

**OFFICIAL**

# **Ngāti Parewahawaha Statement No. 1**

## **Te Awahou Transaction**

Prepared and filed with assistance from Woodward Law Office.

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| <b>RECEIVED</b><br>Waitangi Tribunal |
| <b>6 Oct 2020</b>                    |
| Ministry of Justice<br>WELLINGTON    |

## SUMMARY

1. In earlier submissions the Tribunal asked for a summary before the presentation of the submission. Our summary is in the form of a synopsis of the argument and an overview of the context.

### **Synopsis**

2. This submission gives five grounds for asserting that the Te Awahou purchase was contrary to Te Tiriti o Waitangi.
3. First is that the Government purchased the Block notwithstanding a decision of Ngāti Raukawa that the whole of their lands were reserved under the mana of Taratoa, a senior rangatira, and was not for sale. We submit that the Government's actions in buying when it knew of the tribal decision, was contrary to Te Tiriti o Waitangi and the principle of rangatiratanga. We contend that in terms of Te Tiriti, the emphasis should not be on those who purported to sell, but on the integrity of the Government in purporting to buy notwithstanding the prior, tribal declaration.
4. Second, there was no valid consent as Taratoa had not signed the sale Deed. As well as having an interest in possession, Taratoa represented the tribal over-right. There was a second deed that he did sign but that was to secure reserves in a situation where the Government had the political capacity to unilaterally assume the validity of its own purchase.
5. Third, there was no valid consent of the people. Most of those attending the meetings were opposed to a sale and it was not until the 6<sup>th</sup> meeting when a majority in support was established, that a Deed was completed. In addition, benefits were given to those who were willing to sell. We submit that the process of proceeding until there was a majority for selling, was oppressive, that the granting of favours, was corruption and that the process of a sale by a simple majority had not been agreed.
6. Fourth, the hapū entitled to the ownership were not determined in advance. In terms of tikanga, the separate consent of each hapū, given according to its tikanga, was not obtained.

7. Fifth, the purchase did not comply with the Government's own criteria for validity, that the ownership, purchase price, boundaries and reserves should be settled in advance of the signing of the Deed.

### **Context**

8. The Ngāti Raukawa district was the only district remaining intact after massive Government purchases along the coast from Nelson to Taranaki had obliterated the economic base for the hapū and iwi of those territories. The Raukawa district was also the only remaining part of that vast area that might have met the intention expressed in section 71 of the New Zealand Constitution Act 1852 to set aside districts in which Māori law and custom would prevail. It was following those major sales that a hui ā iwi established, in their eyes, what was effectively a Ngāti Raukawa reserve.
9. The reserve was proclaimed, in Māori law, by a haka and acknowledgement of Taratoa as holding the land under his mana. He would be its spokesperson. It was also settled at that time that Ngāti Apa would remain north of the Rangitīkei River and those who chose to remain in the south would be under the care and authority of Taratoa.
10. Te Awahou was the first inroad into the Ngāti Raukawa reserve. While Government was aware of the decision that the land was not for sale, the Te Awahou purchase would show that Government had no intention of respecting that decision or of dealing only through the representative appointed by Ngāti Raukawa on matters relating to the reserve. At the same time, Government was refusing to acknowledge the authority of the Māori King in respect of those iwi who had placed their land under the mana of the King.
11. The Government strategy was essentially to overcome the resistance to sales by treating with those who wished to sell, whether or not they had a right to sell, and whether or not they regularly resided on the Te Awahou block. These included those who had already sold land in the adjoining territories, who had accepted places on the government's payroll, who sought European lifestyles, or who sought to sell land as a positive way of progressing the tribal economy by having Europeans living amongst them.
12. No matter how genuine the latter policy was, however, the Government put paid to any prospect that latter policy could succeed. Instead of having Europeans living amongst the Māori, the Government reserves and subsequent reserve purchases meant that the Māori, and only a few of them, were a small minority living amongst the Europeans.

There were no lands on the block that were sufficient for the hapū to share in the developing, European economy.

## SUBMISSION

Ka ngapu te whenua,  
Ka haere ngā tāngata ki whea?  
E Rūaimoko  
Purutia!  
Tāwhia!  
Kia ita!  
A—a—a ita!  
Kia mau, kia mau!<sup>1</sup>

1. That haka, originally performed by Kingi Te Ahoaho, Kingi Hori, Mohi Te Wharewhiti, Akapeta Te Tewe, Nepia Taratoa, Te Ahukaramū and others at Te Awahou Pā on 16 March 1849, proclaimed the intention of Ngāti Raukawa to hold onto the land.

### Introduction

2. We are:

Pita Savage of Ngāti Parewahawaha. Pita holds a diploma in Adult Teaching and Diploma in Māori Visual Art from Te Wānanga o Aotearoa, a degree in Māori Performing Arts from Te Wānanga o Awanuiarangi and is a graduate of Te Panekiretanga o Te Reo (Institute of Excellence in Māori Language). He is a product of Kōhanga Reo, Kura Kaupapa Māori and Whare Rūmaki and was brought up in Te Reo and under the korowai of his kaumātua, the late Pita Fraser Richardson and Anau Pare Richardson (nee Ruha).

His family farms on the Mangamāhoe and Matahiwi Blocks by descent from Wairaka and his son Keremihana Wairaka of Ngāti Tukorehe and Ngāti Kapu. The role of Wairaka, as a whanaunga of Taratoa, was to hold the whenua on the southern side of the Rangitikei River where the descendants of Taratoa farmed, had amāra kai, and lived on the papakāinga on the current Ohakēā Airforce Base and at Mātahiwi, Mangamāhoe, Maramaihoea, Poutū te rangi and Tawhirihoē.

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<sup>1</sup> When the land shakes  
Where shall man find an abiding-place?  
O Ruaimoko (God of the lower depths),  
Hold fast our land!, Bind, tightly bind!  
Be firm, be firm!  
Nor let it from our grasp be torn!

Robyn Richardson of Ngāti Parewahawaha. Robyn has several degrees from Te Wānanga o Raukawa including in Māori Laws & Philosophy, Hapū/Iwi Social Services and Master of Management and is currently completing a Professional Doctorate at Te Whare Wānanga o Awanuiārangi on Rongoā Māori. She is also a Trustee of Te Hono ki Raukawa Trust and a representative for Ngāti Parewahawaha on the Wai 113 Claims Forum. She lives on the family farm at Mangamāhoe on the banks of the Rangitikei Awa where her whānau have been since the heke of the 1820s. She was tutored by her parents with whom she attended hui at each of the Ngāti Raukawa Marae as well as those of Rangitāne, Ngāti Apa and Ngāti Hauiti ki Rātā. She also assisted her parents at meetings of the Raukawa District Māori Council, Te Wānanga o Raukawa, Kōpūtara Trust and others. She was a personal assistant to her father, Pita Fraser Richardson who died in January 2019.

