

# **NGĀ KERĒME WHENUA TAWHITO**

**Old land claims in the Whakatōhea rohe: Draft research report**

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**A report prepared by the Office of Treaty Settlements in consultation with  
the Whakatōhea Pre-settlement Claims Trust**

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## Old Land Claims in the Whakatōhea rohe

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1. This research was prepared by the Office of Treaty Settlements in consultation with Whakatōhea Pre-settlement Claims Trust to fill a gap in the existing historical literature on the relationship between the hapū of Whakatōhea and the Crown with respect to the issue of old land claims in the Whakatōhea rohe.
2. This research sits alongside a number of other projects jointly commissioned by OTS and the WPSCT that seek to address gaps in the existing historical record of the relationship between Whakatōhea and the Crown. These gaps were identified by the historian Bruce Stirling of HistoryWorks Ltd in a research report titled *Whakatōhea Claims Research: Literature Review and Gaps Analysis* that was completed in November 2013. This research will help to inform historical redress negotiations between the Crown and Whakatōhea.
3. Four old land claims were identified in the Whakatōhea rohe. This research seeks to ascertain the nature and extent of the claims, the nature of any Whakatōhea involvement and how the claims were resolved by the Crown. The report is in draft form for review. The author of this report wishes to acknowledge the strength of feeling held by the people of Whakatōhea regarding the issue of old land claims in the Whakatōhea rohe which will provide context within the drafting of the historic account.

## Introduction

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4. Old land claims refer to pre-Treaty of Waitangi land transactions which early Pākehā settlers later sought to transform into Crown land grants, scrip or cash. These transactions – including purchasing, gifting and conveyancing – were conducted prior to the introduction of a legal system based on British common law.<sup>1</sup>
5. Initially at least many of these early land transactions were small-scale as European traders and missionaries sought parcels of land on which to establish themselves. Overtime, and as the imposition of British sovereignty seemed increasingly likely, larger and larger tracts of land were sought by settlers seeking to gain interests prior to legal and regulatory constraint.<sup>2</sup> By early 1840, around the time Te Tiriti was signed, a small number of Europeans claimed to own more than 66 million acres (27 million hectares) – more than the total area of the country.<sup>3</sup>
6. Old Land Claims were subsequently investigated by a succession of Crown commissions headed by Edward Godfrey and Matthew Richmond from 1840-1843, William Spain in 1842, Sir Francis Dillon Bell from 1856-1862 and Sir Michael Myers in 1946-1948.<sup>4</sup>

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<sup>1</sup> Myers, M., Reedy, H. T. and Samuel, A. M. 1948. Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown. *Appendix to the Journals of the House of Representatives*. G.-8. 1948. P. 1.

<sup>2</sup> McAloon, J. 2008. Land ownership - Māori and land ownership. *Te Ara - the Encyclopedia of New Zealand*. <http://www.TeAra.govt.nz/en/land-ownership/page-1> (accessed 10 August 2017).

<sup>3</sup> McAloon, J. 2008. Land ownership - Māori and land ownership. *Te Ara - the Encyclopedia of New Zealand*. <http://www.TeAra.govt.nz/en/land-ownership/page-1> (accessed 10 August 2017); see also Lee, J. 1993. *The Old Land Claims in New Zealand*. Northland Historical Publications: Kerikeri. P. 20.

<sup>4</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 5.

7. Ernest Dieffenbach (New Zealand Company naturalist) and Charles Terry (Fellow of the Royal Society), both of who spent time in New Zealand in the 1830s and 1840s, recorded the circumstances through which some Māori were induced to part with their lands. Terry noted that some Māori were given deeds to sign that were:

[A]lready prepared in English, with blanks for boundaries, which have been filled up without such boundaries ever being seen, much more measured, but stating so many miles on each of the cardinal points of the compass, and and (sic) the document then interpreted by Europeans to the natives, according to what the latter may have intimated their meaning to be of sale. <sup>5</sup>

