PRESENTATION SUMMARY

FOR

Ngatiawa:
land and political engagement issues
c.1819-1900

(Wai 2200, #A194)

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WALGHAN PARTNERS

Contents

Part I: Ngatiawa Settlement Patterns & The Exercise Of Customary Authority 1819-1840

Part I of the report covers the time period from 1819 to 1840 and deals with Ngatiawa's arrival in the district, settlement patterns, and their land and resource use. A key aim of this section is to identify the varying origins of customary rights as held by various groupings within Ngatiawa.

1. Summary of Events to 1840

The first significant event noted in the report was the taua that occurred in 1819 which first brought Ngatiawa chiefs into the inquiry district and as far south as Te Whanganui a Tara. Soon after, the arrival in Taranaki of Ngati Toa from Kawhia and the fighting in Taranaki with Waikato contributed to the Ngatiawa decision to migrate southwards. Te Heke Tataramoa, thought to have taken place in 1822, brought Ngatiawa and Ngati Toa south from Taranaki through the inquiry district and through to Waikanae. Estimates of the numbers on the heke vary, but all estimates record that Ngatiawa groups greatly outnumbered Ngati Toa.

While some Ngatiawa returned to Taranaki to collect more people for a further migration, those remaining at Waikanae moved onto Kapiti Island with Ngati Toa to ensure their security, In 1824, a massive but unsuccessful attack was undertaken by Kurahaupo forces against the island. Following this battle, from 1824 to 1834 a series of heke brought further Ngatiawa groups down to Waikanae. Te Heke Nihoputa, the largely Ngati Mutunga heke to Waikanae, arrived just after the Waiorua battle. The second significant Ngatiawa migration, known as Te Heke Mairaro, is thought to have arrived in 1828. This heke brought to Waikanae a body of Puketapu and a body of Ngati Kura and other groups. Two further heke in 1832 and 1834 occurred within the context of attacks from Waikato on Pukerangiora and Nga Motu pa. Those from Taranaki who came south to Waikanae found less opportunities to settle due to the large numbers of Ngatiawa already in the district.

From 1834 to 1839, Ngatiawa became embroiled in conflict with those Ngati Raukawa who also had migrated south and had settled to the north of Waikanae and who were increasingly sensitive to any actions that might be seen as challenges to their customary rights.Ngati Raukawa's strong response in 1834 to an act of food theft brought an equally strong response from Ngatiawa

resulting in a year-long campaign of conflicts between the two groups. The result from the Haowhenua campaign was indecisive, with both sides believing they had triumphed. The uneasy peace after Haowhenua did not last. In 1839 Ngati Raukawa attacked Ngatiawa. The Ngatiawa victory at Kuititanga was viewed as being of great significance and a key component of how Ngatiawa finally gained full possession of Waikanae.

2. Summary of Occupation as at 1840

Te Heke Tataramoa provided the initial basis on which customary rights were established for several Ngatiawa groups. The next Ngatiawa significant migration of Ngati Mutunga on Te Heke Nihoputa (1824), is said variously to have settled south of the Waikanae River or at Waimea which is north of the river. On the arrival of Te Heke Nihoputa at Waikanae, those persons of Kaitangata, Ngati Rahiri and Ngati Hinetuhi who were living on Kapiti Island, having participated in the battle of Waiorua, came across to the mainland and occupied land south of Waikanae River and also between the Waikanae and Waimea Rivers.

The next persons who came with Te Heke Mairaro (1828) initially joined those Ngati Mutunga who were settled south of the Waikanae River and who were in occupation of Kenakena Pa. The heke also brought Te Tupe o Tu, a leading chief of Otaraua who moved onto and occupied land that subsequently became known as the Muaupoko Block. Soon after, those of Puketapu who had been part of the heke moved a little to the south to occupy the pa at Te Uruhi. After some time, those Ngati Kura who lived alongside Ngati Mutunga north of Waimea, were given those lands by those of Ngati Mutunga who were intending to move on to Te Whanganui a Tara. Those Ngati Mutunga who remained at Waikanae continued to occupy an inland area at Kapakapanui. The movement away from Waikanae of most of Ngati Mutunga meant that Kaitangata, with associated members of Ngati Rahiri and Ngati Hinetuhi, came to predominate in the occupation of the land on both sides of the Waikanae River.

The arrival of heke in 1832 brought new groups from Pukerangiora and Nga Motu, who stayed with fellow Ngatiawa in their areas of occupation for a year before moving on to Te Whanganui a Tara. By 1834 occupation areas of hapu were as follows:

- Ngati Rahiri: occupying Kukutauaki down as far as Opua,

- Ngati Kura: between the Waikanae and Waimea Rivers,
- Kaitangata, Ngati Uenuku, Ngati Tuaho and Otaraua: south of the Waikanae River,
- Otaraua: on what is now the Muaupoko Block
- Puketapu: from Te Uruhi down to Whareroa.

Kaitangata, Ngati Uenuku, Ngati Tuaho and Otaraua were said to have lived and accessed resources together. Ngati Kura lived with Ngati Hinetuhi and Ngati Mutunga at Te Upoko a te Kaia. Ngati Kura also cultivated at Kukutauaki, apparently by the permission of Ngati Rahiri. Similarly, Ngati Rahiri cultivated in Ngati Kura areas again by permission.

The year-long campaign that was Haowhenua affected occupation patterns. During the time of the conflict, it brought Ngatiawa reinforcements back into the Waikanae district from places such as Arapawa and Te Whanganui a Tara. After the campaign, the somewhat uncertain state of affairs and the possibility of a Ngati Raukawa retaliation made some Waikanae Ngatiawa nervous enough to leave the district for places such as Arapawa. Those who went to Arapawa included a portion of each of the Ngatiawa hapu at Waikanae. Hadfield later estimated that around 40 percent of Ngatiawa left, with around 600 persons remaining in Waikanae. On the one hand, occupation areas of hapu at Waikanae remained the same. There were some examples of significant change, however. The newcomers from Taranaki (Ngati Ruanui and others), moved on to Te Whanganui a Tara occupying those areas that the Ngati Mutunga who had been there had transferred before they had left for Wharekauri in 1835. In addition, it was said that Ngati Maru went to Whareroa after Haowhenua. After Haowhenua, as before, there clearly was movement between Waikanae and other communities, especially at Arapawa.