Jessica Meimei Pikitemaramatanga Kereama of Ngāti Parewahawaha and Ngāti Manomano. I have a Masters in Regional Planning and a Bachelor of Social Work. I have undertaken studies in Ahunga Tikanga (Māori Laws and Philosophy) and Te Heke Reo at Te Wānanga o Raukawa. I have worked in the Department of Conservation and the Human Rights Commission on Iwi Relations and Māori resource management. I am a Kairongomau (Disputes Resolution/ Mediator) for Raukawa ki te tonga. I am an Environmental Commissioner and Pou Taiao for Te Rūnanga o Raukawa and the Chair for Te Taiao o Raukawa which advocates on environmental issues.

3. In making this statement we are joined by Sir Taihākurei Durie for those parts where submissions are made on matters of tikanga and te ture. His qualifications in those areas are based on his experience as a Māori land advocate from 1960, Māori Land Court judge from 1974, Chief Judge and Waitangi Tribunal chair from 1980, and from 2000 to 2010, Commissioner of the New Zealand Law Commission and Justice of the High Court.
4. We have read and now confirm the summary at the commencement of this paper and so incorporate it into this submission.

## Background

5. This paper relates to the Government's claim to have purchased the Te Awahou Block. It is a purchase in which Ngāti Parewahawaha has an interest in that we were in possession of a pā on the land at the time.
6. This was the first purchase in Manawatū. We support the Tribunal's endeavours to dispose of the matter according to the sequence of the Crown actions in the area. We understand that some of the other inhabitants of the land may not be ready to proceed. However, we must proceed as we understand that the hapū have only one chance to be heard.
7. We submit that to complete the purchase the Government avoided acknowledging Taratoa as having an authority over the land at that time. Government fostered instead a false picture of support for a sale when there was evidence of extensive opposition and most sellers appear not to have resided on the land.
8. The position of Ngāti Parewahawaha is that in 1849 the iwi placed the whole of the Ngāti Raukawa land under the mana of Taratoa as a way of reserving the land for all time. Taratoa was a senior rangatira of Ngāti Parewahawaha who was also a spokesperson for Ngāti Raukawa following the passing of Te Whatanui.
9. Government was advised in writing of the Ngāti Raukawa representative for future dealings and that the land was not for sale. Nothing had changed in that respect when in 1855, Government made its first moves to break into the northern Ngāti Raukawa territory, bypassing Taratoa, dealing with others of the Government's choosing, and drumming up support from persons without first resolving whether they were entitled to the land proposed for purchase.
10. A similar subterfuge later marred the second purchase, of the Rangitīkei - Manawatū Block. When Government sought to buy that block as well, the Government was once more hunting down willing sellers when it was supposed to be looking for true owners. That is to be the subject of a further paper however on the Rangitīkei -Manawatū purchase. We draw attention to it for now because a pattern of aberrant conduct emerges when the two transactions are viewed together.
11. In this submission we will address:

- a. the settlement of Ngāti Parewahawaha on the south bank of the Rangitīkei River;
- b. The status of Taratoa throughout the length of the Ngāti Raukawa coastline;
- c. The rāhui of the confederation whenua and its placement under the mana of Taratoa;
- d. the grooming of new age Māori leaders to subvert the opposition of the senior rangatira; and finally
- e. the Te Awahou purchase

### **Taratoa and Ngāti Parewahawaha**

12. Following Heke Kariritahi as described in the paper, Nō Mua Atu i Ngā Hokonga ('Nō Mua Atu'), the related hapū of Mateawa, Ngāti Kahoro, Ngāti Huia and Ngāti Parewahawaha settled along the south side of the Rangitīkei River upstream from the river mouth. Ngāti Parewahawaha did not migrate but seem to have formed from these groups after settling. **The Ngāti Huia chief, Te Whatanui, who had travelled with them, went on to establish a settlement at Raumātangi Pā, in the Horowhenua.** Ngāti Te Ata o Tū and Ngāti Mutu of Ngāti Kauwhata were also part of the group but their separate identity has not been maintained and may have become part of Ngāti Parewahawaha over time. In August 1840 when Edward Jerningham Wakefield visited Manawatū, he recorded how a large party of Ngāti Parewahawaha were in occupation of a Pā at the Manawatū River mouth.<sup>2</sup>
13. The leader of the heke was Taratoa, who was of Ngāti Huia, but went on to become mainly identified as Ngāti Parewahawaha, and who was so described by Edward Jerningham Wakefield on his visit to the Rangitīkei River area in 1839.<sup>3</sup> In time Ngāti Parewahawaha became the common name for all.
14. Taratoa also became known as Nēpia Taratoa. However, we will refer to him by the birth name by which he achieved fame and by which we can distinguish him

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<sup>2</sup> Anderson, Green, Chase #A201, p 35.

<sup>3</sup> *He Iti Na Motai* #H1 Vol 1 p 19.



from his son – Nēpia Taratoa. The two are frequently confused today because the son was also active in tribal affairs.<sup>4</sup>

15. Taratoa achieved fame in battles in Waikato as a warrior, leader and strategist. He also led the Heke Kariritahi in about 1827 by which Ngāti Parewahawaha came to settle where we are now. When we took occupation of different papakāinga along the lower reaches of the river, Taratoa took up residence at Maramaihoia opposite Parewanui about 5 miles from the river mouth.
16. However, Taratoa was involved in the business of Ngāti Raukawa along the length of the Kāpiti Coast and resided in several places. He had lived for a time at Ōtaki with Kingi Te Amoamo of Ngāti Maiotaki.<sup>5</sup> He mediated in disputes in Horowhenua and resided there to keep the peace between the disputants. He is recorded as being resident at Te Awahou at 1849 with his daughter Erenora who attended school there.<sup>6</sup> Erenora is probably best remembered today for her pātere, *Poia atu taku poi*.
17. Originally, Taratoa had supported the sale of land south of the Manawatū River to the New Zealand Company as a way building contact with Europeans, but soon after that, when it appeared that the leasing of land could achieve the same purpose, he was resolutely opposed to land sales. In opposing land sales, he was also supporting the predominant opinion of his whanaunga of Waikato. However, he remained willing to lease land to European pastoralists and to learn animal husbandry and of the trade in hides, wool and meat.
18. In contrast with Te Rauparaha, and in line with Te Whatanui, Taratoa sought to build relationships with those who had been conquered and to strengthen his hapū by incorporating them into it. As an act of atawhai or grace he shared the rents with Ngāti Apa. Eventually he led the discussions to divide the land to provide about one third for each, despite the much larger number of Ngāti Raukawa.