8. Dieffenbach questioned the extent to which the notion of sale was understood by Māori. Dieffenbach noted that Māori well aware of the capabilities of the soil in the different districts of their territory. In some cases, Māori made reserves for themselves of the best parcels of land. In other cases, however, no such reserves were made. For Dieffenbach this was because lands were sold with the 'implied understanding' that Māori would 'continue to cultivate the ground which they or their forefathers had occupied from time immemorial'. <sup>6</sup>
9. Further Dieffenbach noted that, 'the deeds of purchase have almost always been written in a foreign language and in a vague form, and the purchases were often conducted without a proper interpreter being present. <sup>7</sup>
10. Commenting on the grounds of some of these claims, the authors of the 1948 Myers Commission noted that, prior to the assumption of British sovereignty, 'divers[e] tracts or portions of land...were claimed by divers[e] persons' other than Māori. These claims were based on 'purchases or pretended purchases, gifts, or pretended gifts, conveyances, or pretended conveyances' ...from... 'Chiefs and other members of the aboriginal tribes inhabiting New Zealand'. <sup>8</sup>
11. Historian Jack Lee argues that the Crown, and its commissioners that looked into the various old land claims, effectively returned most of New Zealand to Māori:

[B]y 1840 Māori vendors had eagerly disposed of most of New Zealand to speculators, developers and bona fide settlers. And it was only by relentless elimination of extravagant and dubious land claims that the

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<sup>5</sup> Terry, C. 1842. *New Zealand: Its Advantages and Prospects as a British Colony*. London. Pp 97-108; Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # 14. P. 137.

<sup>6</sup> Dieffenbach, E. 1844 cited in Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # 14. Pp 138-139.

<sup>7</sup> Ibid.

<sup>8</sup> Myers, M., Reedy, H. T. and Samuel, A. M. 1948. *Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown*. Appendix to the Journals of the House of Representatives. G.-8. 1948. P. 1.

government and their commissioners had, by the end of the 1850s, reduced them [old land claims] to a little over 10,000,000 acres.<sup>9</sup>

12. For Lee, the commission process saved Māori from 'certain calamity'.<sup>10</sup> However, the successive Crown Land Claims Commissions that investigated pre-Treaty transactions in New Zealand were underpinned by a fundamental legal assumption, that of the Crown's presumptive rights in New Zealand. Broadly, Moore, Rigby and Russell argue, the Crown considered that in 1840, it had acquired title to all land in New Zealand as a function of sovereignty.<sup>11</sup>
13. As Moore, Rigby and Russell contend, each of these investigations shared a fundamental shortcoming. They all failed to examine old land claims in light of the requirements of Te Tiriti o Waitangi. 'Godfrey/Richmond, Spain, Bell and Myers all shared to a greater or lesser degree the presumption that, by signing the Treaty, Māori conveyed to the Crown a sovereign right to apply the laws of England to New Zealand, and an exclusive right to extinguish Native title'.<sup>12</sup>
14. William Hobson was dispatched from London in August 1839 with instructions to negotiate the transfer of sovereignty from Māori to the British Crown. Before he left Britain for New Zealand, Hobson received lengthy instructions from the Secretary of State for the Colonies.<sup>13</sup> Part of these instructions outlined the approach that Hobson was to take regarding the issue of land claims. Hobson was instructed to announce:

[B]y a proclamation addressed to all the Queen's subjects...that Her Majesty will not acknowledge as valid any title to land which either has been, or shall hereafter be acquired in that country which is not either derived from, or confirmed by, a grant to be made in Her Majesty's name, and on Her behalf.<sup>14</sup>

15. En route to Aotearoa New Zealand, Hobson stopped in Sydney. There he met with some of those claiming to have purchased large tracts of land from Māori. He told them that the Crown 'would not acknowledge excessive claims' or inequitable ones.<sup>15</sup> He told George Gipps, Governor of New South Wales, that: Māori 'never were in a condition to treat with Europeans for the sale of their lands, any more than a minor w[oul]d be who knows not the consequences of his own Acts'.<sup>16</sup>

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<sup>9</sup> Lee, J. 1993. *The Old Land Claims in New Zealand*. Northland Historical Publications: Kerikeri. P. 20.

<sup>10</sup> Lee, J. 1993. *The Old Land Claims in New Zealand*. Northland Historical Publications: Kerikeri. Pp 20-21.

<sup>11</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 11.

<sup>12</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 6.

<sup>13</sup> Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # 14. P. 3; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 14.

<sup>14</sup> Normanby to Hobson, 14 August 1839. *Great Britain Parliamentary Papers*. 1840. (238). Pp 85-90; see also Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # 14. P. 3; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 14.

<sup>15</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 14;

<sup>16</sup> Hobson to Gipps. 16 January 1840. In: Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 14.

