

NGĀ WHENUA I WAHAKAHOKIA MAI I TE RAUPATU

Compensation Court, out-of-court settlements and lands returned to Whakatōhea – nineteenth and twentieth century

1. Introduction

The land confiscations in the eastern Bay of Plenty were, in common with such confiscations elsewhere in the country, historically unprecedented, hastily planned and implemented, and marred by legal and procedural error. In consequence the original confiscation plans were substantially amended, and a large proportion of the lands were eventually returned to those iwi, including Whakatōhea, from whom they had been confiscated.

The process of returning those lands, however, was also unprecedented and at times implemented so poorly that leading officials such as Native Land Court Chief Judge Fenton were moved to criticise aspects of it. In general, the return of confiscated Whakatōhea lands was a complex, confused and loosely documented process, and it is therefore problematic to trace it fully and clearly today.

What appears undeniable is that:

- Although the land confiscation process in general was officially portrayed as a judicial and political response to events such as the killing of Rev. Völkner, it also had significant economic implications for the government and European settlers. They expected, as a result of confiscating large areas of land, to recover much of the cost of recent military activity and to free up valuable land for settlement. In 1871 Col. Haultain told Native Minister McLean that ‘The Maoris have always been loth [ie. reluctant] to part with their fertile land, and it is chiefly by confiscation that we have obtained any large tracts of really good land.’¹ Representatives of Whakatōhea have confirmed to the author of this report that in the period prior to confiscation their iwi was indeed very unwilling to part with large areas of ancestral land, and that the impacts of confiscation were therefore especially damaging and longlasting.²
- James Wilson, the Special Commissioner of Claims to Bay of Plenty lands, was given extraordinarily wide-ranging powers and very little time to exercise them. He acted as Crown Agent at hearings of the Compensation Court but also negotiated out-of-court settlements directly with claimants. Very few official records of those negotiated settlements have been found, so much of his activity on behalf of the Crown remains shrouded in mystery. Wilson negotiated the return of lands not only to Whakatōhea but also to other Bay of Plenty tribes such as Ngai Tai, Ngāti Awa, Te Arawa and others. Despite the complexity of many of these cases, they were generally decided within a very short time in comparison with the pace of Native Land Court title investigation hearings. During 1867 Wilson also found time, on top of his official duties, to complete an Old Land Claim for 1916 acres of land near Ōpōtiki, originally granted to his father in 1844.³
- For much of the period covered by this report, the Whakatōhea rohe was convulsed by sporadic guerilla action between Te Kooti supporters and the

¹ Hon. Col. Haultain to Hon. D. McLean 18 July 1871, *AJHR* 1871 A-2a p. 8

² Personal communication, Danny Pahuru, 21 December 2107

³ *AJHR* 1878 H-26, p. 6

Crown and its allies. The militia were only withdrawn from the Ōpōtiki district in the month before Wilson arrived to negotiate the first returns of land.⁴ The district remained under martial law until February 1867, the month before the first Compensation Court hearing began at Ōpōtiki.⁵ During the court hearings themselves, several armed incidents took place, sometimes involving loss of life, and these significantly affected the operation of the Confiscation Court and the wider process of returning lands.

For example, several awards of land could not be surveyed in advance of the court hearings since a surveyor, Mr. Pitcairn, was killed by Te Kooti's followers while carrying out this work. Shortly before the first court hearing, the Ngai Tai chief Wiremu Kingi and his followers, who were in Ōpōtiki preparing to give evidence at the court, pursued a group of 'Hau Hau' said to be 'prowling about the bush at the Waioeka Valley.'⁶ Before the Ōpōtiki court hearing ended, the Whakatōhea chief Tiwai Piahana tracked down this group and attempted, without success, to persuade them to submit to the government.⁷ This atmosphere of continuing tension, threat and hostility affected the participation of witnesses and claimants in the court's proceedings, and may also have influenced the decisions of the court by reinforcing prejudice against those regarded as 'rebels'.

The many discrete areas of formerly confiscated land returned to Whakatōhea fell into three main categories:

- Blocks awarded to individuals or small groups of claimants, either at a hearing of the Compensation Court or through direct negotiations with Wilson. (In many cases those direct negotiations were later officially validated by the Compensation Court.) These awards were usually of two types – quarter-acre sections in the Ōpōtiki Township, and larger blocks of about 50 acres in surrounding areas such as Tirohanga. Many claimants were awarded both types of block.
- Blocks of from 12 to 1000 acres awarded to named members of specific hapū.
- The 20,000-acre Ōpape Reserve, awarded to all of Whakatōhea but soon partitioned into smaller blocks for specific hapū, and later for individual owners. This reserve represents by far the largest area of formerly confiscated land returned to Whakatōhea, and because of its distinctiveness and importance, is addressed in a separate section at the end of this report.

2. Compensation Court hearings

JA Wilson arrived in Ōpōtiki from Auckland in October 1866. Soon afterwards he met with the Ngai Tai chief William King (Wiremu Kingi) and his followers, and with several Whakatōhea chiefs including Rangimatanuku and Witeria. His talks with these iwi addressed Ngai Tai's plans to claim land at Ōpape. These discussions are not recorded, but their outcome convinced Wilson 'more than ever of the weakness of Ngaitai's claim to Opape.' These discussions apparently convinced Wilson to award the entire 20,000-acre Ōpape block to Whakatōhea in general.⁸

⁴ NZG 1866 vol. 52, p. 358

⁵ NZG 1867 vol. 4, p. 37

⁶ DSC 25 March 1867, p. 5

⁷ NZH 29 April 1867, p. 6

⁸ JA Wilson, Special Commissioner of claims to land at Opotiki, to F. Whittaker, agent for the General Govt, Auckland, 14 November 1866, MA1 1866/3754, Archives NZ Wgtn

After several postponements, the first Confiscation Court sitting was held at Ōpōtiki from 7 March - 8 April 1867 and presided over by Judge William Gilbert Mair. The sitting opened with a haka 'by the different tribes from different parts of the district.' In the speeches that followed, the Whakatōhea chiefs strongly opposed the claims by Ngai Te Rangi and Ngāti Maru to confiscated land in Ōpōtiki.⁹ Despite this opposition, various relatively small areas of Whakatōhea lands were eventually awarded to individuals from other iwi, and several to Europeans and 'half-castes'.

After the Ōpōtiki hearing, the *NZ Herald* reported that 'The natives have gone home quite disgusted with the manner in which they were dealt with by the Government by including the innocent with the guilty, i.e., cutting them all down to a level with the rebels in the distribution of the land claimed by them.'¹⁰ This appears to refer in particular to the award of land at Ohīwa to Wepiha and his father Apanui of Ngāti Awa, who were acknowledged in the court as 'tangata hara', ie. as 'rebels'.¹¹

Another newspaper criticised the court for being too generous in returning confiscated lands to both 'loyal' and 'rebel' Māori, since this meant less land available to the government to sell to European settlers, and thereby recover the cost of warfare against the Hauhau. 'It is much to be feared, from the course taken by the Compensation Court, that there will be little land left for sale to recoup the cost of warfare in this locality... less than a tenth of the total confiscated district will fall into our [ie. European] hands.'¹²

There was further armed conflict between Hauhau and their opponents during the hearing at Maketū (8-12 July 1867), presided over by Judge James Mackay. One newspaper correspondent alleged that the Hauhau planned to ambush the judge, Commissioner Wilson and the Whakatōhea chiefs on their return from the court sittings.¹³

More than 200 representatives of various tribes gathered in Whakatāne in advance of the third and final Compensation Court hearing at Te Awa o te Atua, Matatā (9 September - 1 October 1867.)¹⁴ Again, Mair acted as judge.

3. Awards of confiscated land, 1866-1870

The Compensation Court issued its judgments under the NZ Settlements Act 1863 and clause 9, NZ Settlements and Continuance Act 1865. The awards of land made at these court sittings, and before, during and after the sittings as a result of Wilson's direct negotiations, are listed in official records in a series of 'schedules'. There are several conflicting versions of these schedules, apparently because the hasty nature of the compensation process led to administrative errors, and also because some people awarded lands later objected to the properties selected for them and chose other lands instead. In addition, several grantees received lands in more than one of the schedules. The following schedules are compiled from various archival sources with the aim of

⁹ *NZH* 16 March 1867, p. 6

¹⁰ *NZH* 29 April 1867, p. 6

¹¹ B. Gilling, 'Te Raupatu o te Whakatōhea – the confiscation of Whakatōhea land 1865-1866' Treaty of Waitangi Policy Unit 1994, pp. 141-142

¹² *DSC* 31 May 1867, p. 5

¹³ *Ibid* 9 July 1867, p. 4

¹⁴ *Ibid* 18 Sept. 1867, p. 3

providing the most accurate and informative account of the lands ultimately returned to Whakatōhea.¹⁵

Schedule 1 ('Compensation for friendly natives')

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Rewiri Te Rapata Moka	50	Lot 73, Burslem's survey, Waioeka Moka claimed eight pieces of land at Waioeka. His mother was Ngāti Ira and was taken as a slave to the Bay of Islands, where he was born. He came to live on his mother's land when Whakatōhea 'came back from slavery.' ¹⁶
Miriama Makawe	48	Lot 40, Burslem's survey, Waioeka Miriama Makawe claimed on behalf of herself and others of Ngai Tama.
Te Merimana	25	Lot 52, adjoining Burslem's survey, Waioeka
Hohi Ngapuhi	100	Lots 1 and 6, Worth's survey, near Waioeka Hohi Ngapuhi of Ngāti Kahu, a section of Ngai Tama, was the widow of the late Alexander McGregor of Kennedys Bay, Coromandel, and the daughter of Tuterangikawha, one of the leading chiefs of Ōpōtiki. She also claimed land through her grandfather Patumakaruru. She was awarded 100 acres of land 'of the same value as the average of the land claimed', and chose land near the Waioeka River by arrangement with JA Wilson. ¹⁷
Frederick Whittaker	1	Lot 30, military township, Ōpōtiki Whittaker was a former premier, and large-scale speculator with interests in confiscated lands.
Te Warihi, Ngaputa, Raima	35	E. portion Lot 31, Worth's survey ¹⁸ Te Warihi 'has proved connection with Ngai Tama. Court awards 35 acres of good land to be selected.' ¹⁹ Like to be the same person as Te Whariki, of Ngai Tama and Te Kariki, who claimed lands between the Otara River and Waioeka through her mother Hineira. ²⁰
Mihi Terina	35	N. portion Lot 179, McGuire and Rolleston's survey Tirena 'has proved her claim as a member of Ngatirua. Awarded 35 acres of good land.' ²¹
Mary Davides	100	Lot 9 Worth's survey; Lot 47 Burslem's survey

¹⁵ Opotiki Confiscation - schedule of awards BAPP A1721 24693 Box 259 R23818825, Archives NZ Auck. DB B?

¹⁶ Compensation Court MB 12 March 1867 p. 14-15; 14 March p. 26

¹⁷ Ibid, 1 April 1867, pp. 84-94

¹⁸ Opotiki Confiscation Box 3/1; RDB p. 46156

¹⁹ Compensation Court MB, Judgement 12 July 1867

²⁰ MA 61/8 Commission of Inquiry Papers 1867-72

²¹ Ibid

Elizabeth Brown Tahere Ohui	25	SW portion Lot 143, Blake's survey at
Rena Te Ratapu	50	NE portion of Lot 23, Blake's survey
Ritihia Ropiha	50	Lot 47, Worth's survey
Ropiha claimed on behalf of Upokorehe for 'the whole of the Upokorehe land.' She had been enslaved in the Hokianga, and said that 'All the tribe have sinned against the government except myself. 300 acres would be a fair quantity of land for compensation for us.' However, she agreed to accept 50 acres in full compensation. ²²		
Joseph Kennedy Waiotahi	50	Lot 76, Worth's survey, Paiwiwi,
	30	Ohiwa
Kennedy claimed through his mother, Rangiauwaka of Upokorehe. She had occupied about 1800 acres between Ohīwa and Waiotahi until she was taken into slavery in the north. He said 'Her father was a chief and that is the reason her claims are large and indisputable.' The Ngāti Rua chief Wi Tiria supported the claim and added that the land had been worked by about 18 men of Upokorehe since Rangiauwaka left it. 'In the event of a person being taken into slavery, he [sic] forfeits his claim [to land] unless someone is left to occupy the land.' ²³		

Sub-total (rounded), Schedule no. 1 – 599 acres

In February 1868 Wilson advised the Crown that the above claimants 'are now entitled to Crown grants for their lands.' Grants were accordingly prepared by 30 July 1868.²⁴

Schedule 2²⁵ ('Compensation for friendly natives')

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Mereana Waiti Ohui	50:3:30 31:1:8	Lot 19 McGuire and Rolleston's survey E. portion Lot 82, Burslem's survey,
Miriama Makawe	12	SE portion Lot 12, Blake's survey
Tiwai Piahana Ōpōtiki	2 x ¼ 5 50 x 2 25	Lots 7-8, Commercial Township, Lot 367, Military Township, Ōpōtiki Lots 2 and 3 at Ohīwa E. half Lot 2, Onekawa, Ohīwa ²⁶
James Vann Marston	¼	Lot 219, Commercial Township

²² Compensation Court MB, 5 April 1867, p. 197; 6 April 1867, p. 198

²³ Compensation Court MB, 12 March 1867 pp. 14-15; 14 March p. 26

²⁴ Opotiki Confiscation - schedule of awards BAPP A1721 24693 Box 259 R23818825, Archives NZ Auck.

²⁵ Ibid

²⁶ Proceedings of Compensation Court, Judge Mackay's notes of Maketu, 10 July 1867 BAPP A1721 24693 Box 737 R23897629 Archives NZ Auck; *AJHR* 1864 C-3, p. 9

50 Lot 1, Blake's survey, Ohui
 Emily, Harriet, James, Mary, Ann and George Marston were awarded land on the strength of a letter produced by their father James. This confirmed that he agreed to accept 50 acres at Ohui, and an allotment in the Commercial Township 'having a frontage to the river at or above Tiwai's.'²⁷

Ngahiraka, Matarena 100 Lots 4-5, Blake's survey
 and Katerina Takoto ¼ Lot, 22, Commercial Township

Hira Te Okiwa 50 Lot 9, McGuire and Rolleston's survey
 25 Hiwarau when subdivided
 2 x ¼ Lots 157 and 158, Civil Township,

Ōpōtiki

Hira Te Okiwa of Ngāti Rua claimed lands at Ōpōtiki and Ohīwa from both her mother Ripeka and father Hiomena, who she said were 'both Hauhaus.' Of the lands she was awarded, 25 acres at Ōpōtiki were 'good to average land on the higher ground, to be selected by agreement with Crown agent JA Wilson.'