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<sup>4</sup> For example, it is often said that Taratoa signed the Rangitikei-Manawatū sale deed because Nēpia Taratoa is noted as a signatory, but Taratoa died on 14 January 1863, the year before the sale negotiations began. Also, he should not be confused with Maukiringutu Taratoa who was his tuakana. See Kete Horowhenua <https://horowhenua.kete.net.nz/item/5c972ae3-4f65-46b5-b6fe-6bf9e07c954f> This article was overseen by the late Iwi Nicholson.

<sup>5</sup> *Ngā Korero Tuku Iho* 17-19 November 2014, Raukawa marae, p 94 per Reuben Waaka.

<sup>6</sup> Anderson Green Chase *Māori Aspirations ...* A201 p 168.

19. Also, following the passing of Te Rauparaha, Te Rangihaeata and Te Whatanui, Taratoa was seen as a senior chief along the Kāpiti coast. By the time of the purchase he was the sole survivor of those who had led one or other of the heke.
20. Taratoa was the last of the old school who, by the strength of his arm and the compassion of his heart, united the widely scattered hapū of the north to enable their migration and settlement in the south; and reached an accommodation with the iwi kāinga. He secured their support in the battle of Haowhenua, shared with them the rents from the leases and acceded to their requests for land of their own. He cared for all who were ‘under his feet’ as he is said to have expressed it.

### **The Government Purchase Programme - Te Nuku o te Whenua**

21. In *Nō Mua Atu i Ngā Hokonga*, we described how the history before the Manawatū land sales gave an answer to several questions about land rights, political rights and tribal objectives. The submissions covered:
  - a. how we came to be here;
  - b. the relationships with Ngāti Toa, Te Ātiawa, Ngāti Apa and Rangitāne;
  - c. the separate mana of the Ngāti Raukawa Confederation leaders;
  - d. the relationships with whalers, traders and missionaries;
  - e. the allocations to Ngāti Apa and Rangitāne;
  - f. the setting aside of a whenua rāhui or reserve for the confederation hapū;
  - g. the establishment of the Kīngitanga in opposition to land sales; and
  - h. the division over whether or not to sell land for European settlement.
22. *Nō Mua Atu* has already provided the evidence on how a Hui ā Iwi declared that after releasing Turakina to Ngāti Apa, the remaining Ngāti Raukawa land was to be reserved from sales and would be held under the mana of Taratoa for that purpose. To so declare the land as not for sale, to perform a haka to memorialise the decision and to invoke the mana of Taratoa was about all that Ngāti Raukawa could do, in accordance with Māori custom, to respond to the Crown’s policy of large-scale purchases.

23. We now incorporate into this statement, the *Nō Mua Atū* account. It is under the heading in that paper, of *Tuku Whenua, Whenua Rāhui*.<sup>7</sup> However, *Nō Mua Atū* did not discuss in detail the land sales that undoubtedly prompted the decision to reserve the Ngāti Raukawa land and to express a stout opposition to land sales.
24. Almost immediately after the Declaration of Sovereignty in May 1840, Government was involved in a massive land acquisition programme operating from New Plymouth to Nelson. It must have seemed to the Confederation leaders by 1849, that their lands were almost all that was left, and that unless a stand was taken, like a declaration declaring their lands to be reserved, their lands also would be swallowed up by the Government for European settlement.
25. It all started in January 1840 when, in Whanganui a Tara (Wellington), the settlers simply settled on sections surveyed by the New Zealand Company, on the spurious ground that the Company had purchased from a few people around Kāpiti and Queen Charlotte Sound, almost half the North and South Islands. In New Plymouth, where the same thing had happened, the Government intervened to secure titles for the settlers by purchasing from Māori the 3,500 acre Fitzroy block.
26. The Fitzroy acquisition was followed by the purchase of an adjoining 27,000 acres in five transactions between 1847 and 1848.<sup>8</sup> Small purchases were not enough to meet the settlers' demands however, and in 1848 as well, the Government acquired 86,200 acres at Whanganui.<sup>9</sup>
27. Meanwhile, the New Zealand Company, foregoing reliance on its previous, pretentious purchase, purported to acquire 160,000 acres around Wellington. Speaking through Commissioner William Spain, the Government declined to confirm it. The New Zealand Company replied by paying Māori an additional sum to secure 67,000 acres but then claimed to have purchased 160,000 acres plus an extension to Porirua and the West Coast.
28. The resident Māori stoutly resisted the Company's claims, especially Te Rangihaeata who had the oversight of Heretaunga (Hutt Valley) and who had

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<sup>7</sup> I regret I am unable to pinpoint the paragraph numbers. They are subject to change as *Nō Mua Atū* undergoes revision.

<sup>8</sup> Waitangi Tribunal *Taranaki Report* 1991 p 22.

<sup>9</sup> Waitangi Tribunal *Whanganui River Report* 1999 p 139.

placed Ngāti Rangatahi there (while himself taking residence at Pāuatahanui).<sup>10</sup> Governor Sir George Grey, whose sympathies were with the settlers and not the Māori, did not seek a resolution with Māori. Instead, in 1846, he had the imperial army drive Ngāti Rangatahi out.

29. Ngāti Rangatahi, who were thereby expelled from Heretaunga, joined Te Rangihaeata at Pauatahanui. After capturing Te Rauparaha near the entrance to the Pauatahanui inlet, at Taupo (Plimmerton), the army turned their attention to Te Rangihaeata, who had retreated north along what is now called Transmission Gulley, to a hill at Horokiri, now known as Battle Hill. There Te Rangihaeata and his supporters were driven out, along with Ngāti Rangatahi and a support taua who had come down from the upper Whanganui River under Tōpine Te Mamaku.<sup>11</sup>
30. The Crown then continued its purchase programme, acquiring 70,000 acres from the younger Māori leaders of Ngāti Toa, in the Porirua Deed of 1847.
31. Meanwhile, at Whakatū (Nelson), Commissioner Spain, working to Lord Russell's model based on the New Zealand Land Company's expenditure on colonisation, awarded the Company 151,000 acres in lieu of the impossibly large area the Company purportedly purchased in 1839. The Government then engaged in a further purchase from the younger Ngāti Toa leaders in the Wairau Deed of 1847. This took in the land from Waiharakeke (Blenheim) and an area from the base of the Sounds at Arapaoa to Kaiapoi, estimated at 3 million acres.<sup>12</sup>
32. We ask the Tribunal to note that these massive acquisitions in 1847, in Porirua, Nelson and Te Wairau, were achieved only after the leading rangatira opposed to sales, Te Rangihaeata and Te Rauparaha, had been eliminated by unlawful military action. Te Rangihaeata was in exile following a failed attempt at Horokiri to have him killed or captured, and Te Rauparaha was held captive on a ship without trial. The land was then acquired from the next generation of younger leaders

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<sup>10</sup> The pā of Te Rangihaeata stood above the present day Pāuatahanui village on the hill where there is now a Church.