The 1839 battle of Kuititanga brought a short term change in occupation as the several hundred reinforcements that had assembled in Waikanae from Arapawa and Te Whanganui a Tara stayed on and lived in the district for a while to provide added security. Eventually, these reinforcements returned to their homes. Overall, the fluidity of movement between various Ngatiawa communities was maintained as summarised in Te Watene Taungatara's words: ‘We came and went, came and went...’

3. Discussion on Customary Rights

Within the context of all of the events associated with the migration, there were numerous origins for the customary rights held by various Ngatiawa groups or individuals by 1840. In some cases, these events created a network of mutually supportive and overlapping claims. In other cases, rights were established by one group that were potentially antagonistic to another. Summarised, the basis of customary rights include:

- original rights held by those Ngatiawa chiefs who were on the 1819 taua and who claimed land at the time.
- rights held by those who were on Te Heke Tataramoa arising from participation in armed conflicts especially the battle of Waiorua.
- rights originating from gifts being granted from Ngati Toa chiefs many of these occurring within the context of marriage alliances. Included in these are gifts of specific land areas to Haukaione, Huriwhenua, Te Manutoheroa and Naenae.
- rights of ahi kaa which began from Te Heke Nihoputa, and were built on by successive Ngatiawa heke.
- rights originating from gifts between Ngatiawa hapu and persons.
- rights of descent from Ngati Toa chiefs who also had Ngatiawa whakapapa who held rights from conquest, allocation or tuku whenua
- Te Tupe's apparent right of direct occupation of lands at Muaupoko.
- rights from ringakaha - the holding of land against the Ngati Raukawa during the Haowhenua campaign and the battle of Kuititanga.

In some cases, it is possible that a specific basis of customary interests may be known to or experienced by a small number of people who were the direct recipients or benefactors of the rights bestowed on them. With the fluidity of movement exercised by Ngatiawa persons and groups, even before 1840, understandings of the basis and nature of customary rights could become siloed within whanau or hapu groups. Therefore, by 1840, it is possible that varied understandings over customary rights could be held at the same time by different groups. When Ngatiawa interacted with the Crown after 1840, the nature of customary rights would be brought under a spotlight and it would be shown that several perspectives existed.

Part II: Ngatiawa Political Engagement With The Crown 1840-1870

Before 1840, Ngatiawa already had a more than a decade long association with Pakeha persons, concepts and technology from the whalers that came into the district by the early 1830s to the Christianity that had been brought among Ngatiawa by native teachers. By the time that the Treaty of Waitangi was brought into the district, Ngatiawa were ready to engage with the new Pakeha arrivals whether it be Crown officials or private companies. By the end of 1840, leading chiefs had signed the Treaty of Waitangi, participated in the New Zealand Company transactions and welcomed the missionary Octavius Hadfield to occupy Waikanae Pa. After 1840 Ngatiawa embraced available commercial opportunities brought by the arrival of a Pakeha market. By the mid-1840s, there is evidence of wheat growing at Waikanae with 150 acres under crop. By 1847, the cash earned from such ventures was said to have brought living improvements for local Maori. Despite this interaction with the Pakeha market, the early difficulties of transport between Port Nicholson and the Kapiti Coast meant that European settlement remained limited. Throughout the 1840s and into the 1850s and even 1860s, the area around Waikanae essentially remained a Maori community with few resident Pakeha. Instead, it would be events and developments outside of Waikanae, associated with the growth of Pakeha settlements in Wellington and Taranaki that brought significant impact on Ngatiawa of Waikanae.

1. Challenges of the 1840s

During the 1840s, Ngatiawa actively sought a positive relationship with the Crown. On several occasions they wrote to Crown officials (and the Queen) and strongly identified themselves as fellow Christians who sought to adopt the Queen's laws. They asked for guidance and assistance in following the new laws. Ngatiawa quelled potential Maori unrest in Wellington, leapt to Grey's defence when he was being challenged by Pakeha settlers and declared their loyalty whenever required. In turn, officials such as McLean and Grey promised Ngatiawa protection and benefits so long as Ngatiawa remained as loyal supporters.

The development of circumstances in neighbouring districts during the first half of the 1840s meant that Ngatiawa would be called upon to consider the nature of its relationship with the Crown. This was not a straightforward matter as the Crown's difficulties during this period primarily involved Ngati Toa - an iwi with whom Ngatiawa had a long and complex relationship. The series of crises events that Ngatiawa had to deal with included the Wairau incident in 1843,

the Crown's campaign against Te Rangihaeata in 1846 and the arrest and detention of Te Rauparaha in 1847. While Ngatiawa tried to maintain a supportive position towards the Crown and Pakeha settlement in general, it nevertheless could not engage in a fully hostile position with Ngati Toa. During the Rangihaeata crisis officials clearly expected that Ngatiawa would strenuously assist in achieving the Crown's military objectives. They therefore became somewhat frustrated when Wiremu Kingi expressed some reticence over Ngatiawa actively taking the field. Ngatiawa adopted a position where they were prepared to prevent any reinforcements that might come from the north from proceeding to Rangihaeata and they also were prepared to patrol the area around their kainga. More overt activity than this, however, was not undertaken.

Despite the challenges of the early 1840s, a promising basis for a positive Treaty relationship still existed in the declarations made both by the Crown and Ngatiawa. It would be the developing situation in Taranaki that would pose the most significant challenge to the Treaty relationship between Ngatiawa and the Crown.