Rewiri Te Rapata Moka ¼ Lot 14, Commercial Township, Ōpōtiki

Subtotal (rounded), Schedule no. 2 – 450 acres

Schedule 3 – ('Compensation for friendly natives')²⁸

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Bishop Pompallier 25,	1	Lots 15-17 and nthn halves lots 24 and Commercial Township, Ōpōtiki
Te Aira Township, Ōpōtiki	1:3:0 53:3:16	Lots 217, 225-228, 261-3, Comm. Lot 44, Burslem's survey
Te Aira, of the Ngāti Whiri hapū of Whakatōhea, claimed ancestral land together with her older sister Ani and younger sister Arapera. These lands included Papakanui, purchased by the CMS in 1844 and repurchased by Whakatōhea. ²⁹		
Balneavis children Jemima, Louisa, Georgina, John, Henry and Mary Balneavis, the children of Lt. Col. Balneavis, were jointly awarded the above lands.	3	Lots 122-4, Military Township, Ōpōtiki
Hoana Tunui Tunui told the court, 'My ancestors cultivated land close to Opotiki up to my mother's time. She belongs to Ngati Rua and was among the Hau Haus. The government placed her at Opape. My brother Patua was killed at the battle of Kaokaoroa.' ³⁰	¼	Lot 264, Comm. Township, Ōpōtiki
Papa Kahawai	50	Lot 23, Pitcairn's survey

²⁷ Compensation Court MB, 13 Sept. 1867, pp. 174 -5

²⁸ Opotiki Confiscation - schedule of awards BAPP A1721 24693 Box 259 R23818825, Archives NZ Auck.

²⁹ Compensation Court MB, 14 Sept. 1867, pp. 161-162

³⁰ Compensation Court MB, 25 March 1867, p. 60

Sub-total (rounded), Schedule no. 3 – 108 acres

Schedule 4

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Balneavis children	28	NE portion, Lot 25, Blake's survey, Ohui
Koputawera	20	N portion, Lot 263, Pitcairn's survey
Wiremu Karaka	30	S portion, Lot 316, Pitcairn's survey
Te Aira	26	E portion, Lot 62, Burslem's survey
Hoana Tunui	30	W portion Lot 62, Burslem's survey
Tiwai Piahana	25	E. portion, Worth's survey, Waiotahi
Wakata	25	E. portion, lot 193, McGuire and
Rolleston's survey		

$\frac{1}{4}$ Lots 151-2, Town section no. 1

Wakata of Ngāti Rua was the wife of Dr Albert Agassiz. She claimed land known as Manamata through her father Te Kata. (Judge Mair commented on her evidence, 'This witness is evidently a great liar.') The surveyor Burslem stated that the property claimed 'would make a good millrace' and James Wilson added that 'The mill could work both ways as it is tidal there.'³¹

Timoti Te Poukiwaho (Waiaua) ³²	12	NW portion, Lot 314, Pitcairn's survey
---	----	--

Te Poukiwaho was a son of Te Pou Ki Waho of the Ngāriki hapū and had inherited his lands. As a youth he had been enslaved by Ngāti Awa and Ngāti Maru. The Ngāti Patu hapū of Whakatōhea had cultivated his lands in that period, but acknowledged that he retained rights to them.³³

Tamati Te Au	10	NW portion, Lot 314, Pitcairn's survey
--------------	----	--

Mete Petere (Waioeka)	40	SW portion Lot 87, Burslem's survey
--------------------------	----	-------------------------------------

Mere Petere was of Ngāti Rua and Ngā Pōtiki.

Watene Turua Ōpōtiki valley	40	N portion, Lot 43 Blake's survey,
--------------------------------	----	-----------------------------------

$2 \times \frac{1}{4}$ Ōpōtiki township

Turua, of Ngai Tama, claimed through his mother who had been taken in to slavery by Ngāti Maru. He and his fellow claimants were awarded 'a fair share of the lands of N' Tama.'³⁴

³¹ Ibid, 19 April 1867, pp 44-45

³² 'No. 2 Index – Awards to Maori – compensation claims', p. 106 ABWN 26292 A1825/1197/b R25178879 Archives NZ Auck. DB B32

³³ Compensation Court MB 2 April 1867 pp. 88-91

³⁴ Ibid, 22-23 March 1867, pp. 54-55

Mereana Hauauru Ōpōtiki	25	S portion Lot 21, Pitcairn’s survey,
	40	Waiaua
Te Perini Rolleston’s survey	25	W portion Lot 180, McGuire and
Kiepa Te Tua Rolleston’s survey ³⁵	25	S portion Lot 177, McGuire and
Henare Whakarongohau Rolleston’s survey	40	Portion Lot 178, McGuire and
Huhana Waihapuarangi	¼	Town section no. 1, Ōpōtiki
<i>Sub-total (rounded), Schedule no. 4 – 442 acres</i>		

Schedule 8

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Rewiri Te Rangimatanuku	50	Lot 4, Pitcairn’s survey, Tirohanga
Pokanoa Te Awanui	48:3:37	Lot 29, Pitcairn’s survey, Tirohanga
Witeria Tawhai Moka	50	Lot 42, Pitcairn’s survey, Tirohanga
Te Ranapia Te Uatuaho	50	Lot 259, Pitcairn’s survey, Tirohanga
(The above four men are all described as ‘Aboriginal chiefs’. They were awarded these lands ‘on condition that they remain loyal to 1 st January 1870, when Crown Grants will be issued.’) ³⁶		
Te Ranapia Te Utatuaho and Piri Te Makarini	50	Blake’s survey, Ōpōtiki
Te Makarini Tirohanga	30	S. portion Lot 312, Pitcairn’s survey,
<i>Sub-total (rounded), Schedule no. 8 – 278 acres</i>		

Schedule 9 (‘Compensation for friendly natives’)

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Huhana Te Awawaere	10	Middle portion, Lot 25, Blake’s survey
The chief Te Ranapia gave evidence that Te Arawaere had lands in several parts of the district – two small plantations and a larger piece. She had left Ōpōtiki ‘when only a child to live with a white man.’ James Wilson added that her parents, Hopa and Rawa, became rebels and surrendered to him. He younger brother Panapa had been killed in the rebellion, but neither she nor her six children had anything to do with the rebellion. ³⁷		

³⁵ ‘No. 2 Index – Awards to Maori – compensation claims’, p. 106 ABWN 26292 A1825/1197/b R25178879, Archives NZ Auck. DB B32

³⁶ JA Wilson, Crown Agent, ‘Return of reserves made for friendly natives and returned rebels’, 9 June 1867, *AJHR* 1867 A-18 p. 4

³⁷ Compensation Court MB 17 Sept. 1867, pp. 237-8

Huhana Te Waihapuarangi Valley	40	part Lot 21, Worth's survey, Waioeka
--------------------------------	----	--------------------------------------

Te Kohikohi	10	SW portion, Lot 21, Worth's survey
-------------	----	------------------------------------

Sub-total (rounded), Schedule no. 9 – 60 acres

Schedule 11 ('Reserves for loyal natives and returned rebels')

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Returned rebels	12	Lot 311, McGuire's survey, Waioeka
This land was 'set apart for natives during good behaviour.'		

Sub-total (rounded), Schedule no. 11 – 12 acres

Schedule 12 ('Reserve for returned rebels')

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Whakatōhea	[20,326]	Lot 1, parish of Ōpape
The names of those awarded these lands are listed in the document bank to this report.		

Sub-total (rounded), Schedule no. 12 – 20,326 acres

Schedule 14 (Reserves for loyal natives and returned rebels of Upokorehe hapū)

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Upokorehe	13:2:12	Hokianga Island
Trustees – Teira Haruru, Hemi Kakitu, Taituha Mokai, Hemi Kuri. ³⁸		

	1073	Hiwarau Reserve
--	------	-----------------

Trustees – Teira Haruru, Hemi Kakitu, Hoeroa, Hemi Hamu, Mita Tahanoke, Iraia Kaiponi, Hoani Akeake. ³⁹		
--	--	--

Sub-total (rounded), Schedule no. 14 – 1086 acres

Schedule 17

<i>Name</i>	<i>Area (a:p:r)</i>	<i>Description</i>
Ngatira	102	River Otara, Lot 336 Ōpōtiki
Trustees - Hira Te Popo, Pera Makau, Wharenui, Tuwhakia, Maka Rangiihu, Hane Tapatahi, Mihaka Mataika. ⁴⁰		

Sub-total (rounded), Schedule no. 17 – 102 acres

The above award to Ngāti Ira, and several later awards to members of this and other hapū, note that the lands were granted under Clause 4 of the Confiscated Lands 1876. This clause empowered the Governor to grant lands 'to such person or persons of the Native race as shall be proved to his satisfaction to have been in rebellion and have subsequently submitted to the Queen's authority.'⁴¹

³⁸ AJHR 1874 C-4, p. 13. The names of those members of Upokorehe awarded these lands are listed at p.14

³⁹ Ibid, p. 14. The names of those members of Upokorehe awarded these lands are listed at p.14

⁴⁰ Ibid, p. 1. The names of those members of Ngāti Ira awarded these lands are listed at pp. 1-2

⁴¹ Clause 4, 1867 Confiscation Act

Awards to hapū groups such as Ngāti Ira named the individual members of the hapū who were entitled to the awarded lands. That is, the Crown, rather than the hapū itself, determined which individuals were entitled to the awarded lands. In addition, certain of the listed members of the hapū were named as trustees for the remaining members. Gilling's report points out that only these trustees had the legal right to alienate the awarded lands. The process by which these lists of hapū members, and of hapū trustees, were drawn up is not evident from the archival record. However, according to Gilling, 'it seems to indicate a desire by the Crown to individualise title, something which may have led to the trustees assuming over time the role of owners.'⁴² In practice, however, subsequent title investigations for several of these hapū blocks resulted in them being vested in the hapū as a whole.

The above and several later awards were also issued under Clause 6 of the 1867 Confiscation Act, which empowered the Governor to attach 'certain conditions, restrictions or limitations' to the grant of land.⁴³ Those conditions typically referred to the inalienability of the awarded land (ie. prohibiting the grantees from selling or leasing it within 21 years, except with the approval of the Governor), and/or to the Crown's right to lay out roads within the boundaries of the awarded lands.

4. Awards of confiscated land, 1871-76

In late 1871 JA Wilson was reappointed by the government to finalise the return of Bay of Plenty confiscated lands. There were no more sittings of the Confiscation Court in this district so further awards of land were negotiated by Wilson directly with the claimants. The awards negotiated in this period were listed in a series of schedules which appeared in the *NZ Gazette* 1874 no. 60. Confusingly, these schedules are numbered in a sequence which bears little relationship to the series summarised above. In addition, the schedules in the 1874 series not only record additional areas of land to those in the earlier series, but also update and repeat several of those earlier awards.

The awards listed in the 1874 *NZ Gazette* series are:

Schedule 9

<i>Name</i>	<i>Area</i>	<i>Description</i>
Hira Te Popo, Topeora Ōpōtiki and Mihaka Rangiaho ⁴⁴	¼	Lots 92, 93 Commercial Township,

Sub-total (rounded), Schedule no. 9 – 0.25 acres

Schedule 13 [*confirmation of earlier award but with revised names of grantees*]

Land inalienably assured by a grant in trust to named members of 'Upokorehe tribe'.

Upokorehe 13:2:12 Hokianga Island

Trustees - Teira Hauauru, Hemi Kaki, Taituha Moka, Hemi Kuri⁴⁵

Schedule no. 14 [*confirmation of earlier award but with revised names of grantees*]

'Land inalienably assured by a grant in trust to named members of Ngatira [sic] hapu.

The right to take lines of road reserved.'

⁴² B. Gilling in R. Hill and R. Boast (ed.s), *Raupatu – confiscation of Maori Land*, p. ??

⁴³ Clause 6, 1867 Confiscation Act

⁴⁴ *NZG* 1874 no. 60, 14 Nov. 1874, p. 779

⁴⁵ *Ibid*, p. 781.

Upokorehe 1,073 Hiwarau Block, Ohiwa
 Te Teira Haruru, Hemi Kakitu, Hemi Kuri, Taituha Mokai ⁴⁶

Schedule 17 (confirmation of earlier grant)

‘Land inalienably assured by grant in trust to named members of Ngatira [sic] hapu.’

<i>Name</i>	<i>Area</i>	<i>Description</i>
Ngati Ira	102	Te Rere, beside River Otara next to Ōpōtiki Township ⁴⁷

Schedule 31

‘Land inalienably assured by a grant in trust to named members of Ngatira [sic] hapu.’

<i>Name</i>	<i>Area</i>	<i>Description</i>
Ngati Ira	300	part Simpson’s survey, Waioeka ⁴⁸
Trustees - Hira Te Popo, Pere Makau, Wharenui, Tuwhakia, Maka Rangiihu, Hane Tapatahi and Mihaka Mataika. ⁴⁹		

Sub-total (rounded), Schedule no. 31 – 300 acres

Schedule 32⁵⁰

<i>Name</i>	<i>Area</i>	<i>Description</i>
Tiwai Piahana	100	Simpson’s survey, Otara
In March 1872, Wilson stated that Piahana held a grievance about this award. The land had not surveyed since, according to Major Mair, ‘it was dangerous to survey in that place.’ As a result, Piahana was unable to prevent Europeans from removing timber for fencing from his land. Wilson dismissed this complaint as unreasonable. ⁵¹		

Hana Arapeta	15	Simpson’s survey, Waioeka
This Ngāti Ira woman claimed four pieces of land at Waioeka through her mother. She told the court that when the Hauhau arrived in the Ōpōtiki district, she left to live on her husband’s land at Whangaparaoa, and was therefore not complicit in any ‘rebel’ activity. ⁵²		

Mereana Hauauru	40	Simpson’s survey, Waioeka
	20	Waiaua ⁵³

Sub-total (rounded), Schedule no. 32 – 175 acres

From 1872 HE Brabant became the Resident Magistrate at Ōpōtiki and for the next several years he continued to issue awards of returned lands confiscated from the Whakatōhea. In December 1873 the following awards were ordered:

<i>Name</i>	<i>Area</i>	<i>Description</i>
Ngāti Ira	9?	Lots 335 and 336 (Te Rere)

⁴⁶ *Ibid*, pp. 781-2. The names of those members of Ngāti Ira awarded these lands are also listed.