### The Godfrey and Richmond Commission 1840-1844

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16. Gipps later established the first Crown Commission to investigate old land claims in New Zealand. Edward Godfrey and Matthew Richmond were appointed as commissioners.<sup>17</sup> In cases where particular iwi and hapū had been dispossessed of their 'whole patrimony', or where they had been given 'insufficient consideration' for their lands, the commissioners were empowered to award groups additional compensation.<sup>18</sup>
17. Where Māori title to land was found to be 'validly extinguished' it would become the demesne of the Crown. Claimants could seek a grant of land from the Crown up to a limit of 2,560 acres.<sup>19</sup> The Crown was determined not to allow land to accrue in the hands of speculators, or those without the resources to develop it. The Crown also sought to acquire land for on-sale to settlers – by which the Crown would fund the government of the Colony. If reserves for Māori were required then the Crown would provide them from the surplus lands it retained.<sup>20</sup>
18. Commissioners Godfrey and Richmond looked into 1,100 claims in the north of the country, covering 2.2 million acres (890,000 hectares). Their report of 1862 deemed that 500,000 acres (202,000 hectares) had been genuinely sold, and about half of this was granted to settlers.<sup>21</sup>

### The Spain Commission 1842-1843

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19. A second commission was headed by William Spain (The Spain Commission). Spain was appointed under imperial instructions to deal expeditiously with the claims of Wakefield's New Zealand Company.<sup>22</sup> The New Zealand Company claimed that in late 1839 it had purchased about 20 million acres in Wellington, Nelson and New Plymouth from Te Āti Awa, Ngāti Toa, Rangitāne and other tribes.<sup>23</sup>
20. Spain's hearings, begun at Port Nicholson in May 1842, proved to be an exhaustive investigation of voluminous Māori evidence.<sup>24</sup> So much so, in fact, that many of the settlers grew frustrated with the process and stopped attending hearings.<sup>25</sup>

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<sup>17</sup> Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # I4. Pp 11-12.

<sup>18</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 16.

<sup>19</sup> Moore, D. 1995. *The Origins of the Crown's Demesne at Port Nicholson, 1839-1846*. Part 1 of 3. Wai 145, #E3. Pp 39-40.

<sup>20</sup> Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # I4. P. 24.

<sup>21</sup> McAloon, J. 2008. Land ownership. *Te Ara - the Encyclopedia of New Zealand*.

<http://www.TeAra.govt.nz/en/land-ownership/page-1> (accessed 21 September 2017).

<sup>22</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 28-29.

<sup>23</sup> McAloon, J. 2008. Land ownership – Māori and land ownership. *Te Ara - the Encyclopedia of New Zealand*. <http://www.TeAra.govt.nz/en/land-ownership/page-1> (accessed 21 September 2017).

<sup>24</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 29;

<sup>25</sup> Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # I4. P. 111.

21. The Spain commission investigated a total of 116 claims. Spain later wrote that, as Commissioner, he had 'taken every opportunity of ascertaining by every means in my power all Native customs respecting the tenure of land'.<sup>26</sup>
22. Spain's approach was thorough, time-consuming and vociferously opposed by settlers.<sup>27</sup> Ultimately Spain found that Māori had never thought that sales meant giving up their continued use of the lands. He also discovered conflicting rights among the Māori claimants.<sup>28</sup> More than anything else, Moore, Rigby and Russell contend that Spain's investigation proved that a Land Claims Commission could work, provided it was adequately resourced.<sup>29</sup>
23. The commissions of the 1840s had, when genuine purchase was established, allowed for grants of up to 2,560 acres (1,035 hectares) to settlers. Remaining land, that is, land that was deemed to have been legitimately alienated from Māori pre-Treaty but that was over the 2,560 acres (1,035 hectares) allowed to settlers, was deemed 'surplus land' and passed into Crown ownership. For some years after the Crown did little to enforce the rights it had asserted to these 'surplus lands'.