Throughout the 1840s the Crown pursued objectives to further European settlement associated with the fledgling colony at New Plymouth. The Crown perceived that the migrations from Taranaki of the 1820s and 1830s left a blank canvas in the area for the Crown to further the growth of New Plymouth through land acquisition with remaining resident Maori. In response, Ngatiawa of Waikanae and elsewhere would seek to inform the Crown of their perception that their customary rights had not lapsed in the Taranaki district and therefore needed to be taken into account by the Crown. Ngatiawa demanded that they be consulted with and that the customary rights they held were acknowledged and addressed rather than ignored. When this did not occur, Ngatiawa of Waikanae resolved to take their protest to Taranaki. This eventually occurred with the heke of Wiremu Kingi and his people in 1848. T throughout the difficulties over Taranaki, Ngatiawa remained measured in their actions and tried to avoid inflaming the situation. Despite all the attempts of Ngatiawa to engage with the Crown over Taranaki, to negotiate their return and their settlement once in Taranaki, officials remained antagonistic initially seeking to stop the heke. Nevertheless, the heke departed. For the next decade, Ngatiawa maintained their presence in Taranaki and responded to Crown actions there. As the Crown continued with its own agenda of land acquisition, the path to conflict was inevitable.

2. Land Purchase Negotiations of the 1850s

The next arena of interaction between the Crown and Ngatiawa was focused at Waikanae and the Crown's almost decade long efforts to acquire land there. Despite a number of requests dating from 1845 from Wiremu Kingi and others to purchase Waikanae land within the context of their planned departure to Taranaki, the Crown had refused in the hope that it might prevent the heke taking place. Once Kingi had gone, the Crown was prepared to consider the matter of purchasing land at Waikanae as part of its objectives of acquiring land in the Wairarapa and Manawatu to create a hinterland for Wellington Throughout the 1850s, the Crown made various attempts to acquire land in Waikanae. During this time, visits were made to the district by at least three Land Purchase Commissioners, and Governor Grey personally took action with two visits to the district to discuss the purchase of land. The Crown continued to consider all offers to sell land despite evident opposition from the majority of Ngatiawa. This resulted in disharmony within the Waikanae community and strained relationships with Ngati Toa and Ngati Raukawa neighbours. On several occasions, the negotiations had to be suspended as it was feared bloodshed may result. Negotiations were never abandoned, however.

In Waikanae, Ngatiawa's perception of their customary rights and the certainty that these were held without reference to others shaped their interaction with the Crown. During the decade that the Crown sought to acquire land at Waikanae, officials initially interacted with neighbouring Ngati Toa who actively claimed suzerainty over land at Waikanae. Ngatiawa chiefs, whether they were in favour of selling or not, resisted such a claim by Ngati Toa until the nature of Ngatiawa claims came to be understood and accepted by officials. Nevertheless, officials were required to address the strong claims made by Ngati Toa during the 1850s. As a result, various Ngati Toa rangatira continued to exercise an influence in affairs. Some Ngati Toa chiefs were in favour of a land sale, others, like Rangihaeata, were adamantly opposed.

Despite a decade-long effort by the Crown to acquire all of the land at Waikanae, only the acquisition of the Wainui and Whareroa blocks located between Raumati and Paekakariki occurred in 1858. Furthermore, this appears to have come about as the result of Ngati Toa persons selling their interests in these lands. Ngatiawa held back the main estate at Waikanae on which most of the hapu lived despite some iwi members wanting to complete a purchase with the Crown involving part of the land there as well.

The Crown maintained a purchasing presence in the district for almost a decade no doubt encouraged by the persistent presence of a group wanting to sell land around Whareroa with a few other individuals toying with the idea of offering their interests further north. Yet the Crown met a strong counter response against sale from 1849 right through to 1858. Such opposition to land sales was ignored as long as there was some party who was willing to make an offer. This too, had very much been the situation in Taranaki where the Crown's backing of land sellers resulted in warfare. The Crown therefore almost risked the same result occurring in Waikanae. The Crown persisted with negotiations despite evidence of dissension arising within the community. As a result, Ngatiawa at Waikanae remained in a state of agitation for over a decade.

3. Kingitanga and War

By 1860, the whole community at Waikanae had turned to kingitanga in response to the Crown's land purchasing actions locally and in Taranaki. By doing so, Ngatiawa again found themselves at odds with the Crown. The Crown's position on kingitanga was well known of by Ngatiawa. As a result, there were few opportunities for the Crown and Ngatiawa to work together as cooperating Treaty partners during the 1860s.

Events in Taranaki escalated into open warfare. The Crown had continued to purchase land, despite the objections of local Ngatiawa, and most notably Wiremu Kingi. This led to the outbreak of war which, although of comparatively short duration, was then followed by Crown recriminations in the form of raupatu which removed hundreds of Ngatiawa from their homes and effectively rendered them landless.

In Waikanae, Ngatiawa raised a significant voice in criticising the Government's actions in Taranaki. Numerous letters presented a detailed defence of Wi Kingi and a strong critique of the actions of key Crown figures such as McLean and Parris in persisting with the purchase of Waitara. The these letters recorded how the rights of absentee owners of Taranaki, such as those at Waikanae, had not been taken into account in the Government actions before the War. Ngatiawa joined with other iwi of the southwestern coast in protesting the war when it erupted. A major thrust of complaint was that Ngatiawa had remained loyal subjects who had tried to live in accordance with adopted English laws and yet their people in Taranaki had been attacked.

Soon after the Taranaki War began, the kingite leader Wi Tako took up the invitation from Ngatiawa to establish a political centre at Waikanae. He and his administration remained there for more than a decade. Wi Tako and Waikanae Ngatiawa adopted and promoted a moderate expression of kingitanga. Given the close relationship of Waikanae Ngatiawa with their relatives fighting in Taranaki it is remarkable that open armed conflict did not erupt. Under Wi Tako, Ngatiawa were recognised as a moderating influence on local Maori politics on the western coast. It was always a near run matter however. The desire to avenge the killing of Rawiri Waiau of Puketapu in 1854 and the intention of a large group of Ngatiawa to travel to Waikato on the eve of the invasion, which ultimately was foiled by tragic illness, shows that there was always a real possibility of a very different history having played out among Ngatiawa. Ngatiawa only relinquished their commitment to kingitanga in the face of extreme actions by the Crown: the invasion of the Waikato, the declaration that any groups not specifically aligned with the Crown would be viewed as rebels and the confiscation of land in Taranaki (and the threat of it extending elsewhere).