⁴⁷ *AJHR* 1874 C-3, p. 1. The names of those members of Ngāti Ira awarded these lands are listed at *NZG* 1874 no. 60, 14 Nov. 1874, pp. 783-4

⁴⁸ *Ibid*, p. 6

⁴⁹ *NZG* 1874 no. 60, 14 Nov. 1874, p. 790. The names of those members of Ngāti Ira awarded these lands are also listed.

⁵⁰ *Ibid*, p. 791

⁵¹ JA Wilson to Native Minister, 29 March 1872, *AJHR* 1872 C-4, pp. 6-7

⁵² Compensation Court MB, 18 March 1867 p. 46

⁵³ *AJHR* 1874 C-3 p. 9

Trustees - Hira Te Popo, Pera Makau, Wharenui, Tinowhaka, Maka Rangiihu, Hana Tapatahi, Mihaka Mataika.⁵⁴

Ngatirua [sic] 11 Te Ngaio

The grantees were named as:

Eruera Waikape, Turukori, Te Iki, Motu, Tapui, Teihana, Ngamangemange, Taiheru, Ngapou (wife of Turukori), Te Pukenui (child of Turukori)

Ngatingahere,

Ngaitama [sic] 12 near Te Rere

The grantees were named as:

Ngati Ngahere - Paora Te Ua, Rawini Te Hoko (wife of Paora Te Ua), Manihera Maiki, Rawiri Makawe, Henare, Hemi Te Kupara, Hate, Mirimiri Te Paora (wife of Manihera Maiki), Matene Ruta, Te Onewhero (child of Paora Te Ua), Hemi (child of Paora Te Ua), Kaiwai (child of Hate),

Te Wera (child of Hate), Rota (child of Hate), Te Rangaihi (child of Rawiri).

Ngaitama Hapu - Aramata (widow of Hakaraia), Aporo Te Karihi, Mini (mokopuna or grandchild of Aporo), Emarina (wife of Aporo), Tukirikau, Marara (wife of Tukirikau).

In May 1876 Brabant stated that Mr Wilson had offered the above Ngāti Rua, Ngāti Ngāhere and Ngai Tama grantees, '400 acres of land at Tirohanga which they refused as they have plenty of land.' They wished instead to own land near Ōpōtiki, 'like Hira Te Popo.' Brabant therefore allocated them '32 acres, or one acre per man, of land, which is worth probably eight times as much per acre as that offered them by Mr Wilson, but the aggregate amount given is considerably less in value.'⁵⁵

Sub-total, Brabant post-1972 awards – 32 acres

5. Other awards of confiscated land

A number of awards of Whakatōhea land appearing in archival records are not listed in any of the above schedules. These include:

<i>Name</i>	<i>Area</i>	<i>Description</i>
Erueti Tamaikowha	½	Lots 56 and 57, Commercial Township ⁵⁶
Rangitukehu and tribe	100	Lots 151-2, Ōpōtiki Township
Kopu Tawera	20	Pitcairn's survey, Tirohanga
Tiopira	25	Ohiwa
Tukehu	25	Ohiwa
Wiremu Karaka	30	Waiaua
	10	NW Lot 7, Pitcairn's survey ⁵⁷

⁵⁴ 'Allotments of land to certain natives of the Whakatōhea tribe, as ordered by the Honorable Native Minister, 5 December 1873', BAPP A1721 24693 Box 259 R23818842 Archives NZ Auck

⁵⁵ HW Brabant to Native Minister, 21 May 1876, *ibid*.

⁵⁶ H. Brabant to U-S, Native Office, 24 January 1877, Opotiki confiscation box 2/8, Archives NZ Auckland

⁵⁷ Compensation Court MB 3 April 1867, p. 92; 6 April 1867 p. 198

Sub-total (rounded), miscellaneous awards not otherwise recorded – 235 acres

Total (rounded) – awards of formerly confiscated Whakatōhea lands– 24,200 acres

Note – this figure compares with the estimate by the 1920 Commission into confiscated lands of '22,000-odd acres in all... returned to Whakatōhea'.⁵⁹

6. Lands claimed by Crown

A relatively small proportion of the lands confiscated from Whakatōhea were acquired by the Crown, without compensation, for public works. In some cases these Crown lands are additional to the above figure for awarded lands. For example, by 1877 about 50 acres within the Ōpōtiki township had been reserved under the NZ Settlements Act 1863 (the Act which originally authorised the confiscation of Māori land) for purposes such as a market and courthouse, survey station, schools and redoubt reserve.⁶⁰

In addition, as settlement progressed on and around the awarded lands, parts of those lands were claimed under public works legislation for purposes such as roading. The issues associated with lands within the Ōpape Reserve claimed for roading and other public purposes are dealt with later in this report. Little further information could be found about lands claimed for public works on other awarded lands within the Whakatōhea rohe.

However, in a poignant letter in 1912, the head teacher of the Omaramutu Native School contacted the local MP on behalf of the owners of Lot 312 Waioeka Rd, Tirohanga. This 30-acre block had originally been awarded to Makarini around 1868. His children - Parehuia Makarini (Mrs Paora Taia) Hinehaua Makarini (Mrs Hata) and Waerena Makarini (Mrs George Taia) – had acquired the block by succession and were concerned when three acres, or 10% of the total area, was claimed by the Crown in 1912 for roading purposes. They apparently asked the local teacher, CW Ablett, to ask on their behalf whether they were entitled to compensation for this land. Mr Ablett pointed out that 'White people are paid for land taken for a road and I presume that they too should be paid.'⁶¹ He is likely to have been informed that under the public works legislation in force at this time, no compensation was due to Māori landowners for lands claimed for public works.

7. Acquiring title to awards of confiscated land

All customary title to the above lands had been extinguished when they were confiscated. In order for the grantees to confirm their legal title, they therefore required a Crown grant. In some cases, those grants were not issued for more than ten years. In at least one case, the 12-acre Lot 311 at Waioeka issued under Schedule 11 above, no completed Crown grant seems ever to have been issued.

⁵⁸ *AJHR* 1871 F-4 p. 32

⁵⁹ *Ibid* 1921 G-5, p. 27

⁶⁰ *Ibid* 1877 C-5, pp. 6-7

⁶¹ CW Ablett, head teacher, Omaramutu Native School to Hon. WJ McDonald, MP, 29 April 1912, MA1 1074 1912/1411 R22404284, Archives NZ Auckland

At a 1909 Native Land Court title investigation into this block under Judge Browne, Akuhata Takatua gave evidence that Ngāi Tama had not been awarded land on the same basis as other hapū such as Ngāti Rua and Ngāti Ira, and was therefore occupying Lot 311 without legal ownership. During this hearing the six hapū of Whakatōhea came to an arrangement outside the court to share title in this block, with equal shares. A list of 35 names was handed in to appear on the title deed.⁶² In 1965 a further legal investigation into this block decided that the Minister for Lands should apply under s. 437 Maori Affairs Act 1953 to determine the current beneficial owners.⁶³

With regard to the nine-acre block at Te Rere awarded in 1872 to Hira Te Popo and six others of Ngāti Ira, Mihaka Rangiaho told the Native Land Court in 1909 that the land 'was granted to those people only and not to all of Ngati Ira. But when Hira Te Popo died all N' Ira were included as successors.'⁶⁴

In the same year, Rewita Niwa, Te Wiremu Rangiaherepo, Te Hiakai Apanui, Te Warana Mokomoko, Paroa Taia and Matiu Ranapia explained to the Crown the difficulties they faced in living on awarded blocks without proper legal title. 'We, the people living upon this land are living there wrongly (ie on sufferance) the only reason being that it is Maori land. The Europeans demand half of the fencing to be done by us. It is hard to go and do this work because the rights of us, the people living on the land, are not very clear.'⁶⁵

Perhaps to make it easier to use their awarded lands, from about 1909 the owners of several blocks formed bodies corporate under ss. 122-124 Native Land Court Act 1896, so they could administer the blocks through a committee. Wi Kotu and others did for this for the 785-acre Hiwarau block, and Te Taki te Kaka and others for the 300-acre Waioeka Lot 393.⁶⁶

Although most of the smaller awarded blocks were not subject to restrictions on alienation, few sales of the land appear to have taken place until the early 20th century. These blocks were then often sold by successors of the original grantees. The six-acre Waioeka sec. 3 Lot 143 was sold by Tairua Apanui to Ōpōtiki farmer Alfred Reid for £200 in 1910.⁶⁷ In 1914 Mary Kelly (formerly Mary Agassiz) received £91 3/6 for her one-third interest in the Waioeka Lot 189, part of the lands awarded to Mereana Waiti in 1868. In 1918 Louisa Agassiz sold her one-third share in this block for £240 16/-. Both owners also held lands in Takaputahi and Ōpape.⁶⁸

8. Returned lands remaining in Māori ownership

According to the 'Maori Land Online' website, the areas of returned, formerly confiscated, Whakatōhea lands which are now Maori freehold lands include:

⁶² OMB vol. 19, pp. 242-276, 17 Nov. 1909

⁶³ D-G, Dept L&S, to Secretary, Maori Affairs, 23 Feb. 1965, MA1 5/13/268 Waioeka 1909-1965, Archives NZ

⁶⁴ OMB vol. 19, pp. 242-276, 17 Nov. 1909

⁶⁵ Rewita Niwa et al to Native Minister, 25 March 1909, ABWN W5021 6095 Box 598 R3950934 Archives NZ Wgtn

⁶⁶ NZG 1909 no. 61, p. 1918

⁶⁷ Rotorua alienation files Waioeka sec. 3 Lot 143, R7292469, Archives NZ Auckland

⁶⁸ Rotorua alienation files Waioeka 189 R20662144 Archives NZ Auckland

- Opape reserve - 15,300 acres in almost 50 partitions. Most of that area comprises the amalgamated Opape 28 block
- Scattered areas in Waioeka, Waiotahi and Opotiki – est. 1500 acres
Total (est.) – 17,000 acres, representing approx. 70% of the original returned area.

9. Ōpape block history narrative - introduction

The Ōpape Reserve has been described in Boast and Hill's study of confiscated lands as 'New Zealand's closest equivalent to a North American reservation.'⁶⁹ Gilling concurs that the practice of confining the majority of the iwi on the approx. 20,000-acre reserve, of which only a few hundred acres comprised cultivable river flats, 'appears comparable to the North American practice of confining Native Americans on reservations so as not to hinder European settlement.'⁷⁰

The reserve is situated at the eastern edge of Whakatōhea's tribal boundary and extends from the coast inland in a narrow strip running roughly NW to SE. Very little official documentation of its establishment has been located, but a newspaper report from May 1866 states that 'The very rebels who were taken prisoners with arms in their hands fighting against us have been allotted about 4,000 acres of the finest land at Opape Point, on the East Coast, in the midst of the confiscated territory.'⁷¹ A few days later the same paper reported that 'The Wakatohea [sic] natives are preparing their land (allotted to them by the Government at Opape) for cultivation, and carrying on fishing operations. They are finding a ready market for their surplus fish among the officers and men of the expeditionary force here, and appear contented.'⁷²

The earliest official description of the final 20,000-acre reserve appeared the following year. The reserve was allocated for:

Rebels only of the Whakatohea Tribe who have surrendered
Bounded on the North by the sea; on the East by a line from Point Titoi to Tarakeha, thence to Tawatihitihi, thence by a straight line running through Puketeko to the southern boundary of the confiscated block; on the West by Waiawa River from its mouth to the point where it passes between Makeo and Wakahau hills, thence by a line parallel with the eastern boundary from the point of Wakahau Hill to the southern boundary of the confiscated block; on the South by the boundary of the confiscated block.⁷³

Prior to their confiscation these Ōpape lands lay within the traditional territory of the Ngāti Rua hapū. The return and resettlement of this confiscated land appears to have been negotiated primarily by James Wilson in his capacity as Crown Agent for Poverty Bay. Although intended to sustain and accommodate 'Rebels only of the Whakatohea tribe', the lands were confiscated from a section of Whakatōhea which did not take a leading part in the rebellion against the Crown. In 1870 Wilson wrote that, 'The Opape Whakatoheas, upon whom Te Kooti made his [1867] raid, have always been found faithful to us, and have never turned their backs upon the enemy, except under protest, when ordered to do so by their European officer.'⁷⁴ This curious comment reinforces the injustice of the original confiscation of the lands.

One local account of the formation of the reserve was given in evidence before the Native Land Court in 1895 by the chief Ranapia Waihuka:

⁶⁹ B. Gilling in R. Boast and R. Hill (ed.s), *Raupatu- the confiscation of Maori land* VUP 2010, p. 26

⁷⁰ B. Gilling, 'Te Raupatu o te Whakatōhea – the confiscation of Whakatōhea land 1865-1866' Treaty of Waitangi Policy Unit 1994, p. 181

⁷¹ *Daily Southern Cross*, 15 May 1866, p. 4

⁷² *Ibid*, 22 May 1866, p. 4

⁷³ *AJHR* 1867 A-18, p. 3

⁷⁴ *NZ Herald* 23 March 1870, p. 4

On being defeated by the Europeans Whakatohea fled to the bush, after which we were invited by the govt officers to return. At this time the mana of my ancestor Tetoko rested on me. The Govt said to me 'I will give you two kaingas.' These words I spoke to all the hapus - N' Rua, N' Ira, Ngaitama, N' Ngahere, N' Patu, Te Upokorehe. I said the Govt will give two pieces of land either at Ohiwa or Opape. It rests with you. N' Rua proposed Opape as their crops were growing there. So all the hapus of Whakatohea had lands given them there.

I built a large house there which I named Muriwai, and we have lived permanently on the land there since the Govt placed us there.⁷⁵

Another and slightly differing resident's account of the formation of the reserve was given in 1902 by Rewita Niwa of Ngai Tama. He told Premier R. Seddon:

In 1866 Mr Wilson came to tell Whakatohea to go to Opape and Waiaua... the Maoris agreed so as to leave Opotiki to be a place where the Hauhaus could be waited for, as there was fighting going on at that time. Whakatohea occupied Opape for two years and then found that it was not suitable and it was left to be used as a fishing place and a place for preparing the produce of the sea. All Whakatohea moved to Waiaua and cultivated there, all the hapus were alike prosperous in those days.⁷⁶

Official reports confirm Niwa's statement that many members of Whakatōhea chose not to remain living permanently on Ōpape from 1866, but instead moved back there progressively during the 1870s and early 1880s.