<sup>11</sup> Waitangi Tribunal *Te Whanganui a Tara me ona Takawa – Report on the Wellington District*. See executive summary pp xviii – xviv. Note that the battle was at Horokiri, Horokiwi being further to the south in Ngāti Toa traditions. The area is known today as Battle Hill. Ngāti Rangatahi originally of Ngāti Maniapoto, had previously operated as a hapū of Ngāti Toa and were known as Ngāti Haunga and Ngāti Te Ra.

<sup>12</sup> Waitangi Tribunal *Te Tauīhu o te Waka a Maui Report on the Northern South Island Land Claims* 2008 Volume 1 chapters 4 and 5.

33. It must also have been apparent to the senior leaders of the Ngāti Raukawa confederation, that their lands were also at risk from the Government's purchase programme. It was a programme with the elements of what is now called 'an offer that cannot be refused', the Governor treating with an army at his back.<sup>13</sup>
34. We also ask the Tribunal to note that while popular history acknowledges the important Ngāti Toa whakapapa of Te Rauparaha and Te Rangihaeata, Māori history acknowledges as well, the importance of the distaff. Te Rauparaha and Te Rangihaeata were also of Ngāti Raukawa and it was with Ngāti Raukawa that they would end their days.
35. The Government now sought the ownership of a land-sea corridor linking New Plymouth, Whanganui, Whanganui a Tara (Wellington) and Whakatū (Nelson), uninterrupted by Māori districts, as necessary for military security and the free flow of trade goods. The remaining lands to be acquired by the end of the first ten years of government were Waitōtara north of Whanganui, Turakina south of Whanganui, and south of Turakina the largest area of all, the takiwā of the Ngāti Raukawa confederation.
36. The Government acquired Turakina in 1849. Te Awahou followed in 1859. Waitōtara was also acquired, although not until 1863 because of the outbreak of the war in Taranaki in 1860. Sadly, it was like the fall of dominoes.
37. It was important to the Government to break into the Ngāti Raukawa land and nowhere was more important than at Te Awahou. Each of the colonial towns of New Plymouth, Whanganui, Whanganui a Tara (Wellington) and Whakatū (Nelson) had their own seaports. The river port at Te Awahou was the only seaport remaining on this part of the West coast that was not in the Government's control. The port provided the outlet for the large quantities of harakeke and agricultural produce of the district and the associated river provided the only practical route to the Manawatū interior. Te Awahou had also the largest number of Europeans in possession of land in Manawatū, some on informal arrangements

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<sup>13</sup> The relationship between the abduction of Te Rauparaha and the expulsion of Te Rangihaeata in 1846 and, the purchase from the younger chiefs in 1847, of 70,000 acres in the Porirua Deed and some 3 million acres in the Wairau Deed, is considered by Richard Boast in *Buying the Land Selling the Land* and Judith Binney with Vincent O'Malley and Alan Ward in *Tangata Whenua A History*. The Wairau Deed was signed by three younger members of Ngāti Toa, Rāwiri Puaha, Matene Te Whiwhi and Tamihana Te Rauparaha.

with Māori and some on purchase from Māori to the extent approved by Commissioner Spain on behalf of the Government.<sup>14</sup>

38. While it was important for the Government to break into the land it was equally important, for territorial integrity, for Ngāti Raukawa to hold onto every part. **The sale of the Te Awahou Block** broke our unity and resolve as an iwi and, fractured the defence of the Ngāti Raukawa reserve.
39. As it turned out however, it was the Turakina purchase in 1849 that gave Ngāti Raukawa the opportunity to stop the steamroller that was the Government's purchase programme and as Te Whatanui had passed, it fell to Taratoa to do what was required.
40. Taratoa stated "I have not a word to say, Rangitikei is all I speak about. Do you wish for strife Mr McLean? I will hold this side, and the other side will be yours. Rangitikei, shall be our boundary." Te Ahu Karamu added "Mr Clean the boundary is Rangitikei, a boundary formed or made by God, the other side for the Queen and the Governor, if you wish for this side, let us go to the Governor, and declare in open day that we shall fight for it in open daylight when the sun is shining....."<sup>15</sup>

### **How the Raukawa land was 'reserved'**

41. From out of the sale of Turakina, Taratoa achieved an implicit acknowledgement from Chief Land Purchase Commissioner McLean, that the Ngāti Raukawa land would be permanently reserved and that for the purpose of future discussions the land would stand in the name of Taratoa. The acknowledgement was implicit because the Government did not formally accede to it. We submit, nonetheless, that the Government was properly informed that the agreement from Taratoa to the release of Turakina for sale by Ngāti Apa, was conditional on the reservation of the remainder. In accepting the consent of Taratoa, the Government bought into that arrangement. Taratoa in return, had legitimate expectations that the Government had recognised his authority over any proposals for the land.

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<sup>14</sup> See Anderson, Green, Chase A201 pp 42 – 43.

<sup>15</sup> JK footnote please ED.

42. As mentioned, the fuller particulars were provided in *Nō Mua Atu*. The following is a summary.
43. At the request of Ngāti Apa, who had been conquered, Taratoa, on behalf of Ngāti Raukawa, released the land to Ngāti Apa who proposed to sell it subject to Ngāti Apa receiving reserves. However, the land was released on a condition, conveyed to the Chief Land Purchase Commissioner Donald McLean during their meetings, that Ngāti Apa would have no interest in the land south of the Rangitikei River and that the land extending to Kukutauaki would not be sold but would be held for Ngāti Raukawa.
44. The position of Taratoa was also that Ngāti Apa living south of the Rangitikei River could remain where they were if they wished but they would be under his feet. I take that to mean, that they would be under his authority and probably, in view of his willingness to give them a share of rentals, under his care.
45. As a result of these arrangements, it was the general view within Ngāti Raukawa that ‘the tribe’ had the right to prevent any ‘small tribe’ (hapū) from selling. That was so reported by Samuel Williams in August 1858.<sup>16</sup> Ngāti Raukawa were therefore reported to be angered at the desire of some to sell. Indeed such was the debate between the right of a hapū to sell and the right of an iwi to constrain sales, that it is possible that the eventual vote for Te Awahou was really a vote for hapū independence.
46. There seems to have been general recognition at the time, that the land should be under the mana of Taratoa. McLean acknowledged the influence that Taratoa had, and a multi-iwi hui later confirmed that the land south of the Rangitikei River was held under the authority of Taratoa. McLean was then informed in writing that the land to the south was to be retained.<sup>17</sup> It was repeated in later meetings that the land to the south was under the mana of Taratoa and was not to be sold. Later, when Hirawanu sought to sell the Ahu a Tūranga Block, which was about the same time as the Te Awahou sale, it was to Taratoa that Hirawanu turned to seek a consent.