#### **The Bell Commission 1856-1862**

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24. The Bell Commission was established in 1856 to look into this issue of surplus lands. Francis Dillon Bell (later Sir) was appointed Commissioner. Bell's main experience prior to 1856 was as a New Zealand Company employee – an organisation known for its commitment to the idea that Māori should retain only that small portion of their land on which they lived and cultivated and that the rest should be used for settlement.<sup>30</sup>
25. Moore, Rigby and Russell note that Bell was not famed for his generosity to Māori.<sup>31</sup> Oliver notes that Bell, with a background in land purchasing, never showed great sensitivity toward Māori interests.<sup>32</sup> Bell's commission did little to assuage Māori concerns. As Oliver puts it, the over-riding concern of the inquiry was to get land into Pākehā occupation and use.<sup>33</sup> Māori objections were largely overruled on the basis that the commissions of the 1840s had satisfactorily investigated all Māori interests.<sup>34</sup> As Moore, Rigby and Russell put it:

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<sup>26</sup> Opinions of Various Authorities on Native Tenure. 1890. *Appendices to the Journal of the House of Representatives*. G – 1: 7-8.

<sup>27</sup> Armstrong, D. *The Land Claims Commission. Practice and Procedure: 1840-1845*. Wai 45, # I4. P. 113.

<sup>28</sup> McAloon, J. 2008. Land ownership – Māori and Land Ownership *Te Ara - the Encyclopedia of New Zealand*. <http://www.TeAra.govt.nz/en/land-ownership/page-1> (accessed 21 September 2017).

<sup>29</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 31.

<sup>30</sup> Oliver, W. H. *The Crown and Muriwhenua Lands: An Overview*. Wai 45, #L7: P. 16; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 44.

<sup>31</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 44.

<sup>32</sup> Oliver, W. H. *The Crown and Muriwhenua Lands: An Overview*. Wai 45, #L7: P. 17.

<sup>33</sup> Oliver, W. H. *The Crown and Muriwhenua Lands: An Overview*. Wai 45, #L7: Pp 18-19.

<sup>34</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 44.

When Bell 'overruled' all Maori objections on the basis of commission records from the 1840s, he revealed his assumption that his predecessors had satisfactorily investigated all Maori interests in claims. Bell based his refusal to even consider returning land 'which had been validly sold by those who ... were really empowered to sell' on the belief that his predecessors investigated all Maori interests, and that they had invited Maori to appear to testify on all interests affected.<sup>35</sup>

26. It is evident from his notes that Bell considered Māori to be satisfied with his explanations. Some of which were directed at Māori objections to the Government taking surplus lands.<sup>36</sup> His record of events at a hearing in Waimate (Northland) on 13 October 1857 for example demonstrates his view that Māori readily accepted his findings. Having summarily dismissed all objections Bell concludes that: 'they [Māori objecting to the Crown taking surplus lands] expressed themselves perfectly satisfied, &...apologised for having raised the objections they did'.<sup>37</sup> There is no corroborative evidence whatsoever to suggest Māori were satisfied,<sup>38</sup> and indeed, protest over the old land claims/surplus lands issues continued.

### **The Myers Commission 1946-1948**

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27. The old land claims issue remained largely unresolved after the three previous commissions. More than eighty years later the Crown established a final Commission into surplus lands. The Myers Commission sat between 1946-1948. Sir Michael Myers, the retired Chief Justice was appointed Commissioner. Like the Bell Commission before it, the Myers Commission focussed on the issue of surplus lands. Māori had long and vociferously opposed the idea that surplus lands accrue to the Crown. Long-standing Maori grievances over old land claims in other districts (particularly Te Tai Tokerau and Hauraki) led to the 1948 Surplus Lands Commission.<sup>39</sup>
28. The Myers Commission shared with the Bell Commission a fundamental assumption, 'that surplus land must be considered as the Demesne of the Crown'.<sup>40</sup> Nevertheless, the Commission did recommend that, in certain circumstances, some compensation, 'money or money's worth', be paid to those Māori who had 'a claim in equity and good conscience to the whole or part of such area' [surplus lands].<sup>41</sup>

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<sup>35</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 46.

<sup>36</sup> Oliver, W. H. *The Crown and Muriwhenua Lands: An Overview*. Wai 45, #L7: P. 18.

<sup>37</sup> Bell, F. D. 1857. *Notes of various Sittings of the Court*. 21 September-14 October 1857, OLC 5/34; see also Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 44.

<sup>38</sup> Oliver, W. H. *The Crown and Muriwhenua Lands: An Overview*. Wai 45, #L7: P. 19.

<sup>39</sup> Myers, M., Reedy, H. T. and Samuel, A. M. 1948. Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown. *Appendix to the Journals of the House of Representatives*. G.-8. 1948. P. 3.