One pressing reason for the unwillingness of many Whakatōhea to remain permanently at Ōpape from 1866 was the risk from sporadic warfare with Te Kooti and his followers. In September 1867, Ōpape residents were said to have been warned by:

some of their friends in the Hauhau camp... to join them, otherwise they say they will all be killed. The natives of Opape are friendly, and the commanding officer, Major St. John, has had so much confidence in their loyalty that he has issued to them a supply of arms and ammunition. Since the communication referred to, however, they have felt so much alarmed that they have sentinels posted nightly, and a lookout kept during the day.

They consider themselves, and are without doubt, in a state of extreme peril, the only escape from which is for them to cast off allegiance to the Queen, and go over with their rifles and ammunition to the Hauhaus.⁷⁷

Members of every hapū of Whakatōhea were required to share these former Ngāti Rua lands. The complex task of allocating hapū divisions within the reserve was carried out between 1870 and 1883, first by Native Reserves Commissioner JA Wilson and then by his successor HE Brabant.⁷⁸

In 1872 Wilson reported that 'the hapus of Whakatohea were quarrelling about the possession of their cultivations on the land' and that 'the quarrels have sometimes

⁷⁵ OMB no. 10, pp. 117-118, 5 August 1895

⁷⁶ Rewita Niwa and 'all of Ngai Tama', petition to Premier Seddon, 18 Oct. 1902, MA 13/1006 REPRO 1654 Opape Native Reserve special file, Archives NZ Wgtn

⁷⁷ DSC 18 Sept. 1867, p. 3

⁷⁸ B. Gilling, p. 156

ended with sticks and blows.’⁷⁹ These disagreements are hardly surprising considering the situation of multiple hapū obliged to negotiate shared use of a very inadequate area of fertile land for their support.

10. Subdividing the reserve

In creating the Native Reserve, each of the six hapū of Whakatōhea was allocated a coastal farm block and a bush block. In October 1879 Wilson issued instructions to have these hapū subdivisions surveyed. The survey carried out the following year therefore created 12 subdivisions (Ōpape 1-12), in strips running from the coast to the broken country inland.

In October 1881 Brabant ‘called a meeting of the Whakatohea tribe at Opotiki... to complete the subdivision of the Opape Native Reserve, 20,326 acres.’ Since the hapū subdivision boundaries had been defined by the survey, ‘there remained to settle the names of the owners of each block, and where a native belonged to two or more hapus, into which list his name was to be inserted.’⁸⁰

In early 1883 Brabant supplied these lists of names, and a table showing the subdivisions allocated to each hapū, their area, and the number of owners of each block, stating that, ‘the boundaries and lists have all been agreed to by the several hapus and... contain the whole tribe.’⁸¹

<i>Hapu</i>	<i>No. of owners of block</i>					<i>Block no.</i>	<i>Area (a r p)</i>
	<i>M. adult</i>	<i>F. adult</i>	<i>M. child</i>	<i>F. child</i>	<i>Total</i>		
N’ Rua	57	67	27	22	173	3; 12	2,268 2 6; 4,390 3 36
Ngaitama	64	55	28	41	188	1; 11	2,432 2 14; 3,270 0 4
N’ Ngahere	53	35	14	7	109	2; 10	1,187 1 22; 1,680 2 33
N’ Patu	32	24	13	10	79	5; 9	713 3 12; 1,164 3 22
N; Ira	26	22	17	9	74	6; 8	29 2 12; 1,088 2 16
Upokorehe	16	13	11	5	45	7	425 1 2
“ “	15	13	11	5	44	4	278 1 35
N’ Muriwai	6	5	7	4	22	3A	660 0 0
<i>Totals</i>	<i>269</i>	<i>234</i>	<i>128</i>	<i>103</i>	<i>734</i>		<i>20,290 3 14</i>

This schedule of owners was followed by a 36-page list of the names of individual owners, grouped according to their hapū, and further divided into adult males and females, and male and female children.⁸²

The total area of the reserve in the above schedule, 20,290 acres, differs from the area stated by Brabant in 1881 – 20,326 acres. The difference is represented by the area

⁷⁹ Quoted in Mikaere, p. 30

⁸⁰ HE Brabant to TW Lewis, Native Dept, 21 Oct. 1881, MA 13/1006 REPRO 1654 Opape Native Reserve special file Archives NZ Wgtn DB B80 (2 pages)

⁸¹ HE Brabant, 23 Jan. 1883, Schedule showing subdivision of the Opape Native Reserve, *ibid.* DB B81 (4 pages)

⁸² ‘Lists of owners in the Opape Reserve in the Opotiki District’, *ibid.* DB B82 (36 pages)

surveyed for future roading. These roadlines would remain the property of the Crown after the rest of the reserve passed into hapū ownership, meaning that the native owners had no rights of appeal once roads began to be built across their lands.⁸³ Similarly, block no. 2, awarded to Ngāti Ngāhere, included the site of Omaramutu School. Ngāti Ngāhere were told that they had no rights over the four-acre site, and that it would be cut out of the lands awarded to them.⁸⁴

Note that the schedule above lists seven hapū, including Ngāti Muriwai, who were not included among the six hapū referred to in 1895 by Ranapia Waihuka (above). Brabant explained this addition as follows – ‘I found a further subdivision, besides those originally proposed, necessary, but the survey of this has been done after some delay at the expense of the natives themselves, and not of the Government.’⁸⁵

In 1886 Tuakana Aporotanga contacted the Native Minister ‘on behalf of all of Whakatohea’, to ask that no Crown grant should be issued to Ngāti Muriwai for their block, Ōpape 3A, since ‘this was not part of the original agreement with the six hapus.’⁸⁶ Ōpōtiki resident magistrate R. Bush annotated this letter, saying:

Originally N’ Muriwai were included with N’ Rua’s list of names. Then the Whitikau block went through the Native Land Court and this hapu sided with Ngaitai rather than Whakatohea... subsequently a 660-acre portion [of the Opape block] was cut off from the N’ Rua portion for N’ Muriwai, which paid for its survey.

These people are quite as much entitled to Crown Grants as the other hapus, and as a seventh subdivision has been made, and recorded on the official plan of the Reserve... a Crown Grant should be issued to them.⁸⁷

Brabant gave further details of the disagreement:

The land was surveyed into 12 subdivisions, two for each of the six hapus... after the survey was completed, N’ Rua quarrelled amongst themselves... the bulk of the N’ Rua wanting to turn the N’ Muriwai, one of their sub-hapus, off Opape. They actually did drive their sheep off the property... Mr Bush RM thought it v. desirable that the land intended for N’ Muriwai should be in a separate block... These Natives offered to pay for the extra survey... it is very desirable that the Grants should all issue with as little delay as possible.⁸⁸

Ngāti Rua’s request to exclude Ngāti Muriwai from a portion of the Native Reserve was therefore denied.

The costs of making the above subdivisional surveys were calculated as:

<i>Block</i>	<i>Survey lien</i>
1	£123 7/-
2	£59 15/6
3	£116 1/-
3A	£33 18/-

⁸³ This issue is discussed in detail in B. Stirling, ‘Report for Nukutere Lands Trust on Opape Roading Issues’, Maori Land Court, 2005

⁸⁴ H. Brabant to T. Lewis, U-S, Native Dept, 15 Nov. 1883, marginalia, TW Lewis, 5 April 1884, MA 13/1006 REPRO 1654 Opape Native Reserve special file Archives NZ Wgtn

⁸⁵ H. Brabant to U-S, Native Dept, 23 Jan 1883, *ibid*

⁸⁶ Tuakana Aporotanga to Native Minister, 23 April 1886, *ibid*. DB B86 (2 pages)

⁸⁷ Marginalia to *ibid*, R. Bush to T. Lewis, 17 May 1886, 27 May 1886, *ibid*.

⁸⁸ H. Brabant, memo, 23 Aug. 1886, *ibid*. DB B88 (2 pages)

4	£14 1/6
5	£36 0/6
6	£36 12/6
7	£21 17/-
8	£54 11/6
9	£59 10/6
10	£84 15/6
11	£165 6/-
12	£222 12/-
Total	£1027 8/6

Brabant proposed that ‘these liens should be registered on the land, in case leave should at any time be given to alienate a block [in which case] the lien might be recovered by the Government.’⁸⁹ This proposal appears to have been adopted by the government except that, as noted above, the survey of the Ngāti Muriwai block, Ōpape 3A, was paid for at the time by the owners themselves.

11. Confirming ownership

In spite of the several assertions above that Crown grants should be issued to confirm each hapū’s ownership of its portion of the reserve, no such grants or other instruments of title were ever issued, due to the complex and unprecedented legal status of the lands. The Ōpape lands therefore remained in Crown ownership until they were investigated by the Native Land Court in 1904. This delay in vesting title of the land in its Maori occupants was criticised by various later court judgements.⁹⁰

The lack of Crown grants soon created difficulties for those owners who wished to lease parts of their allocated lands, even though the Crown was also enthusiastic to see these leases taken up. In 1883, at the time that he provided the above schedule of blocks allocated to each of the hapū, Brabant said, ‘Block no.s 1, 2, 3, 4, 5, 6 and 3A are required by the natives for cultivation. I think they should be allowed to lease blocks 7, 8, 9, 10, 11 and 12.’⁹¹

The following day Brabant added:

the natives wish to lease certain of the blocks... and as they do not require these for cultivation it is manifestly for their interest that they should be allowed to do so. They wished the grants issued to trustees to facilitate this, which I informed them could not be sanctioned, but I am fully alive to the difficulties they would labour under were grants to issue for the land to the persons in the lists.⁹²

This reference to the ‘difficulties’ faced by the occupiers of the land referred to the general problem of administering multiply owned lands in which each owner, including minors, might theoretically hold an equal share. The Native Department therefore approved Brabant’s suggestion above, and advised him that:

Crown grants will be issued for the portions of the reserve which you consider are required for native occupation. As regards the portions which it is desirable to lease, steps will be taken to bring them under the operation of the

⁸⁹ Brabant to U-S, Native Dept, 13 Feb. 1883, *ibid*.

⁹⁰ See, for example, deputy chief Maori Land Court judge C. Fox, 4 March 3013, MB 70, p. 280, ‘Māori land should have been returned to the Māori owner by Crown Grant after the Māori Land Court had approved the subdivision – See Confiscated Lands Act 1867.’

⁹¹ HE Brabant, 22 Jan. 1883, Schedule showing subdivision of the Opape Native Reserve, MA 13/1006 REPRO 1654 Opape Native Reserve special file, Archives NZ Wgtn

⁹² H. Brabant to U-S, Native Dept, 23 Jan 1883, *ibid*.

Native Reserves Act 1882, in which case they will vest in the Public Trustee, to be administered by him for the benefit of the native owners.⁹³

However, there were evidently legal obstacles to vesting the lands in this way. The Native Department sought advice from the Public Trustee on ‘the most simple and effective way of vesting in yourself under the Native Reserves Act 1882 the lands which Mr Brabant says should be leased.’⁹⁴ The Public Trustee responded that this Act ‘does not provide any means of doing so and requires amending in that direction.’⁹⁵

Three years later, when Oriwa and other members of Ngāti Rua asked to have their shares in the Ōpape 3 block defined, presumably to help them develop the lands, the lack of Crown grants meant their request could not be met.⁹⁶ Magistrate Bush advised the Native Department that ‘This application opens up a large question, one which I fear cannot be undertaken, because it will be very difficult to divide these blocks and give each native sufficient good land to support them, until their numbers are much reduced.’⁹⁷

Later in 1886, the Native Department Under-Secretary suggested that leasing via the Public Trustee would result in ‘considerable difficulty and expense in distribution of proceeds’ due to the large number of individual owners of each block, and proposed instead that the inland blocks ‘be vested in a specially appointed Commissioner of Native Reserves.’ On that basis Crown grants were drawn up for each of the seven other coastal subdivisions, and the Governor gave a direction to issue them to the landowners.⁹⁸

Shortly afterwards the Native Minister received legal advice that ‘There does not appear to be any legal authority for the issue of the Opape Native Reserve Grants.’⁹⁹ Instead, a clause giving the Crown the power to issue these grants was drafted for insertion in a proposed Special Powers and Contracts Bill. In 1888 the Native Office was advised that this clause had been ‘advisedly omitted’ from that Bill.¹⁰⁰ No explanation has been found for this decision.

In spite of the lack of Crown grants or other legal instruments giving the Ōpape occupants title to their lands, during the 1880s and ‘90s the Native Land Court periodically issued orders for the reserves, and appointed successors to those names on the lists prepared by H. Brabant, as they became deceased. In 1888, for example, the Native Land Court under Judge Mair issued ‘amending’ partition orders for the blocks originally allocated by Brabant, awarding them to each of the seven original

⁹³ U-S, Native Dept to Brabant, 17 Feb. 1883, *ibid*.

⁹⁴ Marginalia to *ibid*, T. Lewis to Public Trustee, 10 Feb. 1883, *ibid*. DB B94

⁹⁵ A. Mackay to Public Trustee, 10 March 1883, *ibid*.

⁹⁶ Oriwa and 16 others of N’ Rua to Native Minister, 7 April 1886, *ibid*. DB B96

⁹⁷ Marginalia to *ibid*, R. Bush to T. Lewis, 4 June 1886, *ibid*.

⁹⁸ T. Lewis to Native Minister, 11 Nov. 1886, *ibid*. DB B98 (3 pages)

⁹⁹ M. Morpeth to Native Minister, 19 Jan. 1887, *ibid*. DB B99

¹⁰⁰ Unsigned memo, ‘The case of the Opape Reserve, Opotiki’, record number 86/3906; Native Office memo, 11 Dec. 1888, *ibid*. DB B100 (4 pages)

hapū.¹⁰¹ There were further partition orders for individual blocks in 1895 and 1898.¹⁰² The validity of these orders is a matter for legal analysis.¹⁰³

12. Surveying Ōpape partitions

On 28 March 1898 Judge Johnson, under s. 62 of the Native Land Court Act 1894, subdivided the Ōpape no. 1 block into 20 narrow partitions, one for each of the families who had been admitted to the block. The Chief Surveyor commented derisively that several of these partitions were so impractical for farming that they were ‘hardly worth the cost of fencing.’¹⁰⁴ Nevertheless, the survey costs were added as a lien to the block once title was eventually awarded.