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<sup>16</sup> Anderson Green Chase A201 p 164.

<sup>17</sup> See Taratoa to Mclean 28 August 1857 in Anderson, Green, Chase A 201 p 187.

## **Government engineers support for the sale**

47. In 1855, six years later, when Government made its first down-payment to buy the Te Awahou Block, Government did not open negotiations with Taratoa, as one would expect given the previous dealings, but with the next generation of rangatira. Taratoa had the mandate for negotiations of which the Government was informed, but which the Government ignored, making its own choice as to who to treat with.
48. Worse, having acquired the Rangitikei -Manawatū Block through the co-operation of Ngāti Raukawa, in agreeing to release the same, Government was now willing to ignore any conditions attaching to the sale. It ignored more that the appointment of Taratoa and the creation of the reserve. In making a down-payment to Ngāti Apa in 1855, and through the medium of a younger rangatira, Government ignored the understanding that Ngāti Apa would have no further interest in the land south of the Rangitikei River and that those of Ngāti Apa who elected to remain living south of the river, would be under the feet of Taratoa and would be dealt with through him.
49. Government also ignored that it was through Taratoa that relationships with Ngāti Apa had been previously managed, Taratoa providing them with a share of the runholders' rents (although he was under no obligation to do so).
50. It was as though Government was purposely setting up a contender in opposition to Taratoa in order to undermine him.
51. Government also set out to create support for its purchase of Te Awahou by enlisting known sellers of the next generation of leaders without recording any adequate evidence of their entitlement to the land in question. To all appearances they lived mainly in Ōtaki, not at Te Awahou. Those whom the Government enlisted in its support, included also those who had already sold the 70,000 acre Porirua Block and the 3 million acre Te Wairau Block.
52. A common feature of many of those enlisted was their desire to adopt European ways and to have Europeans living amongst them. Several were major beneficiaries of Grey's free supply of materials and equipment, which Governor Grey supplied to those who, in his view, were willing to make "advances in civilization". Others were in receipt of stipends and monetary grants.



53. To illustrate Grey's 'flour and sugar policy' as his critics called it, in November 1851, Grey authorised "... the purchase of a really good cart or dray, and set of double lamps, and also two good ploughs, to be given as a present to the native Chiefs of Ōtaki, as a reward for their hitherto excellent conduct, and as an inducement to them to make still further advances in civilization".<sup>18</sup>
54. There is a portrait of these new age rangatira in an entry in the Dictionary of New Zealand Biography. This draws on the description of the missionary Richard Taylor of how 'the young chiefs' formed a club at Ōtaki in the 1840s, and determined to adopt what Taylor called 'the manners of civilized life' in housing, dress, food and dining habits. The article adds that when, in the later 1840s, the English traveller WJT Power visited one of the group, he was treated to lunch 'in a comfortably furnished house, with tables, chairs, knives and forks, and pictures of the Queen and Prince Albert over the mantel-piece.'<sup>19</sup>
55. The Dictionary adds that in 1860, the young chief concerned was described by Land Purchase Commissioner Searancke as an old friend of Donald McLean. The article adds that by 1864 he was receiving an annual salary of £100 as a senior assessor and by 1868 he was receiving the same sum as a pension for 'Services rendered to the Government'.<sup>20</sup> He was not alone as one of the younger Ōtaki chiefs who would receive an assessor's salary.
56. The notable historian WH Oliver, in the Dictionary entry concerned, considers that "he also wanted peace for his people, and this drove him into the arms of the government." The issue, however, concerns the Government's enlistment of his support for a sale of the Te Awahou Block, when there was this close relationship between the Government and the young rangatira concerned, and when the young rangatira concerned was not in residence in Te Awahou and no other ground for his entitlement to Te Awahou has been recorded.
57. Another, the son of Te Rauparaha, was in receipt of a stipend as a senior assessor while his primary income was from sheep farming (at which he was adept).  
Ultimately however, these younger rangatira had been groomed by the Governor

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<sup>18</sup> Anderson Green Chase A201 p 107.

<sup>19</sup> W. H. Oliver. 'Te Whiwhi, Henare Matene', Dictionary of New Zealand Biography, first published in 1990. Te Ara - the Encyclopedia of New Zealand, <https://teara.govt.nz/en/biographies/1t89/te-whiwhi-henare-matene> (accessed 4 May 2020).

<sup>20</sup> See commentary by Te Waari Carkeek *Ngā Korero Tuku Iho* 17-19 November 2014, Raukawa marae, p 146.

to support the Governor. They supported the Governor in his purchases in Manawatū, notwithstanding the positions of conflict in which they had been placed.

58. No doubt many of the sellers had good intentions. Anderson Green and Chase describe one of them for example as simply an advocate of abandoning the old customary ways for new English technologies and systems and as giving his position that "... it would be wise to dispose of a portion (of the land) to the Europeans to settle upon, that they may dwell near us and carry out among us their good system [of commerce]."<sup>21</sup> However, he too is described as a major friend of Governor Grey and one who "seems to have been a major beneficiary of Grey's largess".<sup>22</sup> He was also on the payroll as an assessor.
59. Those living away from Te Awahou were not all from Ōtaki. Another, whose entitlement to the land was also not established, and who was also a Government assessor and known seller, was of Rangitāne and lived at Puketōtara.
60. The difference between the older group and some of the younger generation was more to do with how policy was applied than with the policy itself. Both sought a shift from war to commerce and considered that contact with Europeans would enhance their trade. The difference concerned how relationships with Europeans were to be managed. In seeking Europeans to live amongst them, the older Māori, whose sensibilities were honed on the whetstone of territorial warfare and the need to keep control of one's own district, were careful to keep them on Māori land under Māori control. Nō Mua Atua describes how Te Rauparaha did this in relation to the whalers on Kāpiti Island. Taratoa did the same in relation to the leasehold runs on the Whakaari plains. As Wharepōuri of Te Ātiawa at Ngauranga put it, '... I should be able to keep these White men under my hand and regulate their trade myself'.<sup>23</sup>
61. On the other hand, several of the new age Māori appeared to think it necessary to sell large areas to secure more Europeans. That was apparent in the sales of Porirua and Wairau for example. Others were more cautious. Īhakara Tukumarū of Ngāti Ngārongo, who was a resident on the land, wrote of selling only "a portion" of the

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<sup>21</sup> Letter to Māori Messenger 16 August 1858 cited by Paul Husbands *Māori Aspirations, Crown Response and Reserves 1840 to 2000* at p 24.