<sup>40</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 64.

<sup>41</sup> Myers, M., Reedy, H. T. and Samuel, A. M. 1948. Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown. *Appendix to the Journals of the House of Representatives*. G.-8. 1948. P. 18.

29. The Myers Commission majority recommendations were effectively implemented by the Crown with the passing of the Māori Purposes Act 1953. Compensation was provided to the Māori Trust Boards of those iwi affected at the rate of 14s per acre. The total compensation awarded was £61, 307, of which the vast majority, £47, 154 4s, was awarded to the Te Tai Tokerau Māori Trust Board.<sup>42</sup>
30. The Whakatōhea Māori Trust Board received £4,648 14s in compensation for the 6,641 acres (2,687 hectares) of surplus land in the Ōpōtiki District.<sup>43</sup>

### **Old Land Claims in the Whakatōhea Rohe**

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31. Four old land claims have been identified that involve or may involve Whakatōhea lands. These are: The Whitaker old land claim in Ōpōtiki; the Church Missionary Society (CMS) old land claim in Ōpōtiki; the Wilson, Stack and Brown old land claim in Ōpōtiki and the Black old land claim for Uretara Island in Ōhiwa Harbour.

### **The Whitaker Old Land Claim – Ōpōtiki**

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32. Frederick Whitaker, future Premier of New Zealand, staked a claim for 2 acres (8,093. 713 m<sup>2</sup>) in Ōpōtiki alongside a claim for 2,000 acres on the East Cape.<sup>44</sup> Whitaker purportedly bought the 2 acres at Ōpōtiki for 53 lbs. of tobacco and 100 lbs. of gunpowder (valued at £5 6s and £7 10s respectively). For the 2,000 acres (809 hectares) on the East Cape Whitaker paid goods to the value of £100.<sup>45</sup>
33. Both claims were advertised for investigation in the Gazette dated 27 January 1844. The Godfrey Richmond Commission investigated in August 1844. Whitaker did not attend the hearing or present evidence in support of his claim, and as such no grant was recommended.<sup>46</sup> Indeed, both claims were disallowed, and the 2 acres at Ōpōtiki reverted to Māori ownership.<sup>47</sup>

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<sup>42</sup> Nepia, M. 1992. *Muriwhenua Surplus Lands Commissions of Inquiry in the Twentieth Century*. Wai 45, #G1. Pp 115-116; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 64; *Maori Purposes Act 1953*. P. 1605.

<sup>43</sup> *Maori Purposes Act 1953*. P. 1605; Myers, M., Reedy, H. T. and Samuel, A. M. 1948. Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown. *Appendix to the Journals of the House of Representatives*. G.-8. 1948. P. 36.

<sup>44</sup> *Old Land Claims*. Case 242 & 242a. OLC 510-511. R18461653. P. 2; see also Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329; Appendix to the Report of the Land Claims Commissioner. Appendix to the Journals of the House of Representatives. Auckland. 1863. D. – No. 14. P. 39.

<sup>45</sup> *Old Land Claims*. Case 242 & 242a. OLC 510-511. R18461653. P. 3.

<sup>46</sup> *Old Land Claims*. Case 242 & 242a. OLC 510-511. R18461653. P. 1.

<sup>47</sup> Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329; Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 39.



### **Black Old Land Claim – Uretara Island, Ōhiwa**

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34. Thomas Black claimed 300 acres (121 hectares) on Uretara Island in the Ōhiwa Harbour. 68 acres (27 hectares) on the island were eventually surveyed.<sup>48</sup> Uretara Island has been historically contested between Ngāti Awa, Whakatōhea and Ngāi Tūhoe.<sup>49</sup> Ownership of the island has fluctuated between the three tribes, particularly Ngāti Awa and Whakatōhea, since early occupation.<sup>50</sup>
35. In 1839 Uretara Island in Ōhiwa Harbour was purchased by Alfred Nicholas on behalf of Black, Green and Company.<sup>51</sup> Nicholas had established a trading post on the Island where he traded flax, pigs and potatoes. In 1839, another trader, Thomas Black arrived in Ōhiwa. Between them, Nicholas and Black decided to purchase Uretara Island.<sup>52</sup>
36. Nicholas negotiated the sale and his name appears on the deeds that were drawn up,<sup>53</sup> although it is likely that Black funded the purchase. According to Te Rōpu Whakaemi Korero o Ngāti Awa, Black and Nicholas paid trade goods to the value of £50 for the island.<sup>54</sup> The Native Department also recorded the purchase price as 'goods to the value of £50.'<sup>55</sup> In the minutes of the Compensation Court, however, it is recorded that Nicholas purchased Uretara Island for 'ten shirts'.<sup>56</sup>
37. The island was sold to Black and Nicholas by Te Keepa Toihau, Parata and Hokimoana of Ngāti Awa. Te Whakatōhea opposed the sale and it led to ongoing enmity between Ngāti Awa and Te Whakatōhea. According to evidence presented in the Compensation Court, Te Whakatōhea retaliated by burning Ngāti Awa houses on nearby Hokianga Island and Ngāti Awa then burned the Whakatōhea pā Onekawa on the eastern head of Ōhiwa.<sup>57</sup>