The end of involvement in kingitanga was not the end of political activism. This is shown by the pan-iwi political hui that emerged during 1870. During the 1860s, the Taranaki War and the rise of kingitanga had pitted iwi against iwi on the southwestern coast as different responses were taken to the dramatic events that had arisen. In the aftermath of the war, in the watershed period before the Crown would again seek to be active in the district in trying to purchase land, the northern iwi within the inquiry district found they had common cause. In a series of hui held over 1870, it was agreed among Ngatiawa, Ngatitoa and Ngati Raukawa to forget matters of the past in order to join together to address the comparatively powerlessness position they faced in the post-war era. The iwi agreed that they would henceforth cooperate and seek to present a united voice in Parliament. The election of Wi Tako and Wi Parata to Parliament was an initial result of this pan-iwi reconciliation.

After 1870, there is little evidence of an active relationship between the Crown and Ngatiawa. Instead, within the Inquiry District, the Crown's activities through to the mid-1870s primarily focused on land acquisition north of Waikanae. Thereafter, there was little Crown presence in the district.

In summary, Ngatiawa's relationship with the Crown between 1840 and 1870 was largely reactive, responding to the actions taken and policies developed by a Crown that the Waitangi

Tribunal has found in both the Wellington and New Plymouth districts was pursuing its own objectives in breach of Treaty principles. The Crown's objectives ultimately sought to establish European settlement regardless of any alternate Maori viewpoint and, in Taranaki, in the face of the strongest opposition which ultimately would result in warfare. Compared with Ngatiawa's initially stated aspirations of advancement, partnership and the pursuit of mutual benefit, the iwi's relationship that developed with the Crown was clearly unsatisfactory.

It was the situation in Taranaki that would have the most impact on Ngatiawa. The continuation of land acquisition in Taranaki by the Crown throughout the 1840s and 1850s meant that Ngatiawa at Waikanae were kept in a state of turmoil in assessing how best to respond to the developments as they unfolded. Ultimately it was decided by most, that the best way to safeguard their customary interests at Taranaki was to be on the ground there. The departure of Wi Kingi, other rangatira and almost 600 persons robbed the Waikanae community of the significant human resource of three quarters of the resident population. Ngatiawa therefore would have been weakened in their potential to fully explore the economic opportunities that had been evident from Ngatiawa's participation in the colonial economy during the 1840s. Another clear impact relates to the loss of traditional leadership which left Ngatiawa susceptible to challenges over their customary rights from competitive neighbouring iwi.

In summary then, in signing the Treaty, Ngatiawa were seeking to enter into a relationship with the Crown which would be mutually beneficial. The early support by Ngatiawa of the Crown through to 1850, even in the most difficult circumstances of the military campaigns of 1846, reveals a preparedness to cooperate. Unfortunately, the Crown's pursuit of its own objectives in Taranaki and Waikanae outstripped Ngatiawa's capacity to cooperate. Instead, it placed Ngatiawa in a position where they had to protest and resist in order to retain land and protect customary rights. Any chance of a positive, cooperative relationship to explore mutually beneficial objectives soon disappeared as Ngatiawa, in response to Crown actions, were required to take up a contrary position and maintain a long running opposition to Crown objectives. All of this is a far cry from being in a positive relationship with a Treaty partner pursuing mutually beneficial objectives.

Part III: The Ngarara Block: Title And Alienation History 1870-1900

Part III, covers the period from 1870 to 1900 and documents the events, processes and impacts arising from the titling through the Native Land Court of Ngatiawa customary land interests within the Inquiry District primarily, however, in the large Ngarara block and its satellite blocks at Waikanae. The Crown has long been criticised by the Waitangi Tribunal for bringing into effect a title conversion process after 1865 that actively undermined the fabric of community and overrode the customs through which Maori held rights in relation to their land. The 'legalising' of title through the Land Court ultimately individualised title and responsibility for land was removed from the constraints of community oversight. In addition, land became commoditised within a Pakeha land market. In several Inquiry Districts and Deed of Settlement, the Crown acknowledges a range of Treaty breaches associated with the Land Court.

Aside from the generic concerns associated with the titling of any Maori land through the Land Court process, the Ngatiawa story of problems arising from the Land Court titling process has its own unique features. As noted in the report, the complexity of Ngatiawa customary rights as at 1840 had only been added to over the next thirty years by the impacts of events such as heke into and out of the area by large groups or even individuals. Some of this was as a response to Crown policies or actions. On the other hand, the fluidity of movement observable across the far flung Ngatiawa rohe in Taranaki, Waikanae, Whanganui a Tara, Te Tau Ihu and Wharekauri was a long-established part of the way in which hapu members exercised their customary rights. Migration gave members the opportunity to occupy places as circumstances allowed or required. As has been demonstrated within this report, being away from a place for a long time, even decades, was not viewed by all within Ngatiawa as equating with the relinquishment of rights there. It is those very customary rights which were examined in the greatest detail by the external titling process that was the Land Court in order to make final decisions over Ngatiawa land tenure at Waikanae. It was in the forum of the Land Court that members of Ngatiawa were brought into a sharp realisation that distinctly different views were held among them in respect of central tenets associated with customary rights. Unfortunately, Ngatiawa were involved in a process that was geared to decision making when parties seemed to compete rather than mediation and reconciliation. The Court would reach findings of Ngatiawa's customary rights and iwi members would have to live with the ramifications of the decision made. The Land Court, with processes that were aimed to make set decisions about set rights to set places,

especially was ill-suited to deal with Ngatiawa land tenure. Furthermore, the Court's orientation was as a judicial body that used rules and processes to support unilateral decisionmaking when conflicting views were brought before it by opposing parties. The Court was not geared for mediation or for the accommodation of varying views or the protection of rights operating on overlapping levels.