<sup>22</sup> Anderson Green Chase A201 p 107.

<sup>23</sup> See *Te Tau Ihu Report* 2008 p 170.

land so that the Europeans “may dwell near us and carry out among us their good system [of commerce].” The problem then was not with the intentions of some of the sellers. The problem was with the Government in disregarding not only the policy of Taratoa and those of his peers, but the policy also of the likes of Tukumarū.

62. As we shall see the Government reserved to itself a decision on how much would be given back by way of reserves. Such a practice was contrary to the Government’s stated criteria but was not unexpected amongst Māori accustomed to trade by gift exchange. The return of an equivalent for that given by one side was left to the other side to decide. The custom required that the Government should act generously but the Government did not.
63. The reserves given by way of rejoinder were so miserly or so badly protected that by 1864 the Government had acquired not just a “portion” of the land but almost the lot. The Europeans did not carry out amongst the Māori their system of commerce so that Māori might benefit from their presence. Rather, the Government, disregarding the intent and purpose of Tukumarū, acquired for the Europeans an extensive territory that soon became to all intents and purposes, exclusive to themselves.

## **The Te Awahou Purchase**

### *Summary of Events*

64. The following is a chronological summary of the event relating to the purchase.
65. **1855 (December)** A Government Land Purchase Commissioner records that two down-payments have been made to Ngāti Apa at the request of a younger rangatira, that is younger than Taratoa, who has been trained at missionary institutions and who resides on the block and at other places to the south of the Manawatū River.
66. **1858 (March 26).** Land Purchase Commissioner Searancke calls the first open meeting at Ōtaki. McLean is present. Searancke records ‘...the opposition offered by Nēpia Taratoa and his friends, though without feasible grounds, was very strong.’<sup>24</sup>

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<sup>24</sup> The fullest account of the preparatory meetings is provided by Anderson, Green and Chase from page 186 on.

67. **1858 (March 30).** Meeting at ‘Manawatū’. About 700 present. There is a note of ‘5 against and two for sale’ – which is presumably a reference to a ratio of those present and voting. A journal note for 1 April records ‘Agreed to purchase’. It appears the Crown agent informed sellers he would still affect a purchase.
68. **1858 (April 14).** There is a ‘long meeting.’ Nepia sought more time to come to terms’ but Īhakara was ‘anxious to close matters.’<sup>25</sup>
69. **1858 (July).** Assistant Land Purchase Commissioner Grindell visits Te Awahou and Ōtaki communities to discuss sales and records that Taratoa was ‘pretty certain to come over to the land selling side, as he [was] aware that public opinion is becoming too strong to be resisted’.<sup>26</sup>
70. **1858 (August).** A hui of 150 – 200 persons. Anglican Missionary Samuel Williams records that there were two distinct parties present, sellers and non-sellers, who were not talking to each other. He considers that most wanted to sell but there is no record of an account being taken. In order to keep the peace, Williams urges the non-sellers to withdraw their opposition.<sup>27</sup> Taratoa remains opposed. Despite the opposition Searancke agrees to purchase Te Awahou for £2,500 and makes a down payment to a younger chief of £400.
71. There is no account of further meetings until a Deed is signed in November but the record of the whole proceeding is scanty. Parakaia Te Pouepa, a rangatira of Te Awahou and Hīmātangi and an opponent of land sales, would later tell the Native Land Court, that he had “no distinct recollection of the meetings which preceded the sale of the Awahou there were so many of them”.<sup>28</sup>
72. **1858 (November 12).** About 150 present. Taratoa remains opposed but the sellers now dominate. Searancke advises Taratoa that it is “utterly impossible” for Taratoa to resist and that he (Searancke) “would proceed at once to purchase the block”. Searancke proposes that the price of £2,500 be paid by instalments. A deed is completed and signed by 67 persons.
73. The boundaries were not marked out and the reserves were not settled. Anderson, Green and Chase observe that this was contrary to the practice of the Government

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<sup>25</sup> Anderson, Green, Chase p 187.

<sup>26</sup> Hearn p 163.

<sup>27</sup> Anderson, Green, Chase p 189 – 190.

<sup>28</sup> Anderson, Green, Chase p 187.

of the day. However, the payment of the balance purchase price is contingent on the 'portions of the block to be reserved' being 'arranged' and 'approved by Mr Searancke', leaving the Government in charge of the portions to be reserved.

74. Taratoa seeks to rescue access to the customary food resources of the main forests and lakes by excluding an area providing access into the interior. In his report to the Tribunal on Reserves, Paul Husbands depicts the area concerned at page 27.
75. **1859 (May)**. Survey having been settled and reserves having been arranged, a second Deed is prepared and is signed. Taratoa signs. The balance purchase price is paid to a junior rangatira and is distributed.
76. **1864** The year after the death of Taratoa death in 1863, the land held back from the sale by Taratoa, as shown in Husbands p27, is sold. No particulars of the sale that we can find, are recorded in the research reports.

#### *Assessment of Events*

77. Ngāti Parewahawaha claim that in light of the foregoing, and for the reasons below, there was not a Tiriti compliant purchase of Te Awahou.
78. Having regard to the conditions on which Ngāti Raukawa had agreed to release the Rangitīkei-Turakina Block to enable the Government to complete a purchase, and having regard to the Ngāti Raukawa statement that its other lands were not for sale and that they were held under the mana of Taratoa for that purpose, **it was contrary to Te Tiriti o Waitangi for Government to proceed with the purchase in ways that ignored the Ngāti Raukawa decision.** In particular it was contrary to the principle of rangatiratanga and of good faith relationships between treaty partners.
79. For the same reason, the emphasis, we contend, should not be on those who purported to sell, and who were victims themselves of the Government's purchase policies, but on the Government's lack of integrity in buying.
80. The Ngāti Raukawa concern to protect their lands from sales was justified and had to be taken seriously by the Government. The concern arose from the magnitude of the Government's purchases from New Plymouth to Nelson.
81. **The Government's studied avoidance of Taratoa tells how much he needed to be side-lined in order to complete a purchase.** It is submitted that the Tribunal should so find. In the future teaching of history in our schools, every

pupil should know that Te Rauparaha had to be kidnapped and Te Rangihaeata exiled before the Government could acquire Porirua and Te Wairau, and that Taratoa had to be circumvented before the Government could break into Manawatū. We need to overcome the popular misconception, even amongst our own youth, we submit, that we have no land today because our forebears sold it.