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<sup>48</sup> Moore, D., Rigby, B. and Russell, M. 1997. Old Land Claims. Rangahau Whanui Series. P. 329; AJHR 1881. Final Return of Land Claims Definitely Settled. *Appendix to the Journal of the House of Representatives*. 1881. C. – 1. P. 5.

<sup>49</sup> *Ngāti Awa Claims Settlements Act*. 2005. Schedule 9. Statutory acknowledgement for Uretara Island. <http://www.legislation.govt.nz/act/public/2005/0028/1.0/DLM340444.html>

<sup>50</sup> Te Rōpu Whakaemi Korero o Ngāti Awa. 1992. *Te Uretara Island*. Te Rangahau Whenua Rauapatu o Ngāti Awa Report to the Department of Conservation. Wai 46, #A5. P. 2; see also Miles, A. 2001. *Ōhiwa Harbour Scoping Report*. Wai 894, #A5. P. 18; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. Pp 29-39.

<sup>51</sup> Under Secretary, Native Department, to Clerk, Native Affairs Committee, 15 August 1922, Re Petition 172/22 re Nicholas Island. RDB Vol. 4. Pp 1425-1426; Te Rōpu Whakaemi Korero o Ngāti Awa. 1992. *Te Uretara Island*. Te Rangahau Whenua Rauapatu o Ngāti Awa Report to the Department of Conservation. Wai 46, #A5. P. 3.

<sup>52</sup> Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 93; Melvin, L. W. 1964. Thomas Black: Early Trader and Settler in the Bay of Plenty. *Historical Review*. Vol 12. No. 3. Pp 105-111.

<sup>53</sup> Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 93.

<sup>54</sup> Te Rōpu Whakaemi Korero o Ngāti Awa. 1992. *Te Uretara Island*. Te Rangahau Whenua Rauapatu o Ngāti Awa Report to the Department of Conservation. Wai 46, #A5. P. 3.

<sup>55</sup> Under Secretary, Native Department, to Clerk, Native Affairs Committee, 15 August 1922, Re Petition 172/22 re Nicholas Island. RDB Vol. 4. Pp 1425-1426; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 95.

<sup>56</sup> *Compensation Court Minutes*, Opotiki sitting, 7 March – 8 April 1867, P 57 RDB, Vol. 120, p 46112; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 94.

<sup>57</sup> *Compensation Court Minutes*, Opotiki sitting, 7 March – 8 April 1867, P 57 RDB, Vol. 120, p 46112. See also Miles, A. 2001. *Ōhiwa Harbour Scoping Report*. Wai 894, #A5. P. 16; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 30.

38. Black's claim to Uretara Island was first heard in 1863. He claimed the loss of 300 acres and £50 'payment to natives'. The claim was 'disallowed' and was 'brought forward but not admitted for investigation'.<sup>58</sup> The claim was subsequently re-heard at Ōpōtiki in 1875, the Land Claims Commissioner, H. A. Atkinson, strongly suggested a finding in favour of Black's claim: 'I have the honour to inform you that...I shall, if no obstacle to the issue of a Crown Grant is found to exist, make an award in your favour'.<sup>59</sup>
39. The issue was subsequently referred to H. W. Brabant, the resident magistrate at Ōpōtiki. Presumably Brabant found against Black's claim.<sup>60</sup> In 1881, it was reported that the claim had been 'investigated under the New Zealand Settlements Act, but the claimant failed to make out his case. Declared to have lapsed'.<sup>61</sup>
40. Uretara Island was included in the Eastern Bay of Plenty confiscation proclaimed on 18 January 1866. The island was not returned by the Compensation Court, although the nearby Hokianga Island was made a reserve for Te Ūpokorehe. Uretara Island has remained in Crown ownership ever since the raupatu proclamation.<sup>62</sup> The Department of Lands and Survey noted that the land, 'originally belonging to the Whakatōhea Tribe' had since become a public reserve:
- In 1898 the island was permanently reserved under the provisions of the Land Act for public recreation (Gazette 1898 page 1467) and by Order in Council dated 13<sup>th</sup> September, 1909, was declared to be a public domain subject to Part II of the Public Reserves and Domains Act, 1906.<sup>63</sup>