There were other indications at this time that some occupants of the Native Reserve were scarcely able to survive on the land available to them. In 1902 Rewita Niwa and ‘all of Ngai Tama’ petitioned Premier Richard Seddon regarding the quality of their two blocks, 1 and 11, totaling 5700 acres. They said that, ‘In 1882 Mr Brabant accompanied by Wiremu Kingi came to indicate the divisions of the Opape Block. Then it was seen that Ngaitama were awarded land that was tenanted by ghosts [te whenua o te kehua].’ They described these areas as:

the home of the tawai and rewarewa in the high mountains, precipices and boggy places, of which it is not possible to plough more than 300 to 400 acres. The [other] five hapus had land awarded to them where potatoes, maize and other crops are grown, whereas the lands that Ngai Tama now cultivate, they have to lease from the Pakehas at the rate of £2 per acre per annum.¹⁰⁵

In 1904 a remedy finally appeared for the legal impasse that prevented the Ōpape Reserve occupants from acquiring full title to their lands. Section 12 of the Maori Land Claims Adjustment and Laws Amendment Act 1904 empowered the Native Land Court to determine who was legally entitled to the land that comprised the Ōpape Native Reserve.¹⁰⁶ The reserve is one of twelve named properties falling within the jurisdiction of this Act, and its area is there given as 20,291 acres.

Accordingly, from February 1904, Judge Edger, assisted by Native Assessor Hemi Erueti, heard partition applications for each of the blocks in the reserve, and ordered lists of owners’ names to be handed in to him. Ramiona Papuni, for Ngāti Rua, told the court that ‘The hapu has allotted to each occupant his cultivation and a part at present not worked. We have made 20 divisions [in block 3].’¹⁰⁷ Heremia Te Iki added that even though the hapū’s inland block, no. 12, was still unoccupied, they wished it divided among the families and had made eight divisions.¹⁰⁸ Others expressed themselves satisfied with the quasi-legal partitions made by earlier courts, and simply asked for these to be confirmed.¹⁰⁹

¹⁰¹ OMB no. 15, pp. 71-73

¹⁰² OMB no. 12, 3 Dec. 1895 pp. 286-291; OMB no. 15, pp. 79-85, 182.

¹⁰³ H. Seth-Smith, deputy chief Judge, NLC to U-S, Native Dept, 1 July 1904, MA 13/1006 REPRO 1654 Opape Native Reserve special file, Archives NZ Wgtn DB B103

¹⁰⁴ Chief Surveyor memo, 29 June 1898, *ibid* DB B104

¹⁰⁵ Rewita Niwa and ‘all of Ngai Tama’ petition, to Premier Seddon, 18 Oct. 1902, *ibid*. DB B105 (4 pages)

¹⁰⁶ S.12, Maori Land Claims Adjustment and Laws Amendment Act 1904

¹⁰⁷ OMB no. 15 25 Feb. 1904, p. 221

¹⁰⁸ *Ibid*, 7 March 1904, p. 255

¹⁰⁹ See, for example, OMB no. 18, 18 March 1907 p. 57

Kora, for Ngati Ira, gave evidence that a road had been surveyed and formed through the Ōpape no. 6 block awarded to his hapū. The road had passed ‘through our cultivations, and our crops were destroyed. It would have been better had the surveyor consulted us as to the line of the road, which could have been taken so as to avoid our cultivations.’¹¹⁰

Several hapū asked to have papakainga and urupā, to be owned collectively by all their members, marked out within their blocks.¹¹¹

All of the partitions made by the 1904 court were formally validated by an application of the Native Minister at a later court sitting in November 1907, under Judge Mair.¹¹² Each of the Ōpape partitions, with its area, number of owners and present use, whether as family farm, papakainga, urupā etc, was set out in the government’s ‘Native land and native land tenure’ report the following year.¹¹³

In 1910 the Native Minister, Hon. A. Ngata, inspected the Ōpape reserve and found that, ‘The subdivisions made by the Court had, in the opinion of the Department, spoilt the block,’ presumably by cutting up the already limited cultivable land into impractically small strips. However, Ngata believed that, ‘the partition of one-third of the block could well go on. This work is now in hand.’¹¹⁴ This comment suggests that even though the reserve occupants had at last acquired firm legal title, they remained subject to the views of the government in how their land was used.

The various surveys made of the boundaries of the hapū subdivisions, and later of the individual interests, grew to represent a very significant proportion of the valuation of many of the blocks, and became a source of concern for their owners. In 1913 Wiremu Paikea, on behalf of his hapū of Ngāti Rua, contacted the Native Minister regarding a 1912 survey of their 73-acre papakainga reserve at Omaramutu. The survey cost for this relatively small area was ‘£25 and some shillings’, which Paikea felt was excessive. He asked, ‘If these survey fees are paid, what effect will this have on our Crown grant, or other mana?’¹¹⁵ The Department responded that the Survey Department had approved the charge and that they had no power to reduce it.¹¹⁶

Perhaps the most extreme example of an undesirable and expensive partition survey took place in the no. 1 block which, as noted above, was subdivided into 20 parts in 1898 under Judge Johnson. In 1907 Judge Mair reheard those partition orders under the 1904 Maori Land Claims Adjustment and Laws Amendment Act, and made various adjustments to the number of shares in each partition, and to the boundaries of the no. 1A papakainga block. These changes required a new survey which was carried out in 1913. However, the surveyor was apparently not informed of the changes ordered by Judge Mair, and cut lines according to Judge Johnson’s 1898 orders. The block owners were charged £356 19/10, plus 5% interest per year, for this survey.

¹¹⁰ OMB no. 15, 18 March 1904, p. 328

¹¹¹ See, for example, OMB 15 10 March 1904, p. 284; OMB no. 18, 30 March 1904 pp. 11-17

¹¹² U-S, Dept of L&S to U-S Native Dept, 8 April 1913, MA 13/1006 REPRO 1654 Opape Native Reserve special file, Archives NZ Wgtn

¹¹³ *AJHR* 1908 G-1M, pp. 6-8

¹¹⁴ *Poverty Bay Herald*, 21 June 1910, p. 5

¹¹⁵ Wiremu Paikea, ‘for the iwi’, to Native Minister, 17 Sept. 1913, MA1/1032 1910/4766, R22403316, Archives NZ Wgtn

¹¹⁶ Marginalia, HW Fowler, 23 April 1914, to A. Ngata to Native Minister, 7 Nov. 1913, *ibid.*

This situation greatly concerned some owners of this block such as W. Wright, who told the Native Minister:

A survey has been made recently... in such a manner as to leave myself and family of about 30 Natives without practically any agricultural land, not more than four or five acres of flat land being left on the portions awarded to us... Some of the young Natives interested do not own one single acre of land and if some provision is not made these people will suffer severely next year as they lose their homes now any day, according to the survey just completed.¹¹⁷

When asked to correct the survey, the Chief Surveyor replied that:

It would be very undesirable to alter the lines as now run on the ground because in some cases the dividing lines would run parallel to the existing ones and only a very short distance away from them and anybody trying to pick up the boundary of the subdivision on the land would very likely be misled. In any case, both subdivisions... are equally useless for any settlement or practical purposes.¹¹⁸

This last remark is presumably a further reference to the impractically narrow strips into which the land had been divided.

The matter was then raised at a Native Land Court hearing, at which the owners agreed to reinstate the original 1898 partitions as suggested by the Chief Surveyor.

Regarding the survey fee, Judge Browne advised the Chief Surveyor that:

the owners have acted so well and conceded so much that no interest should be charged.... If the Court had been left a free hand, in all probability a partition of a totally different character would result... if, instead of having the survey made first and drawing attention to its inutility [ie. uselessness] afterwards, you had when the requisition was received by you, pointed out the position to the Judge who signed it... the necessity for this expensive and allegedly useless survey might have been obviated.¹¹⁹

Two years later the Native Department expressed the view that 'As the mistake apparently arose in the survey office, the survey should be free of cost,' that is, that not only the accruing interest but the original fee should not be charged to the landowners.¹²⁰

This issue remained unsettled until a special clause was inserted into the Native Land Amendment and Native Land Claims Adjustment Act 1918. S. 8 of that Act states that, 'as on the whole the Native owners [of Ōpape no. 1] are satisfied with the present position', Judge Mair's 1907 amending orders were cancelled, fresh orders were issued in conformity with Judge Johnson's 1898 original orders, and the erroneous 1913 survey was validated.¹²¹

By 1930 unpaid survey charges on the Ōpape Native Reserve overall had risen to £845, with the addition of interest and the cost of further internal surveys. In

¹¹⁷ W. Wright to W. Herries, Native Minister, 4 April 1913, MA1 1160 1916/418, R22406212, Archives NZ Wgtn DB B117 (3 pages)

¹¹⁸ R. Knight for Chief Surveyor to Chief Judge Auckland, 20 Nov. 1914, *ibid.* DB B118 (2 pages)

¹¹⁹ Judge Browne to Chief Surveyor, Auckland, 7 Nov. 1915, *ibid.* DB B119 (2 pages)

¹²⁰ U-S, Native Dept to U-S for Lands, 27 Aug. 1917, *ibid.* DB B120

¹²¹ Native Land Amendment and Native Land Claims Adjustment Act 1918, s. 8

November 1930 Hon. A. Ngata, then the acting prime minister, approved a recommendation to write off this sum.¹²²

13. First alienations of Ōpape lands

No alienations, by either sale or lease, of any part of the Ōpape Native Reserve took place before about 1916. This was probably due in part to the uncertain nature of the owners' title to the lands until the 1907 validations. After that date, alienations required the approval of the local District Maori Land Board, which may have felt concerned that the Ōpape owners lacked sufficient other lands for their maintenance. Furthermore, the 1913 Native Land Amendment Act specifically prohibited the Crown from acquiring, either by purchase or lease, any portion of the Ōpape Native Reserve.¹²³ In 1916 Raiwhara Heremaia offered to sell his interests in the Ngāti Patu blocks 5A and 9 to the Crown, and was informed that this Act forbade all such sales.¹²⁴

However, the 1908 government report which recorded Judge Mair's 1907 amending partition orders noted that Ngai Tama's 3,270 Ōpape no. 11 block, and Ngāti Ira's Ōpape 6 (balance) and 8 blocks, totaling almost 1600 acres, were recommended for lease subject to the District Maori Land Board's approval.¹²⁵

By 1918 several small areas within the reserve were leased to individuals. Some of those leasing arrangements may have been informal since not all appear to be recorded in WDMLB records. The earliest found is the 35-acre Ōpape 3W4 block owned by Nakinaki and Hira Ruka. The WDMLB president found that these owners were 'not occupying the land or utilising it in any way.'¹²⁶ In May 1918 the Board approved a lease to Ōpōtiki tobacconist George Matchitt for 21 years with right of renewal for a further 21. The block was valued at £87, and the rent was set at 5% of that amount for the first 21 years, and 5% of the then-unimproved value for the rest of the term.¹²⁷ Almost all WDMLB leases of Ōpape lands followed this pattern.

The following year, in February 1919, the WDMLB called a meeting of the Ngāti Ngāhere owners of Ōpape 2B, to discuss an offer to lease the block to Emma Collier, described as a 'half caste'. Of the 120 owners, only 13 attended the meeting. Eight voted in favour of leasing and five against. The Board noted that this poor attendance was not due to the owners not being aware of the meeting, because the previous Sunday they had held their own meeting at Te Rere 'to discuss this very proposal and the majority were against leasing.' In spite of this very ambivalent outcome, Judge Ayson provisionally confirmed the lease proposal the following month. Forty owners then signed a Memorial of Dissent to the leasing proposal, and it was reconsidered at a later Board meeting. This decided that since the February vote was in favour of leasing, it must proceed, but that a 30-acre area used by the owners 'for residential purposes' should be excluded. On that basis, the lease was confirmed in August 1920.

¹²² *AJHR* 1932 G-7, p. 2

¹²³ Native Land Amendment Act 1913, s. 117(2)f

¹²⁴ Raiwhara Heremaia to U-S, Native Dept, 14 March 1916, MA-MLP1 167/k 1916/49, R23910060 Archives NZ Wgtn

¹²⁵ *AJHR* 1908 G-1M, pp. 7-8

¹²⁶ President WDMLB to U-S Native Dept, 27 May 1918, MA1/1186 1918/166, R22406721 Archives NZ Wgtn

¹²⁷ *Ibid*

The Inspector of Noxious Weeds reported that the block was covered with gorse, blackberry and sweetbriar, 'and that the owners would not do anything to clear it.' Judge Ayson agreed to cut off two further portions totaling 64 acres, 'so as to remove all possibility of hardship on any owner or set of owners.' This included 38 acres near the coast which 'comprised the best part of the block... and should be able to grow kumaras and potato in abundance.'¹²⁸

In 1921 Mrs Collier transferred the lease to the local police sergeant, Sgt Ferguson, who in turn transferred it to his wife, described as 'a lady of German extraction'. This was especially galling since the First World War had only recently ended. A Mr G. Mackay wrote to Hon. A. Ngata to ask 'Can Germans take up Native land? Two others here have secured land from the Natives and that during wartime. I am sorry for some of the natives here as they seem to have no land while those who have sections of their own are now doing well dairying.'¹²⁹

Whaiora Renata and about 30 other owners also wrote to Ngata, saying that the rentals for Ōpape 2B were in arrears for three years. They wished to charge the lessee at least 2/6 per acre, but Mrs Ferguson was paying only 1/3, by arrangement with the Maori Land Board. Their other concerns included the puriri trees on the land, which they felt should be reserved for their use, 'and anyone else charged a royalty to cut them.' They claimed that the papakainga which had been cut out for them 'is of no use for a village. There is no puriri timber there for fences or firewood. The land is not much use for planting kumaras or potatoes.' Finally, they claimed that 'when this land was acquired under lease, some owners were landless.'¹³⁰

An explanation for these grievances was provided by the registrar of the Waiariki District Maori Land Board. He stated that 'Mrs Ferguson has paid her rents to date and such rents are devoted to paying off survey costs on the block.' The lease agreement contained no provision for reserving the puriri to the owners, 'except that any posts required for the repair of boundary fences are to be obtained from the block.' He admitted that the Board had approved a rent of 1/3 per acre, but had divided the 21-year lease period so that this amount would be paid for the first 11 years, and the rent for the remaining ten would be 5% of the then-unimproved government valuation.

'As to some of owners being landless, it was proved to the satisfaction of both Judge Rawson and Judge Ayson that these owners have sufficient other lands for their maintenance and have never relied on this block as such, with the exception of one or two now living in it.'¹³¹ No details or other evidence in support of this assertion were provided, although it appears to contradict the statements above by Mackay and the Ngāti Ngāhere delegation represented by Whaiora Renata. It is difficult to avoid the conclusion that in this case the Board was prioritising Mrs Ferguson's interests above those of the landowners.