1. Initial Titling of Ngatiawa Land

The first Section of this Part of the report covered the period from 1860 to 1875. Contextual information from the 1860s is presented which shows how the land within Ngarara was increasingly being utilised by its occupants for commercial purposes such as the running of stock and leasing to Pakeha. Within a context where customary rights were already complex, and often would only be demonstrated on the ground through challenge and response, the advent of leasing to Pakeha brought in a further dimension. For the owners, the leasing was seen as a means to an end as there is evidence that early rentals took the form of payment in sheep and lambs. The running of sheep requires larger areas of land than other forms of agriculture. The area in question included an area held in various ways by a number of people. This, therefore, became the new forum where land rights held within the Ngarara block were again put under a microscope, especially when differing views arose on the best utilisation of land.

Another feature of Ngatiawa land tenure shown in these pre-1870 snippets is the fluidity of movement by individual Ngatiawa persons around the various areas where customary rights were held. In addition, a number of examples of group migrations are presented in this report. In addition to Ngatiawa claiming to have interests in Taranaki over twenty years after they had left the area, this report has also presented evidence of a group of Kaitangata returning to Ngarara just after 1848, of Ngati Kura returning after 1855, of Eruini Te Tupe and his Auckland Island group returning in 1855 and a group of Ngati Hinetuhi returning just prior to 1860. In most of these cases, the groups mentioned had been away since the mid-1830s or, in the case of Eruini Te Tupe, the very early 1840s.

Another key theme that emerges is the depopulation at Waikanae recorded for the decade after 1865. The claims of an apparent steady population decline probably should not be taken at face value given the fluidity of movement noted above. Nevertheless, it is clear that from a population

of around 700 in the 1850s to one where 64 owners only are recorded for the Ngarara title as locally resident indicates that some significant decline had occurred. In part this had resulted from the impacts of disease. In part, however, it also was caused by outward migration. For many of the Ngatiawa of Waikanae, the destination was Taranaki. The timing of the migration is associated with significant developments in Taranaki resulting from responses to Crown policy there. The confiscations of land that occurred prior to 1865 and the allocation of 'reserve' land thereafter were being processed by sittings of the Compensation Court over the late 1860s. The need to be present at those hearings if there was any hope of receiving an award of land was clear to all Ngatiawa claimants. In addition, a rising force of resistance against Crown action was emerging in the settlement of Parihaka which from the mid-1860s became a magnet for disillusioned and disenfranchised persons seeking to find a new way forward.

Within this context, the title investigation of Ngarara proceeded as did that of the satellite blocks of Kukutauaki No.1 and Muaupoko. The title investigation of Ngarara, Muaupoko and Kukutauaki No.1 in 1873 and 1874 appeared to be a straightforward process. The Ngarara and Muaupoko cases were unopposed, while Ngatiawa succeeded as counter-claimants against the Ngati Toa claims made over Kukutauaki No.1. All hearings were comparatively short.

Behind the scenes, however, significant problems existed. When dealing with title, the difficulties arising from a constantly changing population were added to by the lack of experience of Ngatiawa in Land Court processes and in understanding the ramifications of the title that was being brought into place. In the case of Kukutauaki, a long-running dispute over iwi boundaries became mixed in with a whanau claim over a specific land block. As a result, Ngatiawa persons participated in the case with different understandings about the aims of the case and the likely ownership result. In the main Ngarara case, a finding that the land belonged to Ngatiawa as an iwi was transmuted into the creation of an ownership list supposedly based on residency. This was done, presumably, to provide some certainty at a time of demographic turmoil. Aside from the inherent difficulty of coming up with consistent criteria to define residency, the result was the selection by those conducting the case of a somewhat random group being placed on the title of Ngarara through the use of eclectic criteria for entitlement riven with inconsistencies and errors. It appears that having gained an iwi-based title, those Ngatiawa who were running the case struggled to actualise this into an ownership list as required by Court procedure. Put on the spot, an attempt was made to create an ownership cohort. In doing so, the tenets of customary rights and even the norms of the Land Court were departed from to create an

ownership group that bore little relevancy to wider understandings of who the Ngarara owners actually were. There is even some evidence to suggest that the list when handed in was unfinished.

None of these difficulties were revealed in 1873 and 1874. When Ngatiawa titles were first brought forward, the Court reacted to what was brought before it - groups of owners that apparently were in accord and apparently seeking the same result. In situations such as these, the Court was not structured to interrogate or investigate beyond the cases put before it. The Court therefore effectively rubber-stamped the apparently unified requests put before it by Ngatiawa claimants. The complexity of Ngatiawa's customary rights were not evident at this time nor was the inexperience of Ngatiawa in Land Court processes taken into account. Therefore, a tenure was brought into place that later events showed did not reflect the true nature of ownership at Waikanae. A limited ownership group was identified that the Court, because of its rules, subsequently could not move beyond when proceeding in the future.

The irony of the attempt to create a new resident ownership group to meet the perceived needs of the community as at 1873 was that within a year of the title being fixed the community dramatically changed further as a comparatively large group of Waikanae Ngatiawa, including a number of the owners recorded as being on the Ngarara title, migrated to Parihaka or Waitara and therefore were no longer the 'residents' that the title sought to identify. The migration was funded by the sale of the mountainous Maunganui (Ngarara East) block. It appears that the money raised from this sale was distributed in accordance with custom rather than strictly in accordance with the title ownership of the block. Within a year of title being awarded, therefore, the ownership list was redundant in its attempt to define who were the Ngatiawa community at Waikanae.