### **CMS Old Land Claim – Ōpōtiki**

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41. The CMS Old Land Claim in Ōpōtiki was for the 2,500 acre (1,011 hectares) Ngaio Block.<sup>64</sup> The Church Missionary Society bought the block on January 28 1840. The boundaries of the block were described in the following terms: The line begins at the Ate, goes on to

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<sup>58</sup> AJHR. 1863. Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 68; see also Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 95.

<sup>59</sup> Land Claims Commissioner, Office of the Court of Land Claims, to Mr Thomas Black. 29 June 1875. RDB. Vol. 4. P. 1427.

<sup>60</sup> Under Secretary, Native Department, to Clerk, Native Affairs Committee, 15 August 1922, *Re Petition 172/22 re Nicholas Island*. RDB Vol. 4. Pp 1425-1426.

<sup>61</sup> AJHR 1881. Final Return of Land Claims Definitely Settled. *Appendix to the Journal of the House of Representatives*. 1881. C. – 1. P. 5.

<sup>62</sup> Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 96.

<sup>63</sup> Under Secretary, Department of Lands and Survey, to Clerk, Native Affairs Committee, 16 October 1922, *re Petition 172/22 – Lucy S Waugh Uretara or Nicholas Island*. RDB Vol.4. P. 1423; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, A116. P. 96.

<sup>64</sup> Turton, H.H. 1882. *Māori Deeds of Old Private Land Purchases in New Zealand, from the Year 1815-1840, with Pre-emptive and Other Claims*. Wellington: George Disdsbury, Government Printer. P. 383; Walker, R. 2007. *Ōpōtiki-Mai-Tawhiti Capital of Whakatōhea: The Story of Whakatōhea's struggle during the nineteenth and twentieth centuries*. Auckland: Penguin. P. 50; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329.

Tirohanga, to Te Rua o nga Tamariki, from thence to Hangaia from thence to Okakaina from thence to Papakanui and from thence to Pakihi.<sup>65</sup>

42. The CMS paid £300 and trade goods to the value of £150 including: 3 casks of tobacco, 100 blankets, 100 coats, 100 axes, 100 adzes, 100 hoes, 200 fish hooks, 100 scissors, 100 knives, 100 shirts, 100 gowns, 12 spades, 100 lbs. soap, 24 frocks, 15 caps, 12 striped shirts, 24 pairs of trousers, 10 iron pots, 80 children's dresses and one cow.<sup>66</sup>
43. The CMS did not occupy the Ngaio Block and Whakatōhea continued to cultivate it. According to the *Appendix to the Report of the Land Claims Commissioner 1863* and also to Moore, Rigby and Russell, the 2500 acres (1,011 hectares) at Ngaio was returned to 'Natives' in 1851.<sup>67</sup> In Turton's *Māori Deeds of Old Private Land Purchases in New Zealand*, however, it is recorded that the sale was repudiated in 1854 and that £280 of the £300 was returned. The remaining £20 was to pay for a parcel of land at Papakanui within the Block on which the Minister was to live.<sup>68</sup> This much smaller block was the site, now in central Ōpōtiki, upon which Völkner's church was located.<sup>69</sup>

#### **The Wilson, Stack and Brown Old Lands Claim**

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44. The Wilson, Stack and Brown Old Lands Claim was also related to the activities of the Church Missionary Society. John Alexander Wilson was a lay catechist for the CMS. He arrived in the Ōpōtiki district in 1840. As a catechist, Wilson was tasked with evangelising and instructing converts in the Christian faith. He was not ordained as a Minister until 1852 – Bishop Selwyn had refused on the grounds that Wilson lacked the requisite 'missionary zeal'. Wilson was a former Royal Navy officer and was married to the daughter of a Colonel.<sup>70</sup>

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<sup>65</sup> Turton, H.H. 1882. *Māori Deeds of Old Private Land Purchases in New Zealand, from the Year 1815-1840, with Pre-emptive and Other Claims*. Wellington: George Disdsbury, Government Printer. P. 383.