82. To the prejudice of Ngāti Raukawa, the 1855 down-payments for Ngāti Apa contradicted the terms on which Ngāti Raukawa had released the Rangitikei-Turakina lands from their control in 1849.
83. The **payment of Ngāti Apa** through other than Taratoa, also undermined the 1849 arrangements and the long-standing authority that Taratoa had had in managing Ngāti Apa.
84. It was also contrary to principle to ignore the representative role with which Taratoa had been entrusted. The principle, it is submitted, is that **Government is to deal with Māori through representatives chosen by themselves** and not with representatives chosen by the Government.
85. In terms of the Ngāti Raukawa decision **there could be no valid purchase of Te Awahou without the consent of Taratoa and that consent was not given.** As well as having an interest in possession, Taratoa represented the tribal over-right. The signature of Taratoa on the second deed was not a consent to the purchase for the reasons that follow.
86. There could also be no valid purchase of Te Awahou without the individual consents of the hapū in possession, but the hapū in possession were not identified and no hapū consents were obtained. The Government's process was to seek an approval by a majority vote of whoever came to a meeting and who then signed a Deed. The Government had instead to determine which hapū were entitled in accordance with Māori custom and to do so before purchase negotiations began. It is submitted that the Government had then to seek the separate consent of each according to the customary mode of decision making.
87. The Ngāti Whakarewa circumstances illustrate the position. Their unique circumstance was that their marae and principal places of residence were all on the Te Awahou Block. Notwithstanding the extent of their physical possession of the land they lost the whole of it their land on the block apart from two areas marked as "burying places for the dead". That way the tribe was excluded from

participating in the projected economic development of the block due to the proximity of the Foxton port. They were excluded by a Deed of Sale dominated by others from outside and in which they were only marginally represented. There was no rūnanga consent where ordinarily, each of the whānau heads is involved.

88. Their land reserve contrasts with the 197 acres allowed for the half caste children of one European trader, nearly four times that given for a tribe of several hundred.
89. As a tribe, Ngāti Parewahawaha received nothing. We lost our papakāinga by the river mouth, reasonably close to the port, but at least we had other land at the Rangitīkei River.
90. The result is that there has not been clarity around who were entitled to what lands in the Te Awahou Block. Those who we understand were in possession at the time included Ngāti Whakatore around Mōkau, Ngāti Parewahawaha around the Manawatū River mouth, Ngāti Takihiku at Raumātangi where Captain Robinson farmed and Ngāti Ngārongo – Patukōhuru around Te Awahou papakāinga where Foxton now stands.
91. We submit that it was contrary to Te Tiriti o Waitangi for Government to subvert the authority of Taratoa by favouring those willing to sell, and that it was corruption we submit, to grant them favours or retain them on salaries while enlisting their support for the sale.
92. It was also contrary to Te Tiriti o Waitangi we submit, to **recruit supporters without establishing their entitlement to ownership**. Obviously, one must be entitled to land in order to sell it. It appears that most of the sellers selected by the Government did not live in the vicinity of Te Awahou and so, if their right was not based on the norm of residence or ahi kā, it had to be established on some other basis.<sup>29</sup>
93. **The subscription of Taratoa to the second deed was not a consent to the sale.** The first Deed conveyed the land to the Government subject only to a condition that the Government alone could fulfil, that the reserves would be “as

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<sup>29</sup> Native Land Court records of 1873 and 1889 describe several hapū taking lands by allocation and division (kotikoti whenua) before or at the time of the Haowhenua battles in 1834, in the vicinity of the southern and eastern aspects of the Te Awahou block, but these are inadequate to provide certainty about entitlement to the lands that had been allocated in Te Awahou and how they were possessed at the time of the 1858 purchase. The evidence is for the purpose of determining the customary title or to partition land outside of the Te Awahou block. See 1A Ōtaki MB, 13 March 1873, Manawatū-Kukutauaki No 1 (Koputaroa) and 9 Ōtaki MB 19 July 1889, Manawatū-Kukutauaki No 3.

Mr Searancke believes them to be”. Taratoa did not sign but the land having been transferred, Taratoa took the only option open to him, to negotiate for the largest reserve he could get. He secured a reserve that would maintain access for all to certain forests and lakes customarily exploited for food and accessed at either end of the river, from Foxton or Karikari. The apparent object of the second deed is to declare the lands to be reserved including that sought by Taratoa. Accordingly, Taratoa affixed his mark. It is submitted that that was the only sensible thing for him to do. The land having already been transferred, at least according to the Government, one had to do all that seemed to be necessary under this strange process, to secure the reserve. As it turned out however, the land is not in fact securely reserved by the Government. The year after Taratoa died, in 1863, it was sold.

94. In the event that the Tribunal takes a different view of the second deed we add that the second deed could not convey **a free, prior and informed consent**, that being the universal standard for contract formation between states and indigenous peoples. It could not have been a free consent because it was given under duress as explained below. It could not have been a prior consent because on the face of the first deed the land had already been sold. And it could not have been an informed consent for the dual deed process was itself uninformed. There should have been no conveyance until the matter of the reserves had been finalised.
95. There is duress, it is submitted, and it is oppressive, when **there is ‘strong opposition’ to a sale but Government presses ahead** by recruiting and financing support until “the public opinion is ...too strong to be resisted”. For that reason, we submit that there was no valid consent of the people. Most of those attending the meetings were opposed to a sale and it was not until the 6<sup>th</sup> meeting, when a majority in support was held to be established, that a Deed was completed. The process was one of continually calling meetings while supporting just one side, until the non-sellers gave in. It is submitted that the meetings should have stopped once the significant opposition was noted. The meetings should not then have been recalled without the approval of Taratoa.
96. In searching for a standard it may help to note that today, under section 173 of Te Ture Whenua Māori Act 1993, a meeting of assembled owners can be called only at the discretion of the Māori Land Court, and a Court is unlikely to approve of



numerous meetings in quick succession. To emphasise the disincentive for meetings in quick succession, section 177 provides that where a proposed resolution for the alienation of land has been rejected by the assembled owners, no further meeting of the owners to consider a resolution to the same or substantially the same effect shall be summoned within the period of 12 months thereafter, unless there is deposited with the Registrar of the court such sum as the Registrar thinks reasonable to meet the expenses of owners attending the meeting.

97. It also submitted that **a customary consent is not given by a majority vote at a government run meeting**. Such a process had not been agreed upon and, as earlier stated, a separate consent of each affected hapū was required.
98. For the same reason a customary consent is not realised by a majority vote of whoever turns up. It could not depend, as it was seen to depend, on who could get the most supporters to a meeting.<sup>30</sup>
99. The purchase did not comply with the Government's own criteria for validity as prescribed by McLean, or with those recommended to the Government by Commissioner Spain or, while it existed, the Aboriginal Protectorate. In essence, these required that the ownership, purchase price, boundaries and reserves should be settled in advance of the signing of the Deed. As the land was surrounded west, south and east by the river and the sea, the critical boundary was the northern boundary where the Te Whārangī block appears to have been added into the purchase without the approval of Taratoa.
100. In the event that the Tribunal finds that the Government was not obliged to deal with Taratoa, by virtue of the 1849 arrangements, it is submitted that Government was still obliged to deal with Taratoa by virtue of Māori custom. It is submitted:
  - a. While ordinarily each hapū is independent and makes its own decisions, in custom **a senior rangatira might prevent a hapū from doing that which could prejudice other hapū** or the confederation as a whole.
  - b. In this case Taratoa was a senior rangatira who in the customary situation would have had the capacity to enforce his word.