Many other partitions, or parts thereof, were leased in the following decade, as economic conditions for small farmers deteriorated. The 62-acre Ōpape 3O block, belonging to Paora Taia Tamaiti, Arihia Makarini, Mehaka Watene and Te Riri

¹²⁸ Registrar, WDMLB to U-S, Native Dept, 14 September 1923, MA1/1321 1923/300, R22408586 Archives NZ Wgtn DB B128 (3 pages)

¹²⁹ G. Mackay to Hon. A. Ngata, 25 Aug. 1923, *ibid.* DB B129 (2 pages)

¹³⁰ Whaiora Renata and approx. 30 others to Hon. A. Ngata, 13 August 1923, *ibid.*

¹³¹ Registrar, WDMLB to U-S, Native Dept, 14 September 1923, *ibid.*

Tautapa, is typical. The WDMLB found that ‘The owners have sufficient other lands for their own use... and therefore desire to alienate by way of lease.’ The Board’s president added that ‘The Native owners are not living on the land or using it in any way, and it is covered with noxious weeds, fern, scrub and bush, is wholly unimproved and produces no revenue whatever.’¹³² An Opotiki photographer, Frederick Firth, proposed to farm the land, and it was leased to him for 42 years from December 1919 for 2/6 per acre for the first 21 years and 5% of the then-unimproved govt valuation for the remaining 21.¹³³

From the 1920s a number of partitions were alienated by sale as well as lease. They included a portion of the 60-acre Ōpape 3S block, owned by Hara Te Ohu, Riu Kurei Agassiz, Te Ua Peepi Taku, Mere Agassiz and Louis Agassiz. The last two owners had succeeded to the original owner, Wakata te Kawakawa, in 1909.

Hara Te Ohu, also known as Mary Kelly and Mere Agassiz, told the Board in April 1922 that she and the other owners wished to sell a ten-acre portion for £495. ‘That sale would be very greatly to the advantage of myself and the co-owners. The remaining portion (49a 1r 11p) would be ample for the use, occupation and support of all of us, the owners, should we wish at any time to reside on or cultivate the said land, but each of us is independent of such piece as a means of occupation and support.’ She gave evidence that each of the owners had interests in other Ōpape blocks, and in Whakapaupakihi. ‘My share of the purchase money will be used by me to purchase dairy livestock and farm implements for use on my husband’s farm at Waiawa where I reside with him.’¹³⁴

Sarah Mortensen explained that she had lived on the land for the past three years and had spent more than £400 on buildings and other improvements. Her offer of £495 included the value of these improvements.¹³⁵

The WDMLB described the owners as ‘educated half-castes well able to conduct their own affairs’, who had ‘decided to agree to this reduction’ in their shares in the reserve.¹³⁶ In response to a query from the Native Department about the legal validity of this sale, the WDMLB said ‘no injury will be done to the owners... The land is not required for Native occupation. The owners are to all intents Europeans.’¹³⁷ The Minister accordingly approved the sale under s. 219 of the Native Land Act 1909 in August 1922.

In the same year Sarah Mortensen also offered to buy the 11-acre Ōpape 5G block from Hone Taka (aka Taiaki Taka, Taiaki Takatotara) of Ngāti Patu. She agreed to pay £50, a price well above the government valuation. Taka gave evidence that he owned land in seven other Ōpape blocks, plus several Whakapaupakihi blocks, which were ‘more than ample for my occupation and support and I and my family have always been supported by my cultivation of some of these other lands.’¹³⁸

¹³² President, WDMLB to U-S, Native Dept, 25 May 1920, R22404472, Archives NZ, Wgtn

¹³³ R22404472, Archives NZ, Wgtn

¹³⁴ Declaration by Mary Kelly (aka Hara Te Ohu, Mere Agassiz), 12 April 1922, BAJJ 11192 Box 58 Rotorua alienation files Opape 3S 1922 R20662696 Archives NZ Auck

¹³⁵ Declaration by Sarah Mortensen, 22 June 1922, *ibid*.

¹³⁶ Deputy-president, WDMLB to U-S, Native Dept, 14 July 1922, MA1/1291 1922/179, R22408188, Archives NZ Wgtn DB B136

¹³⁷ Commissioner, WDMLB, to U-S, Native Dept, 2 August 1922, *ibid*

¹³⁸ Declaration, Hone Taka, 22 November 1922, BAJJ 11192 Box 61, Rotorua alienation files Opape 5G, 1922-1923, R20662739, Archives NZ Auck.

The WDMLB approved the sale, saying the block was ‘three miles distant from the owner’s other lands and... quite unsuitable for occupation or cultivation... only about three acres being flat land and the balance hill land which could not be cropped.’¹³⁹ The sale was approved by the Native Minister in March 1923.¹⁴⁰

Some sales were made to other Māori, although it is not always clear from the files whether these purchasers were already Ōpape landowners. For example, in 1919 Te Moana Rewiri applied to sell his 8-acre interest in the Ōpape 6C block to Paku Edwards, a farmer of Ōpōtiki, for £13 10/- per acre. The WDMLB found that the land ‘is covered with scrub and... produces very little revenue. Te Moana Rewiri has ample land at Ruatoki for maintenance of himself and his family.’¹⁴¹ The Board approved a memorandum of transfer in July 1919.¹⁴²

In 1921 Raimona Papuni applied to sell his 15-acre Ōpape 3Q2A block to Amoamo te Riaki. The land was mortgaged but was producing no income and the mortgagee was threatening to sell up the property to recover his money.¹⁴³ Since Papuni was also said to have ample lands elsewhere, the sale was considered to be in his interest, and the land changed hands in July 1921.

Five years later Amoamo Te Riaki applied to mortgage the interests of his children Ngamane, Awanui, Tiwai, Wharepapa and Ruahema Amoamo. These children were living with him and the youngest were attending school. He hoped to borrow about £1000 at 6% interest to repay two other mortgages, including one for the Ōpape 3Q2A block, at 8%. ‘Both blocks are being farmed by me. At present I am milking 40 cows, and I hope to increase to 60 next season.’ In 1928 the Board granted a mortgage for five years at 7%, reducible to 6%.¹⁴⁴

In addition to these alienations by leasing and sale, Ōpape lands changed hands as a result of gifting by owners. Such transfers required the approval of the WDMLB and are recorded in its records. For example, Hamiora Hei, a Gisborne solicitor, gave evidence in 1925 that he was an owner of the 37-acre Ōpape 3Y3 block, together with his mother Maria Nikora and Kenehia Hemi Hei, aka Akenehi Hemi Hei. They wished to give the property to Hamiora’s brother Pita Baker:

Pita has practically no lands. He is married and has one child. He is a returned soldier. He is anxious to settle on land and has endeavoured to raise money from the Repatriation Board but has failed for want of security. He has appealed to me for assistance and I and my mother have decided to give him our interests in this land... I have sufficient other land and so has my mother.

A transfer by gift under s. 298(b) of the Native Land Act 1909 was approved in March 1925.¹⁴⁵

¹³⁹ Deputy president, WDMLB to U-S, Native Dept, 16 Feb. 1923, MA1/1307 1923/33, R22408403, Archives NZ Wgtn

¹⁴⁰ Ibid

¹⁴¹ President, WDMLB, to U-S, Native Dept, 18 Nov. 1919, BAJJ 11195 Box 41 Rotorua alienation files Opape 6C (part) 1919 – 1920 R20662452 Archives NZ Auck.

¹⁴² Ibid.

¹⁴³ President, WDMLB to U-S, Native Dept, 23 March 1921, MA1 1434/1928/12 R22410365 Archives NZ Wgtn DB B143

¹⁴⁴ Rotorua MB no. 77, 20 May 1926, p. 210

¹⁴⁵ Registrar, Waiariki Maori Land Board, 6 March 1925, MA1 1355/1925/56 R22408971 Archives NZ Wgtn

14. Right of way dispute, Ōpape 5A3

One early leasing agreement later resulted in a long-running legal dispute between the lessee and the owners. In October 1918, farmer John McDonnell was granted the lease of the 499-acre Ōpape no. 6 (balance) block for 42 years, initially at 1/- per acre. Eleven years later, in 1929, he proposed to buy the land. Thirteen owners considered this offer and all but one, Pani Witeria Moka, agreed. The Board therefore approved the sale.¹⁴⁶

In 1931, Pakaha Tairua and others of Ngāti Patu wrote to Sir A. Ngata MP concerning their adjoining block, 5A3:

There is a European residing here named McDonnell who is urging that a road for his son T. MacDonnell be taken through the centre of our piece of land Opape 5A3.

We are opposed to this proposal firstly because a road to the main road can be taken through their own blocks. Secondly, this European is very much prejudiced against Maoris and to the Commissioners who are conducting operations among the Maoris. Thirdly, we consider it improper... for persisting to use our land for purpose of access to his own without our leave. Fourthly, since he uses our land as access to his farm, the gates are left open and our stock, some of which are lost, are allowed to stray out of our paddocks. Fifthly, he persists in using our paddocks for right of way in spite of the fact we have crops growing there. Their children do not close the gates, it would be better if they went through those paddocks with less gates. We respectfully request you to prevent the acquisition of our land for this anti-Maori European.¹⁴⁷

McDonnell's application for right of way had the support of the Opotiki County Council, whose clerk also wrote to Ngata asking him to assist with an application to the WDMLB for this purpose.¹⁴⁸ The Board's registrar commented that 'From the tone of the County Council's letter it appears that the owners have not been consulted about this road, as the Council requests this office to refer the matter to the natives interested.'¹⁴⁹

In February 1932 McDonnell's application was heard by the Native Land Court under Judge Holland. His decision revealed that after leasing the Ōpape no. 6 (balance) block from Ngāti Ira for 12 years, McDonnell had bought it in 1930, although no other record of this purchase has been located. The judge found that:

Access is required to a valley situated on the Opape no. 6 balance block, which is mostly hilly, broken country.... Upon the partition of the Opape blocks, road lines were apparently laid off by the Court to give access to the various partitions. These roads have been surveyed and excluded from the titles to the various partitions... The road in the application traverses part of Opape 3K and 5A3 - an approximate distance of seven chains [ie. about 150 metres]

¹⁴⁶ BAJJ 11192 Box 82 Rotorua alienation files Opape 6 (balance) R20663017 Archives NZ Auck.

¹⁴⁷ Pakaha Tairua and others to Sir A. Ngata, MP, 10 November 1931, MA1 472/22/1/5 R19527253 Archives NZ Wgtn

¹⁴⁸ Opotiki County Clerk to Hon. A. Ngata MP, 28 May 1931, *ibid.*

¹⁴⁹ Registrar, WDMLB to U-S, Native Dept, 22 June 1931, *ibid.*

... it was evident that the dispute arose by the applicant's agents taking a high-handed attitude in dealing with native owners. Had they been approached in a proper spirit, the intervention of the court would not have been necessary.

Judge Holland concluded, however, that:

the applicant is entitled to access. The road will be 12 ft wide. A surveyor, accompanied by the natives, will submit to the court a plan which will prejudice the native owners to the least extent. The applicant will provide and maintain a fence on both sides. Access is restricted to wheel, horse and foot traffic only. No stock is to be driven over it. Access is granted for ten years, and the applicant will pay an annual rental of £5 to the WDMLB.¹⁵⁰

The following year the local newspaper reported that 'Mr McDonnell alleges that he has been victimised and the terms of the Native Land Court were an insult to him. The natives wish to make it clear that Mr McDonnell brought all his troubles on himself.'¹⁵¹

A year later, in 1934, the Native Land Court again considered the case of the right of way across Opape 5A3. Its owners told Judge Carr that McDonnell had not complied with any of the conditions of the earlier court order. There had been no survey plan, no fencing, and no rental paid, although McDonnell had used the route continuously since the order was made. The owners therefore applied to cancel the order. McDonnell responded that he objected to the conditions imposed by the 1932 court order. 'A 12-ft wide road is not adequate... what is the use of a ten-year term?' However, the court agreed with the landowners and cancelled the earlier order granting the right of way.¹⁵²

Soon afterwards McDonnell informed the chairman of the Opotiki County Council that, 'The Maoris barricaded the road last month and prevented further use with menacing attitude... we refused the INSULTING, DEGRADING and humiliating restrictions imposed by the Waiariki Maori Land Board... we absolutely refuse to pay further BLACKMAIL.'¹⁵³

He then wrote to the prime minister, pointing out that 'We have been using the road or track for 19 years' (ie, since 1916, before he began leasing the adjacent land) and said 'we were unable to accept the objectionable restrictions' imposed by the court in 1932.¹⁵⁴

A final solution was reached later in 1935, which resulted in the owners of Opape 5A3 losing the part of the land traversed by the right of way. By then the block had been partitioned into 5A3A and 5A3B, and it is possible that the owners of the latter block had come to an agreement with McDonnell. A Native Land Court hearing under Judge Jones created a permanent right of way across 5A3B 'by the most convenient route.' Both parties would share the cost of the survey, but McDonnell would fence and maintain the right of way. He agreed to pay the WDMLB £20 within one month as compensation for breaching its earlier order, plus £3 legal costs to the

¹⁵⁰ Judge Holland's decision, 10 February 1932, *ibid.*

¹⁵¹ *East Coast Guardian*, 9 November 1932, in *ibid.*

¹⁵² OMB n. 28, 12 October 1934 pp. 237-238

¹⁵³ H. McDonnell to Chairman, Opotiki CC, 20 Dec. 1934, MA1 472/22/1/5 R19527253, Archives NZ Wgtn. Emphasis in original

¹⁵⁴ J. McDonnell to PM G. Forbes, 24 Jan. 1935, *ibid.*

landowners.¹⁵⁵ This right of way later became the public Oteakona Valley Road, known today at Te Akona.