It would be wrong, however, to assume that the draw on Ngatiawa of moving to Taranaki to participate in developing matters in Waitara or Parihaka was the end of their Waikanae story. Throughout the report, despite there being record of outward migration from Waikanae, there is also record on inwards migration, either by another party or a later return of previous inhabitants. And so it was with the 1874 migration to Taranaki and with others who had gone there in the previous (and later) years. The evidence of this is clearly recorded by the Wanganui Resident Magistrate who, in 1878 and within the context of trying to compile an accurate census, complained of the migratory ‘habit of coming and going’ of local Maori to places such as

Taranaki. Therefore, just as the 1873 ownership list decisions which had been adopted to meet the requirements of the title process was made redundant by the 1874 migration, so the ongoing fluidity of Ngatiawa movement over subsequent years rendered the 1873 title even more out of step with the way that Ngatiawa persons occupied their land.

The ramifications of the tenure that was locked in during 1873 and 1874 were not immediately understood or felt within the Ngatiawa community which for the next 15 years continued to exercise customary rights as they had before. For those who were away, Wi Parata acted as agent as had been agreed. Despite the awarding of title to specific owners, Parata sought to keep the land within the Ngarara block together as a tribal estate available to non-residents away at Taranaki even if they were not recorded on the title. Challenges were emerging, however. From the granting of title, continuing changes with land use through leasing to Pakeha or sheep farming by owners brought tensions within the community. Competition and conflict between individuals resulted in disgruntled ownership groups turning to the Court for a determination, through subdivision, of the rights that persons believed they held under the awarded title. A partition hearing occurred in 1887.

2. The 1887 Partition and Subsequent Protest

For Parata, it was the worst outcome. Wi Parata, in his role of representing those who were away in Taranaki and his leadership role amongst the community in Waikanae, intended to keep Ngarara ‘intact’. This was to ensure generally that Ngatiawa did not become 'poor' and to act as a residual estate to provide refuge and resources should the time come that those from Taranaki returned. Parata's intention of providing for the whole tribe if necessary was completely incongruent with the title regime set up through the Court process where 55 people only had the right to take any action regarding the land. From this point onwards, the tensions between custom-based aspirations in relation to the land, and Court imposed realities came into a complete clash and matters quickly unravelled.

Although able to present their customary rights at an iwi level during the 1873/1874 title investigations, when it came to the partitioning of the Ngarara block in 1887, claimants described their customary rights in terms of hapu-based rights. These hapu rights, based on several different origins, were closely held within a network of arrangements and agreements

that had developed over half a century of occupation. Within the context of competition arising over the new land uses developing on the land at Waikanae, the various Ngatiawa groups sought to explain their understandings of these rights to the Land Court that they might receive a title based on and reflective of these understandings. It was at this time, and in this forum, that participants would learn that, within the myriad of origins for customary rights, a fundamental difference of understanding existed between them that previously may not have been brought so sharply into contrast. There was evidence of the differences in the 1873/1874 title investigations, although these did not come to the fore. The full contrast was first revealed in 1887.

As this was really only the second time of participating in the Court the inexperience of the applicants in its processes led to the presentation of a series of rather messy cases leading to a wholly unexpected result where their hapu-based applications were rejected. When the applicants requested adjournments or the opportunity to present rebuttal evidence, the Court denied these requests noting that their cases had been closed. (Subsequently it was learned that the denial at the 1887 hearing to present further evidence was based on the rather fickle actions of the presiding judge rather than any steadfast rule. Had those protesting made their request at a different time or in a different way, then apparently their request to produce more evidence would have succeeded). The result of the 1887 subdivision case for those who had applied for the partition was that instead of having the rights they believed they held confirmed, a number of owners had their hapu rights relegated to individual holdings of a small piece of land on which they lived.

Those participating in the 1887 partitions, especially those who had brought the partitions and failed, had come up against Court procedures and the implication of what their titles really meant. In relation to the first matter, there was no understanding that those owners who had not applied for partition would be able to present evidence and therefore the partition applicants had closed their case. The inflexibility of Court rules, as decided on the day by the presiding judge, meant the applicants could not reopen their cases when confronted with claims in relation to customary interests that they never before had heard. The applicants also learned for the first time that the Court was not convinced the hapu-based cases that were brought forward. The Court believed there was an incongruity between claims made and the numbers of people making them. The claims were each based on an expansive history of hapu who in the past would have had dozens, even hundreds of members at Waikanae. By 1874 these hapu were represented on the ground by less than ten members. The partition applicants in 1887 still saw

their rights as hapu-based but the 1874 title had delivered a tribal right over the land. When the partition applicants had struggled to elucidate the nature of hapu based rights for the purposes of partition, their failure resulted in the Court dealing with their rights as individual owners within a tribal certificate of title.

Those who brought the partition cases of the Ngarara block forward had been so confident in the expected result that when different results emerged from the Court's decision the parties were genuinely surprised. A strong response was immediate. Failing in their attempts to gain a rehearing, the surprise outcome of small individual awards engendered the voicing of suspicions of past misconduct by a certain individual in his management of the block titles and the land. Therefore what were really complaints over results that had arisen from misunderstandings arising from participation in the Land Court process emerged as accusations of fraud. It was this component within the protest that gained a quick request from within Parliament on the need for an investigation. The inquiries that proceeded produced apparently contradictory evidence, significant accusations and strong resentments. Each inquiry that was established passed the matter onto another body. Hence the Native Affairs Committee, in August 1888, recommended a Commission of Inquiry. In December 1888 the Ngarara Commission recommended that the matter be sent back to the Land Court for rehearing. The inquiries were presented with an overwhelming amount of what was seen as contrary evidence although this really arose from the complexities of Ngatiawa's customary rights and the differing views that were held in relation to these. Ultimately, it was decided that something had gone wrong and an in-depth review was needed. While this was the right result, the chosen vehicle of further investigation was wrong with official and Parliamentarians choosing the only official body seen as having expertise in these matters - the Land Court.