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<sup>30</sup> See Anderson Green Chase A201 p 190. It is alleged that Īhakara strengthened his position by calling non-owners to the meeting and that he was assembling all his friend who very much increased in numbers from the previous meeting.

- c. His intervention would be seen to be justified, or tika, considering (i) the prospect of a major land loss unless a united position was taken against all sales (ii) a major hui had supported that the land be reserved, and (iii) effect would be given to the longstanding policy of most of the senior rangatira who led the heke and to the policy endorsed by senior rangatira at Manawapou and Pūkawa.<sup>31</sup>
- d. **The Government had also to defer to the senior rangatira in view of the obvious division between sellers and non-sellers.** It is submitted that the dispute between sellers and non-sellers was an internal issue to be resolved within the tribe and not by the Government. The ordinary customary method was to refer the matter to a senior person to mediate. In this case the obvious person was Taratoa. He had previously mediated on internal disputes at Ōhau.
- e. Alternatively, it was for the senior rangatira to decide policy, and where the whole confederation was affected, the senior confederation rangatira. The issue was raised in Nō Mua Atu under the heading of *Sellers and Non sellers*. It is submitted that the decision rested with Taratoa. He held the greatest mana over the whole coast, he had the mandate, he was still active and able to take control, he lived on the land and he was a generation ahead of all others.

101. In the event that the Tribunal finds against **the need for a customary-compliant process** we submit that the process had to be fair, and that it was not fair because:

- a. **The Government set the process unilaterally and did not disclose what it was** so that Māori did not know the rules of engagement and could not assess the Government's compliance.
- b. **The meetings should have been on the land, unless otherwise agreed.** The meeting at Ōtaki implied that the land could be owned by hapū who were not resident on it, when that was debatable.
- c. **Those entitled to sell should have been settled** before sale negotiations began. Those entitled to sell were never settled at all.
- d. **Down payments** bound recipients to a sale before the sale terms were settled.<sup>32</sup> They also committed the Government to a purchase notwithstanding

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<sup>31</sup> The reference here is to the meeting of senior rangatira from several districts in Taranaki, who opposed further land sales, and the meeting at Lake Taupo to settle the appointment of a King to take a united stand against sales.

<sup>32</sup> Down payments were recorded in December 1855 and in August 1858. Both payments were made to Īhakara Tukumarū, the first to enable him to pay out to Ngāti Apa and the latter being left to his discretion. These are

the subsequent opposition from others.<sup>33</sup> Down-payments could also be used to buy votes to overcome a robust opposition.

- e. The first Deed committed the subscribers to a sale before the reserves and boundaries had been settled, leaving the outcome to the Government's discretion.
- f. The proportion of affirmative votes required for a sale had not been agreed, nor the need for a separate agreement from each resident hapū.<sup>34</sup>
- g. The extent of loss, to **Ngāti Whakare** for example, is striking evidence that such consents as were given were **not informed consents** in that the consents were given in the context of Māori expectations (which under gift-exchange customs, required that the Government should respond generously).

We note that under the heading of *Literacy*, the paper *Nō Mua Atu* takes issue with the popular opinion that because literacy became widespread amongst Māori during the 1840's, Māori would have been relatively informed of sale deeds and sale processes. *Nō Mua Atu* contends that in fact the literature available to Māori was all in Te Reo and had little educational value outside of religion. Māori were not taught English and did not have the benefit of written material in English.

In this particular case, there is a serious issue about how the transactions were understood. About half of those subscribing to the Deed conveying the land did so by their mark despite the large contingent brought in from the centre of teaching at Ōtaki and the higher level of literacy amongst the Ōtaki recruits.

We also note that a signature is not evidence of literacy but only of the

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not the same as tākoha referred to as gratuitous bribes by Professor Alan Ward *National Overview* Vol ii Rangahaua Whanui series p 184, or as conditional gifts as referred to by the Waitangi Tribunal in *He Maunga Rongo* 2008 Stage One Volume 1 p119. The down-payments here referred to are deposits for the purchase of land before the terms have been properly defined.

<sup>33</sup> For example by the payout to Tukumaru in 1855, Government had committed to buying the land from Tukumaru and had prejudiced its capacity to deal fairly with subsequent objectors. Anderson Green Chase A201 p 190 note that the Government had promised Ihakara that Government would purchase the land before the meetings occurred and that Ihakara demanded of the Government agent that the pledges made to him be fulfilled.

<sup>34</sup> Assistant Land Purchase Commissioner Grindell was broadly correct in observing –“When the Ngātiraikawas first established themselves in the country, each division of the tribe, claimed, and took formal possession of certain tracts, as their share of the conquest, of which they forthwith became the sole proprietors and which they ever afterwards retained possession.” (Anderson, Green, Chase p 188) However, Grindell failed to appreciate the corollary that a separate consent would be needed for the part that each division of the tribe possessed.

capacity to print or write one's name.

The facts point to a different comprehension amongst them that is based on the customary dictates of gift exchange, to give generously with the expectation of a generous response that will result in a lasting trading relationship.<sup>35</sup>

- h. Turning then to the Deeds themselves it is submitted that the Government agent himself failed to comprehend the proper European process. In the first and primary deed conveying the land, **there are no witnesses who separately verify the presence and subscription of each of the 67 subscribers.** There is only a general statement naming five persons as witnesses to all. Then, two witnesses had interests as sellers, one had an interest as an agent for the purchaser, and the fourth had an interest in securing a reserve of land for his family (a reserve that was secured in the second deed). That leaves one witness of unknown capacity to independently verify the identity and acquiescence of each of the 67 subscribers.
102. The Te Awahou sale had serious consequences not only for the hapū who were dispossessed of the land necessary for their survival, but because it broke the back on the policy of retaining the Confederation's land for future generations. The remaining land was now vulnerable to Government interventions at any time, to be purchased by suspect processes that had not been agreed, or to be placed under the control of a Government created authority.

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<sup>35</sup> The principles and practice of gift exchange are set out by Raymond Firth in *Economics of the New Zealand Māori* 2<sup>nd</sup> edition 1929 R E Owen.