15. Farming conditions, early 20th century

A 1914 petition to Parliament signed by more than 160 members of the Whakatōhea tribe stated that, 'Past governments have heard the great lamentation of [Whakatōhea] on account of the sterility of the land - broken with numerous cliffs and gullies - only about 200 acres of Opape Reserve being ploughable - this being for six hapus of Whakatohea.' Another petition the following year, signed by Paku Eruera and 210 other of Whakatōhea, reinforced the argument that, as a reserve intended to support to the entire iwi, Ōpape:

is exceedingly small. Out of the 300,000 acres confiscated by the Crown, only this land, Opape Reserve, has been returned. No other solid [ie contiguous] block than this has ever been returned to the whole of the hapus of Whakatohea - apart from the sections distributed among single individuals, but these have been of no benefit to the tribe as a whole.¹⁵⁶

Some telling impressions of the impoverishment and underemployment of those living on the Ōpape Reserve emerged from evidence given to the 1927 Sim commission of enquiry into Māori land confiscations. William Oates, an Ōpōtiki farmer, estimated the population of the reserve at 150. 'Some go out working, some hang about fishing.' He believed that the area under occupation was no more than 60 acres, not enough to support this population. George Shalfoon, who had married into Whakatōhea, agreed that 'The natives are landless as far as farming is concerned.' He believed a significant element of the iwi was living outside their tribal lands, mainly through the need to find work, and that most of those would prefer to return. 'They are always crying out for good land to grow potatoes and watermelons.'¹⁵⁷

Prior to 1931 about 35 Māori farmers were milking small dairy herds on the Ōpape block, and a few ran larger herds. Most of the farms were between 50 and 70 acres in size, often made up of disconnected smaller pieces of land. In several cases these pieces were so far apart that the farms could not be operated efficiently. Other parts of the block were leased to Europeans, and a few to Māori owners who hoped in this way to avoid the difficulties of farming multiply-owned land. The largest lease was held by Mrs Ferguson, who farmed the 1070-acre Ōpape 2A1 block, which was so large in relation to the other farms 'as to completely sever one half of the Opape reserve from the other.'¹⁵⁸ The area of the Ōpape Native Reserve which remained Maori land, excluding the leases to Europeans, was 15,442 acres.¹⁵⁹

16. Land development, 1930-1940

In 1930, under the influence of Sir Apirana Ngata, the Minister of Native Affairs, all those Ōpape lands still in Māori hands and not leased to Europeans, plus the 1072-acre Ōpape 2A1 (part) block, leased to Louisa Ferguson, were gazetted for inclusion in land development schemes.¹⁶⁰

¹⁵⁵ OMB no. 28, pp. 314

¹⁵⁶ Petition to Speaker and members of Parliament from Mehaka Watene, Tauha Nikora, Paora Taia and 166 others of Whakatōhea, 14 September 1914; Petition to Speaker and MPs from Paku Eruera and 210 others, 1915 BAPP A1721 24617 Box 257 R23818776 Archives NZ Auck.

¹⁵⁷ Notes of 1927 Sim Commission at Opotiki, *ibid*

¹⁵⁸ *AJHR* 1932 G-10, p. 39

¹⁵⁹ *AJHR* 1931 G-10, p. 15

¹⁶⁰ *NZG* no. 90, 23 Dec. 1930, p. 3908

From late 1931, after requests for assistance from ‘a section of the Whakatōhea Tribe’, the Native Trustee began carrying out development work on the Ōpape Block and other Māori lands. About 45 local men were employed on roading, scrubcutting, clearing fern, draining and preparing pasture. Amoamo Te Riaki, ‘a dairy-farmer in a large way and one of the most prominent men of the Whakatōhea Tribe’, was appointed foreman for the Ōpape section of the development scheme.¹⁶¹

In addition, acquiring the leasehold to the Ōpape 2A1 block was considered ‘essential to the proper and effective working of the Opape Block.’ This block had been leased to Emma Collier in 1920 for 42 years, at £80 11/- per annum, with no right of renewal or compensation for improvements (lease no. 10297).¹⁶² The lease was later transferred to Mrs Ferguson. The Native Trustee purchased Mrs Ferguson’s leasehold in July 1931 for just under £2000.¹⁶³ The property was then carrying 80 dairy cows, but had no improvements on it at all.¹⁶⁴ It was decided not to take over this herd but to acquire quality Jersey cows from Taranaki, and make the farm a stock-base farm for the Ōpōtiki district.¹⁶⁵ The *East Coast Guardian* reported optimistically that ‘The block is... mostly well suited for dairy farming, and will be cut up into ten or twelve farms.... The district round about is already well farmed by Native farmers.’¹⁶⁶

For its first year the farm was managed by Mrs Ferguson’s former manager, assisted by three cadets, ‘selected by the owners from among the young men of the tribe.’ In July 1932 Ngawai Amoamo, an owner in the land and the son of Amoamo Te Riaki, was appointed manager. ‘The change in the management was reflected in the better state of the pastures, the fencing, conservation of feed, and general initiative in the work and management of the farm.’¹⁶⁷

The name Whakatōhea Development Scheme was given to the rest of the Ōpape block, plus the Wainui Reserve and Waiotahi allotments, a total of 16,374 acres. In 1932 a government report found that:

A section of the owners was... suspicious of both consolidation and development by a State Department. The Whakatōhea Tribe has not forgotten the confiscation of the Opotiki lands by a former Government, and suspects some ulterior motive in Government attempts to simplify land titles, or in Government offers of assistance.¹⁶⁸

Despite this suspicion, development continued on both the base farm and the Whakatōhea Development Scheme - draining, clearing land, fencing and erecting buildings and other facilities. In 1935 the Development Scheme at Ōpape supported 27 families milking more than 500 cows, and work was underway to ‘have the existing shacks replaced by small cottages.’ The smaller Ōpape Base Farm carried 114 cows and 200 sheep.¹⁶⁹ The following year the Base Farm was reported to be

¹⁶¹ *AJHR* 1932 G-10, p. 40

¹⁶² Maori Affairs District officer, report ‘Whakatōhea Development Scheme’, 6 September 1956, AAMK W3074 869 Box 874 63/42/3 pt. 2 R11842520 Archives NZ Wgtn

¹⁶³ *NZG* 23 Dec. 1930

¹⁶⁴ Maori Affairs District officer, report ‘Whakatōhea Development Scheme’, 6 September 1956, AAMK W3074 869 Box 874 63/42/3 pt. 2 R11842520 Archives NZ Wgtn

¹⁶⁵ *AJHR* 1932 G-10, p. 40

¹⁶⁶ *East Coast Guardian*, 17 July 1931

¹⁶⁷ *AJHR* 1933 G-10c, p. 7

¹⁶⁸ *AJHR* 1932, G-10, ‘Native Land Development’ p. 39

¹⁶⁹ *AJHR* 1935, G-10, p. 16

‘now reaching the profit-earning stage, and the area developed could be subdivided into six holdings.’¹⁷⁰

Between about 1935 and 1937 the Bay of Plenty consolidation officer, Rangi Royal, conducted a series of meetings with Ōpape landowners to resolve their concerns about these development schemes. The meetings were also headed by the scheme supervisor, LH Brown, and Amoamo Te Riaki, the chairman of the Whakatōhea advisory committee.

In March 1935 this committee and a large gathering of Whakatōhea people heard from Ranapia Mihaka and Huriata Te Awahou, shareholders in the heavily partitioned Ōpape 1 block. Mr Mihaka wished to use a larger area of the block than he had been allocated as a farming unit for his family. He and Huriata agreed to exchange interests so that he occupied the more fertile Ōpape 1F portion, while she took the inland 1M block.¹⁷¹ George Hudson and Kupu Brown agreed to a similar exchange regarding the Ōpape 1D1 and 1D2 blocks.¹⁷²

These two blocks formed part of the Hinahinanui scheme, within the wider Whakatōhea Development Scheme. The remaining area of Hinahinanui was divided, by general agreement between Pawhata (Buffett) Williams (Ōpape 1A19 and 1B), Te Kurihaere Mitai (Mrs Hayes) and her husband Frank Hayes, a European (Ōpape 1C), and Kupu Brown (parts 1D and 1E1).¹⁷³

At another meeting the following year, the 36-acre Ōpape 3G1A was discussed. This was occupied by Heta Ropitini under lease, but one of the owners, Mihaere Pera, wished to return and farm it. The land would not support both families and Heta agree to vacate it, and was paid compensation for the improvements carried out under the lease.¹⁷⁴

In 1937 Tuakana Raikete and other owners of the 62-acre Ōpape 3R2 block, also known as the Te Hata estate, discussed who would take over this land. Tuakana was ‘averse to placing any more Maori settlers on the block. He preferred a Pakeha, Bernie Mortensen, whom he had practically brought up since childhood and who was a Maori at heart. Tuakana also desired to go back there and live upon a small area sufficient for a maara kai.’ Amoamo Te Riaki had no objection to Mortensen but did not think the Maori Affairs Department would approve this proposal ‘as it was directly against the kaupapa of the development.’ The owners were therefore asked to nominate a suitable Māori manager and suggested Akima Te Pene, who was their relative, and a good worker. Tuakana agreed to this on condition that he could also live the property, have a small garden area and that both families would receive six pounds of butter a month from the farm’s output. On those terms, Akima took over the property in April 1937.¹⁷⁵

In this period the owners of the large Ōpape 2A1 block, formerly the Ōpape Base Farm, also met to discuss how their land could be used in future to directly support local farmers. At a meeting at Te Rere Pā in April 1937, 31 owners nominated

¹⁷⁰ *AJHR* 1936 G-10, p. 25

¹⁷¹ Consolidation MB 8 - Whakatōhea series, 22 March 1935, pp. 1, 3

¹⁷² *Ibid*, pp. 2-3

¹⁷³ *Ibid*, p. 6

¹⁷⁴ *Ibid*, 29 September 1936, pp. 9-10

¹⁷⁵ *Ibid*, 4 February 1937, pp. 11-14

individuals to take up three dairy farms at the coastal end of the long, narrow block. The result of a ballot awarded Lot 1 to Paroa Rerekura (Tom Edwardson), Lot 2 to William Oakes Jnr (Hemi Pirihi) and Lot 3 to Ngawai (Fred) Amoamo.¹⁷⁶ The following year Pirihi was replaced by Waka Kahika of Ngāti Ngāhere.¹⁷⁷

By 1939 the Base Farm had been subdivided into three dairy farms and merged with the Ōpape section of the Whakatohea Development Scheme. In total, this 4,000-acre property supported over 300 people and ran more than 1000 milking cows.¹⁷⁸ The following year one of the Ōpape farmers won the Ahuwhenua Trophy, the most prestigious national award for Māori agriculture.¹⁷⁹ Pita Heretaunga Baker, a Ngai Tama landowner, told the Maori Land Court that, 'We are looking forward to the European leases expiring so as to enable the consolidation, which is part of the Native Land Development Scheme, to operate smoothly.'¹⁸⁰

By 1956 the owners of two of the farms on the 2A1 block, formerly the Ōpape Base Farm, had repaid the full cost of the improvements carried out under the development schemes of the 1930s, and also annually paid a proportionate share of the rental on the overall block. The Maori Affairs District Officer noted that 'the validity of this appears doubtful since the farmers do not appear to have been 'nominated occupiers' within the meaning of the Act - they had no definite form of tenure... It appears that the head lease should have been surrendered in 1938 and the units then given secure tenure.'¹⁸¹

The Maori Affairs Department believed that the coastal end of the block could continue to be farmed economically as three dairy farms. The inland portion was considered suitable only for leasing to neighbouring farmers as grazing. A meeting of owners at Torere Pā in October 1956, under Part 23 of the Maori Affairs Act 1953, resolved to direct the Maori Trustee to accept surrender of the lease on behalf of the owners.¹⁸² Again, it is not clear from the archival record how this issue was finally resolved.

17. Title disputes, Ōpape 3H2 and 3K

As leases expired and Ōpape lands returned to the control of their owners, some lessees proved reluctant to return lands which they had occupied and farmed for the past 20 years or more. Gordon Mackay, a teacher at Omaramutu Native School, had leased the 14-acre Ōpape 3H2 block belonging to Te Aorangi Te Tawhiro and Te Wikiriwhi Uenuku since 1918. In 1937 he learned that his lease would not be renewed since Pita Heretaunga Baker, quoted above, had paid a deposit of £8 on it. Mr Mackay asked his local MP, 'Why was I not given the opportunity to buy it when it came before the Native Land Court? The sale has ruined my farm, leaving only 26 acres.'¹⁸³

¹⁷⁶ Rangi Royal, WDMLB to Registrar, NLC, Rotorua, 14 June 1937, BPFZ 5015 A1207 18/a no. 41 Pt. 1, R328126, Archives NZ Auckland

¹⁷⁷ Ibid, 11 July 1938

¹⁷⁸ *AJHR* 1939, G-10, p. 37

¹⁷⁹ *AJHR* 1941 G-10, p. 5

¹⁸⁰ PH Baker to Registrar, Maori Land Court, Rotorua, 20 April 1940, BAJJ 11192 Box 125 Rotorua alienation files Opape 3H2, R20662260 Archives NZ Auck.

¹⁸¹ File note by E. McIntyre, MA District Officer, undated but prob. 1956, AAMK W3074 869 Box 874 63/42/3 Pt 1 R11842519 Archives NZ Wgtn

¹⁸² Maori Affairs District officer, report 'Whakatōhea Development Scheme', 6 September 1956, AAMK W3074 869 Box 874 63/42/3 pt. 2 R11842520 Archives NZ Wgtn.

¹⁸³ G. Mackay to G. Hultquist MP, 25 Sept. 1937, *ibid*

The Native Land Court registrar responded that ‘I can see no justification for allowing the block to pass to Mr Mackay. It will defeat the object of the Act if Europeans through persistent enquiry are permitted to acquire lands set apart for natives. As between Baker and Mackay, Baker’s claim must take priority.’¹⁸⁴

Other problems arose due to faulty survey or land transfer arrangements in the past. One of the most serious concerned a very small but significant area within the Ōpape 3K block. This was an area less than two acres in size within the Waiaua River. In 1944 the owners of Ōpape 3K approached the Maori Land Board to say that a European farmer, Louis Ross, was using this land and refused to allow the owners access to it. Ross claimed rights to the land on the basis of a 1925 certificate of title, 79/178, which apparently awarded it to him, although the Ngāti Rua owners had never agreed to this sale.