By the time of the 1888 inquiries, those owners who had not fared well during the 1887 partition had also learnt that there was a wider body of owners who had been disenfranchised as a result of the 1873 hearing. The situation of these disenfranchised claimants was referred to in petitions of those unhappy with the 1887 partition and during the 1888 inquiries evidence emerged about the experiences of the disenfranchised. Within the context of the title of the Ngarara block being fully aired and publicly discussed, a number of claims emerged from persons who believed that they had customary claims within the Ngarara Block, but came to realise they had not been included in the ownership lists of 1873. Some had believed they were included and were surprised to learn that they were not. Others had not realised that the Ngarara block had passed

through the Court. Claims were made by individuals or small groups. In addition, however, significant hapu-based claims emerged out of Taranaki from the direct descendants of Wiremu Kingi and other chiefs of the 1848 return heke. In a reversal of the situation where those on the heke had left Waikanae to safeguard customary interests in Taranaki that the Crown had assumed had lapsed, by 1890 those from Taranaki who were claiming to be included in a rehearing stated that customary interests in Waikanae had not been relinquished by them at all. Nevertheless, the basis of claim that the 1873 certificate of title was not sufficiently inclusive, was not addressed in the remedy that Parliament settled on. Instead, the rehearing that was enabled by legislation, was limited to reviewing the 1887 partition only. Therefore, only those on the 1873 title had a stake in the rehearing.

A small window of opportunity had existed for the Crown to make things right but it was missed. The limit to the Court's investigation had come about through the recommendations of the 1888 Ngarara Commission. Evidence is available that shows that the Crown, in appointing this Commission, did not take care to ensure an effective inquiry was held. The commissioners were not well qualified for their task. Neither could speak te reo and neither knew anything about Maori land law and custom. Given the low level of experience of the Commissioners, the statements in their report that they found the evidence ‘extremely conflicting’ and that they were able to reach findings ‘without attempting to weigh carefully the relative value of all the conflicting statements that have been made’ are extremely troubling and raise the question of whether the recommendation to rehear the 1887 partition had been based on any full understanding or full consideration of all the evidence heard.

Both commissioners were viewed as political appointees rather than being selected on the basis of their expertise or independence from government. One appointee, at the time of his selection, had been pegged to take over the position of Chief Judge in the aftermath of the Commission which duly occurred. This meant that during the commission's hearing a conflict of interest existed where the commissioner was investigating something for which he subsequently would be administratively responsible. This situation, therefore, removed his ability to be completely impartial as a Commissioner.

The main failing of the Commission's findings over the Ngarara block is that these were out of step with the complaint that had been made and the evidence that had been heard. The Tuhata petition, which sparked the two inquiries in 1888, had complained about the result of the 1887

subdivision case. It also, however, broadly alluded to a deeper systemic problem with the narrowness of the 1873 Ngarara title and it claimed that a number of interestholders had missed out on being included in the title. When the Commission sat, the evidence presented on the 1873 title confirmed that this was the case. The Commissioners, however, did not report on this. Following the Commission's report, no Crown official or parliamentarian who ultimately had the responsibility of passing the enabling legislation for a rehearing acted to address the evident discrepancy between the evidence of injustice arising from the 1873 title and the limited findings of the Commission. The matter was directly brought up by the petitioners' legal counsel who provided a proposed clause to the legislation allowing anyone in residence at Waikanae to bring their claims before the rehearing even if they were not in the Certificate of Title. This suggestion was supported by the Under Secretary of Native Affairs who also expressed a further view that a hearing of the Ngarara title de novo would be a fair way of meeting the requests and petitions for inclusion that were coming out of Taranaki. The Native Minister had no problem with this either. They agreed the matter be referred to the Chief Judge. It was at this point that the conflict of interest, put in place by the Crown's appointment on a Commission of inquiry of a person who would be responsible for implementing the recommendations made by the inquiry, came into full effect. Former Ngarara Commissioner and now Chief Judge Seth Smith recommended against the proposed clause giving as the only reason that the issue was not part of the Commission's findings. Therefore, the Commission's findings, having failed once to address an issue of exclusion from title, was used as the basis to undermine a proposed solution to this failure. Nevertheless, the option remained for the Chief Judge's view to be ignored by officials who had acknowledged the fairness of rehearing the Ngarara case do novo. It was not taken and the rehearing of the 1887 partition case only went ahead.

3. The 1890 Rehearing

With the Court's field of inquiry severally constrained, the scene was set, therefore, for a replication of what had previously occurred - the application of the Court's limited rules, processes and decision-making to a customary land tenure debate that was broad and complex and better suited to an inquisitorial, mediation-orientated process. Therefore, sitting under special legislation, in 1890 a rehearing of the 1887 partition occurred. The rehearing lasted for months, saw claims and counter-claims over facts and events, accusations and personal recriminations. The result was problematic. During the rehearing opportunity, the competing

participants presented the only cases they knew, ones that were hapu-orientated and based on genuinely held, but very different understandings of the origin and basis of their customary rights. The Court followed its rules of procedure to cut through contradictory evidence and deliver a result.

In the judgment, there are evident problems with the judges' historical narrative of events. Despite the judges claiming that they were summarising evidence received during the investigation, much of the historical narrative dealt with Ngati Toa events for which there had not been testimony presented by witnesses. The judges' history was stylised and uneven, providing detail on the process of migration gone through by Ngati Toa, but somewhat skipping over the post-Waiorua Ngatiawa migrations and providing comparatively little detail on these. In addition a number of key details presented in evidence were missed or misunderstood. Ultimately, the judges got the key narrative for Ngatiawa wrong, when compared with the evidence of witnesses. The origins of rights therefore, as understood by the claimants, were misunderstood by the judges.

Aside from mangling the historical narrative, the fullness of the hearing did not provide the expected boon for either participating party. The Court, encountering the full complexities of Ngatiawa customary rights, merely reached the view that the evidence was unsatisfactory and contradictory between and within cases. The cases presented before the Court did not conform with the Court's expectations: according to the judges there was no evidence of exclusive, clearly defined hapu rights by 1840 and therefore they were deemed not to exist. Any claims or evidence that did not reflect the Court's understanding of the region's history were rejected. Attempts for recognition by those who had not made it onto the first titles were not accommodated.