The Gisborne Chief Surveyor investigated the certificate of title and found that when it was issued, the ‘island’ was ‘a complete accretion to the main channel’ of the river. He maintained that ‘the position is not as serious as it appears, as the area is completely surrounded by Ross’s land and therefore valueless to the owners of 3K as their stock could only be placed on it by trespassing on Ross’s property.’¹⁸⁵ The Native Department’s field supervisor inspected the site and could find little evidence of either erosion or accretion. He pointed out that:

The Chief Surveyor’s comment that ‘The Natives have lost nothing of value’ is scarcely borne out by the expense and trouble of Mr LD Ross to acquire the same piece of land and I think his comment is beside the point if the Maori people have been unjustly divested of their land.¹⁸⁶

The WDMLB president, Judge Harvey, was clear that ‘the owners of 3K have a claim... for being wrongfully deprived of their land. There has been some very poor supervision by the Land Transfer and Survey Office. As for lack of access, the owner of 3K had access over the stream and possibly owned to the centre of the stream from both sides.’¹⁸⁷

For the next three years various government agencies disputed over this issue. The Lands and Survey Department’s registrar-general believed that ‘the certificate of title issued to the European Ross has stood for many years... and any right of action the Maori claimants might have had had been lost to them by the effluxion [ie. passing] of time.’¹⁸⁸ However, the WDMLB insisted that the Māori owners were clearly in the right. ‘The value of the land is small, but if the matter is left as it is a very dangerous precedent will have been established... if the owners can be deprived of this piece by such methods, grave doubts must inevitably arise as to the validity of their titles and the amount of protection conferred thereby.’¹⁸⁹

In 1946, 18 months after the owners first raised the issue, the District Surveyor continued to insist that the faulty 1925 certificate of title should be upheld. The WDMLB’s solicitor warned Judge Harvey that ‘this subtle act of confiscation by the

¹⁸⁴ Registrar, Maori Land Court, Rotorua, memo, 5 October 1938, *ibid*.

¹⁸⁵ Chief Surveyor, Gisborne to Registrar, Rotorua, 13 Oct. 1944, MA1 144/5/13/203 R19525260 Archives NZ Wgtn

¹⁸⁶ Field Supervisor, Native Dept to Registrar, Native Dept, Rotorua, 14 May 1947, *ibid*.

¹⁸⁷ Judge Harvey, marginalia to above, 16 October 1944, *ibid*.

¹⁸⁸ J. Caradus, Registrar-General of Land, to U-S Dept Maori Affairs, 21 July 1948, *ibid*.

¹⁸⁹ Registrar, WDMLB, to U-S, Native Dept, 4 June 1947, *ibid*.

lodging of a ‘piratical plan’ will impress itself on the owners’ minds not as a piece of confused conclusions on the part of the surveyor but as a deed of 20th century chicanery [ie trickery].¹⁹⁰

The archival record does not make clear how this issue was ultimately resolved.

18. Leasing timber cutting rights

By 1959 the Ōpape blocks had been heavily partitioned and comprised a patchwork of mainly small and uneconomic units. On 15 December 1959, a representative of the Whakatōhea Trust Board (signature illegible) wrote to the Minister of Maori Affairs on behalf of the Whakatōhea people to ask for consolidation efforts to begin again in the district. When projects such as the Ōpape base farm had been undertaken in the 1930s, he said:

the position was definitely hopeful, but when the department withdrew the development, sold the stock and other assets to pay off the department’s mortgages, and then released the lands from the operation of the development Act, the units or occupiers became stranded, their outlook hopeless, and the lands abandoned to deterioration now setting in...

In our opinion the only remedy is consolidation of interests for the purposes of development by competent Maori farmers or for farming by any other competent farmer, Maori or Pakeha.¹⁹¹

From the early 1960s, the owners of several of the steep, forested backblocks of the Ōpape Reserve proposed to earn income from these lands by leasing cutting rights to private milling companies. In 1963 the management committee of the 3270-acre Ōpape no. 11 block told the NZ Forest Service that they planned to have the remaining timber on this block felled, to be followed by land development.¹⁹² Two years later the owners of several adjoining partitions of Ōpape 12, totaling 2637 acres, also proposed to sell cutting rights to the timber on the lands.¹⁹³

In June 1966 the timber cutting rights to Ōpape 11 were granted for ten years, with a further five-year right of renewal, to the Rotorua company Pine Milling Ltd.¹⁹⁴ The lease agreement was confirmed by the Maori Land Court. By 1968 Lot 2 of Ōpape no. 11, an area of 311 acres adjoining the Torere block, was being milled by the company, which transported the logs, mainly rimu and tawa, to its own mills at Rotorua, where the timber was in demand for housing.¹⁹⁵ The total timber resource on Ōpape 11 was estimated at four million board feet, mainly rimu/miro and tawa.¹⁹⁶

In 1980 twelve adjacent blocks were amalgamated to create the Nukutere Trust, with the object of planting a commercial forest.¹⁹⁷

¹⁹⁰ District Solicitor to Judge Harvey, 18 Oct. 1946, *ibid*.

¹⁹¹ Whakatōhea Trust Board to Minister of Maori Affairs, 15 Dec. 1959, Raupatu Document Bank DB B191

¹⁹² CW Nikora to Forestry Service, Rotorua, 7 October 1963, BAFK 1466 213/a R1855185 Archives NZ Auck.

¹⁹³ Conservator of Forests to Waiariki Dist. MLC, 9 Feb. 1965, *ibid*

¹⁹⁴ Memo of grant of cutting rights, Opape no. 11, 16 May 1966; Alienation of Opape no. 11 confirmed at MLC, Opotiki 27 June 1966 under Judge K. Gillanders Scott, Maori Affairs Act 1953, sec. 226, *ibid*.

¹⁹⁵ GR Coveny, NZ Forest Service woodsman, to Conservator of Forests, Rotorua, 1 November 1968, BAFK 1466/212/h 18/2/257 R1855184, Archives NZ Auck.

¹⁹⁶ D. Kennedy, Conservator of Forests, to Chairman, Opape 11 Management Cttee, 12 Feb. 1969, *ibid*

¹⁹⁷ Mrs Tarati Carrington to Minister of Crown Lands, 7 April 1981, ABWN W5021 6095 Box 598 R3950934 Archive NZ Wgtn

Two of the heavily partitioned ‘bush blocks’, Ōpape 236 and Ōpape No 12P7, were amalgamated into Ōpape 28 in 1994 and vested in the Whakatohea Māori Trust Board. ‘This block is situated approximately 20 kilometres from Opotiki. It is for the most part, steep hill country covered in bush... There are 4,791 owners in this block and it is now administered by owner-selected trustees. It is commonly known as the Nukutere Lands Trust.’¹⁹⁸

In 2013 a Maori Land Court judgement found that, while most Ōpape blocks were eventually partitioned into smaller farms for use by particular whānau or families within the hapū, ‘The one exception was the Ngāti Ngāhere block which still for the most part remains unpartitioned.’¹⁹⁹

A list of each of the current Opape partitions, with their areas, taken from the Ministry of Justice’s ‘Maori Land Online’ website, is given at Appendix A of this report. This website provides further information about each of these blocks, including the number of owners, management structure, ground plan etc.

19. Papakainga, marae and urupā within Ōpape

From the late 1930s, as economic conditions improved, several groups of Ōpape landowners began addressing the condition of their collectively owned papakainga, marae and urupā properties. Wiremu Te Rangi Haeata, the secretary of the Ōpape pā committee, applied for funding from the Native Affairs Department in 1938 because, ‘our pa needs a lot of money to put her right... such as water supply, lavatories, leveling of land, cutting down hedges, and much other improvements.’²⁰⁰ Judge Ayson of the Native Land Court visited this pā, on the Ōpape no. 5 block, shortly afterwards and agreed that ‘It requires an improved water supply and sanitation, a few small houses to replace the present ramshackle dwellings, removing dining hall to a better site, and leveling part of the marae.’²⁰¹

In 1956 the Maori Land Court under Judge Prichard heard an application from Arapera Tamati and others to set apart the 7-acre Ōpape 1A18 block ‘for a marae for the common use and benefit of the Ngati Tama hapu of Whakatohea tribe and other Maori living in the locality.’²⁰² The land became a Māori reservation under s. 439 MA Act 1953.²⁰³

At a 1964 court hearing under Judge N. Smith, Manu Apanui applied to partition the 6-acre Ōpape no. 5 papakainga. He told the court a meeting-house and dining hall currently stood on the land, and that it been used as a marae since the 19th century. The current marae trustees were Kiri Edwards, Wairaki Walker, Aapanui Tairua, Hemi Apanui, Mautini Mokokoko and Hipirini Tamati. The land was partitioned under the above Act ‘for the common use of Ngati Patu.’²⁰⁴

¹⁹⁸ Ibid, p. 275

¹⁹⁹ OMB no. 75, 4 March 2013 (deputy chief Judge C. Fox), p. 295

²⁰⁰ Wiremu Te Rangi Haeata to U-S, Native Affairs Dept, 6 Feb. 1938, ACIH 16036 MAW2490/46 24/3/12 R18798045, Archives NZ Wgtn

²⁰¹ Judge Ayson to U-S, Native Dept, 14 March 1938, ibid

²⁰² OMB no. 34, p. 248; ACIH 16036 MAW2490/46 34/3/12 R19526765 Archives NZ Wgtn

²⁰³ NZG 19 March 1959, no. 17, p. 348

²⁰⁴ OMB no. 39 pp. 138-9; NZG 25 March 1965, p. 383; ACIH 16036 MA1/459 21/3/506 R19527104 Archives NZ Wgtn

In 1969 Maori Affairs welfare officer T. Te Maipi reported that, ‘The residents of Ōpape have expressed the feeling that their marae is a major marae’ because ‘it was sanctioned to the Ngai Tama hapu in 1870, or during the land confiscation period’ and ‘In 1902 the Muriwai meeting house was completed. Muriwai of course is an ancestor from the Mataatua canoe.’²⁰⁵

The Ōpape 1A19A block was partitioned from the main marae site and awarded to Alexander Smith and 259 others as a burial ground ‘for the beneficial owners thereof and the Maori people generally of the Ōpape district.’²⁰⁶ The owners paid the \$338 survey cost themselves.²⁰⁷

In 1976 Mr Te Maipi reported on an application by Ngāti Patu to set apart one acre in Ōpape no. 4 as an urupā. He found that ‘this is a very old and well established urupa. It is possible to identify at least 80 graves.’ It was adjacent to the Waiau Catholic church and its cemetery, and the marae committee and church members worked together to maintain both urupā.²⁰⁸

Tiwai Amoamo told the Maori Land Court under Judge E. Durie that:

There were two original owners - Wiremu Rangihaupo, my grandfather, and Tairua Apanui. We, the descendants of Wiremu, have decided to hand over our interests to our hapu, Ngati Patu, also the hapu of Tairua Apanui. This is a very old burial ground but it is a large area and is still used as a urupa.²⁰⁹

The land was accordingly set apart for that purpose.²¹⁰

20. Ōpape land takings for roading

On several occasions from 1922, areas of land were taken from the Ōpape blocks for roading purposes. At a Native Land Court hearing in June 1922, the roadlines already surveyed across the Ōpape and Aawaawakino blocks were gazetted as public roads under s. 48 and 49 of the Native Land Act Amendment Act 1913.²¹¹

At a 1935 hearing of the court under Judge Carr, about eight acres was taken from the Ōpape 3K, 5A and 5G blocks for roads under s. 487 Native Lands Act 1931.²¹²

A total of about 75 acres in Ōpape blocks 3, 4 5 and 6, including access to several papakainga and urupa, was claimed under s. 486 of the Native Land Act 1931 in January 1939 (Judge Harvey).²¹³

²⁰⁵ T. Te Maipi, memo MA 28 May 1969, ACIH MA1/429 21/1/170 R19526651 Archives NZ Wgtn

²⁰⁶ OMB no. 43, 1 Oct. 1968, Judge Gillanders-Scott, pp. 250-251; NZG 9 Oct 1969 no. 61, p. 1972; ACIH MA1/429 21/1/170 R19526651 Archives NZ Wgtn

²⁰⁷ Deputy Registrar to Secretary, Maori Affairs, 22 August 1969, *ibid*.

²⁰⁸ T. Te Maipi, community officer to Maori Affairs Dept, Rotorua, 29 April 1976, AAMK 869 W3074/728/g 21/1/347 R11838684 Archives NZ Wgtn

²⁰⁹ OMB no. 48, 4 February 1976 pp. 483-484; *ibid*

²¹⁰ NZG 23 July 1976, no. 80 p. 1701

²¹¹ OMB no. 25, p. 268; NZG 22 Nov. 1923, p. 2842; ACIH 16036 MA1/1317 1923/239 R22408538 Archives NZ Wgtn

²¹² NZG no. 12, 25 February 1937, p. 446; ACIH 16036 MA1/502 22/2/38 R19527588 Archives NZ Wgtn

²¹³ OMB no. 29, p. 318; NZG no. 29 22 Aril 1943, p. 475; ACIH 16036 MA1/506 22/2/94 R19527640 Archives NZ Wgtn

Appendix A – current partitions of Opape blocks, according to the Ministry of Justice’s ‘Maori Land Online’ website:

<i>Block number</i>	<i>Area (hectares)</i>
1A 15A	0.1011
1A 15B1	0.2203
1A 15B2	0.7327
1A 19A	1.341
1A 19B	72.319
1B Sec 3, 3A Bal. No 1B Sec 4	
3A Bal. 1A2	7.7902 (Te Waiti Lands Trust)
1G1A	8.81111
1G1B	20.9921
1G2	5.77778
1G3B	7.9982
1K 1L no.2	154.7375
1N1	9.6584
1N2	28.3279
1N3	22.49004
<i>subtotal</i>	<i>341.29733</i>
2A2B2B	9.6922
2B2B	1.1912
2B5	2.465
<i>subtotal</i>	<i>13.3484</i>
3A1F1	12.6708
3A1F2	0.16
3A1G	3.4145
3A Bal. 1A1	0.1011
3A Bal. 1B Sec 2, 3A Bal.	62.7466
3C1	5.0586
3C3B	18.1466
3E	12.8487
3F3A	1.6718
3G 1B, Opape 3G 2B agg.	39.6135
3H2	14.5838
3K2B2B	24.7732
3M	5.1192
3PW3	1.7254 (Papakainga)
3PW no. 1	0.202 (Papakainga - Catholic Church site)
3R2B2	0.955
3W3B	10.0109
3X3A	2.1606
<i>subtotal</i>	<i>99.8604</i>
4 2B	1.2444 (Papakainga)
5A1	12.5123
5B2B	8.77083
5D2, 5D3 agg.	4.229
<i>subtotal</i>	<i>25.51213</i>

13		140.1148
15		1.3789
17		58.171
19		49.9748
20		68.1116
24		5.4455
25		30.265
27		4.3609
28		5255.6109
29		10.1
30		14.426
	<i>subtotal</i>	5637.9594
Total area		6129.22206 ha.