The Court created a construct to meet the situation as at 1840 - the tribal right. The Court retreated to the iwi title recognised in 1873 and, because this was a rehearing of a partition case, leapfrogged from there to the awarding of areas to all of the parties to the case but based on individual rights. Reaching findings that did not reflect the basis of claims made by either party, the Court instead implemented a compromise. The task was simplified: examine occupation as at 1840, identify descendants of occupants who were on the title as at 1873 and then make awards to descendants accordingly.

However, it was clear that the tribal title did not survive after 1840. All of the land was not used

by all of the people in common. Instead, resources were accessed in varying ways by various groups of people. The judges chose to view this as not being the rolling out of hapu-based rights but that it represented the taking up of rights by individuals. This construct by the Court of a tribal right as of 1840 subsequently unbundling to individual rights over time, was out of step with the thinking of all claimants, even those opposed to each other. For them, the take through which they acquired rights when they arrived provided the basis of legitimacy, which was maintained by occupation in whatever form that needed to proceed. For them, there was no need to demonstrate these as exclusive rights spread across the land as at 1840. The people understood the basis on which they held the land - a hapu basis - and neither timing nor preparedness to share land or resources with others undermined these rights. Therefore, the foundation of the judgment was entirely out of step with the way in which claimants perceived their own rights.

Having in their reasoning reached the point in relation to the nature of customary rights being exercised only by individuals, the judges encountered difficulties in allocating land due to joint occupation and shared use of resources by parties that were now opponents in the case. The awarding of specific parcels of land either to individuals or small groupings of related owners resulted in creations of land blocks that had little to do with reflecting customary rights on the ground. A hop-potch of small, disjointed, sections were created over the Ngarara block. Any corporate tribal entity that appeared to be the basis of title being awarded in 1873 had been replaced by competitive interestholders in 1890. The partitioning of Ngarara West set up numerous land holdings, primarily with only one or two owners on the title. Effectively title had been individualised. In addition, title was fragmented. An analysis of title revealed that owners usually held their interests in more than one subdivision. Most owners had interests in four blocks and many held land in various ownership combinations in up to eight blocks.

With the Court having rejected all cases before it, and substituted and implemented a new form of tenure, the outcry of protest from all contending parties to the rehearing is not surprising. The extent of protest in the form of letters and petitions is significant. All parties to the 1890 rehearing were dissatisfied with this result and petitioned for a further inquiry. Complaints related to the amounts of land received, the location of grants having little to do with actual areas of occupation, the inclusion of people who were deemed to not have any rights and the denial of the opportunity to present claims. Clearly factors other than custom were being taken into account by the Court in the awarding of land. That this had occurred was acknowledged and defended by the judges as being the only practical course to adopt.

In addition, a number of those who were disenfranchised from the 1873 title, and who unsuccessfully had sought to be parties to the 1890 rehearing, also petitioned for a new inquiry which this time included them. Instead of weighing up the complaints based on their merit, the Crown simply adopted a position of saying that enough had been done in respect of Ngarara. The uniform response of the Crown to calls for review was refusal with the special legislation that had already passed and the resulting rehearing being pointed to as having fulfilled all that was required of the Crown. The Crown had reached the end of its preparedness to assist believing that it had provided sufficient due process. While it is true, much resource had been applied to resolve Ngatiawa complaint from 1887, it had not been provided through processes that had the ability to identify and get to the bottom of what really was the issue. In addition the process did not have the capacity to resolve the issues that had arisen. This would have required the use of a mechanism that was different than unilateral judicial decisionmaking.

The injustice of the Court's processes in excluding any interests other than those on the original list of owners is reflected in one of the responses provided by one of the judges presiding over the 1890 rehearing which shows that the Court knew that there would have been wider interests held in the land other than only those recorded on the 1873 title. In this case the complainant had protested about the small amount of land he received and the judge needed to justify why. He therefore recited at some length the history of the various residence of the complainant in other districts. Judge Scannell then noted this occupation as being typical of Ngatiawa: 'Occupation was shown to be of that intermittent kind usual among the Natives. Individuals came and went from Taranaki, Picton and elsewhere in addition to those who remained after the exodus to Taranaki and all cultivated whenever and wherever fancy or convenience dictated, remaining as long as it suited them and left it as they choose; and came again'. Without possibly knowing it, Scannell is recording the absurdity of the result from the Court processes and the wider injustices having occurred for others who were not on certificate of title.

As a result of the 1890 rehearing judgment, a new tenure was brought into place at Waikanae with which few Ngatiawa could identify. In addition, the resulting land awards were impractical to utilise in a Pakeha world due to size and location of sections. In addition, the Ngatiawa estate, now consisting of individualised sections at Waikanae, was confronted with the costs of the hearing process that had been gone through to have the title finalised. Give various comments on these costs and the length of a rehearing that lasted for several months in Wellington, it is

very likely that costs associated with the titling process were associated with the sale of Ngarara West sections to private persons before 1900 and even the earlier Crown purchases of Ngarara West C sections. In addition, owners were now faced with costs of their interests being held essentially as Pakeha land.

The timing of the finalisation of title is significant. The Manawatu-Wellington Railway had been completed in 1886 and a Pakeha settlement established at Paraparaumu at around the same time on land that had been purchased by the Crown from the Muaupoko Block as early as 1873. By 1890, there was great settler interest in acquiring land on the Kapiti coast. In the decade after 1890, the Crown acquired a comparatively large amount of the Ngarara West C block for European settlement purposes although the area involved was the more hilly eastern part. The western part of Ngarara, was soon acquired by private purchasers several of whom had close and long standing links to Ngatiawa. After 1900, the rate of private purchasing accelerated within the context of continued pressure from European settlement, and by 1925 very little land remained in Maori ownership.