<sup>66</sup> Ibid; see also Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329; Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 54.

<sup>67</sup> AJHR 1863. Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 54; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329.

<sup>68</sup> Turton, H.H. 1882. *Māori Deeds of Old Private Land Purchases in New Zealand, from the Year 1815-1840, with Pre-emptive and Other Claims*. Wellington: George Disdsbury, Government Printer. P. 383; see also; Walker, R. 2007. *Ōpōtiki-Mai-Tawhiti Capital of Whakatōhea: The Story of Whakatōhea's struggle during the nineteenth and twentieth centuries*. Auckland: Penguin. Pp 50-51; Gilling, B. 1994. *Te Raupatu o te Whakatāne: The Confiscation of Whakatōhea Land 1865-1866*. Wellington: Treaty of Waitangi Policy Unit. Pp 6-7; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, #A116. P. 85.

<sup>69</sup> Turton, H. H. 1879. *Supplementary Deed: Repudiation of Sale and Return of Purchase Money*. *Raupatu Document*. 28 May 1879. Raupatu Document Bank. Vol. 119. P. 45841; Gilling, B. 1994. *Te Raupatu o te Whakatāne: The Confiscation of Whakatōhea Land 1865-1866*. Wellington: Treaty of Waitangi Policy Unit. P. 8; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, #A116. P. 85.

<sup>70</sup> Gilling, B. 1994. *Te Raupatu o te Whakatāne: The Confiscation of Whakatōhea Land 1865-1866*. Wellington: Treaty of Waitangi Policy Unit. Pp 6-7; See also Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, #A116. P. 85.

45. When he arrived in Ōpōtiki, Wilson chose Hikūtaia as the site for his Mission Station. It was a sloping area of land on the west side of the Waiōweka River.<sup>71</sup> The block was called Pākihi. The boundaries of the block were described thus: 'Beginning at Pakihi you go on to the Native River called Waiōweka, and from thence to Tamatatamahewa, Matiti, Puhiraki, Waihoutahi, and Taraitu to the sea and along the sea shore to Pakihi'.<sup>72</sup>
46. The 3,840 acre (1553 hectare) Pākihi block was sold by the rangatira Rangiharepō (Te Ūpokorehe), Titoko, Ake (Te Ūpokorehe), Ōkoki and Te Āporotanga (Ngāti Rua) to Rev. A. N. Brown and Messrs Stack and Wilson on 27 January 1840. Brown, Stack and Wilson paid £400 cash and the following trade goods for the block: 600 lbs. tobacco, 100 blankets, 100 plane irons, 100 axes, 100 adzes, 100 hoes, 200 fish hooks, 100 scissors, 100 knives, 100 shirts, 100 gowns, 12 spades, 100 lbs. soap, 24 frocks, 25 caps, 12 blue woollen shirts and 24 trousers.<sup>73</sup>
47. The land was to be the private property of Brown, Stack and Wilson. It was described as being for their 'heirs and assigns also for ever, to locate sell or appropriate for their use and benefit: the land with whatever might be growing on it or deposited beneath'.<sup>74</sup> Prominent academic and member of Whakatōhea Dr Ranginui Walker notes that the land was sold by the rangatira in order to have influential Pākehā settle among Te Whakatōhea. It was hoped that having a missionary in the area would benefit the community through schooling, enhanced trade and increased settlement.<sup>75</sup> In 1862 Archdeacon Brown subsequently exchanged his share in the claim for £853 in scrip which was granted by Governor FitzRoy. A grant was issued to the remaining two claimants for 2,987 acres (1,208 hectares).<sup>76</sup>
48. J. A. Wilson subsequently sought to have his share of the claim exchanged for 560 acres (226 hectares) at Mangemangeroa, Howick in Auckland.<sup>77</sup> The Crown rejected Wilson's proposal. Wilson then applied to have the land partitioned between himself and James Stack. His application was granted provided the land was surveyed. The Crown agreed to undertake

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<sup>71</sup> Walker, R. 2007. *Ōpōtiki-Mai-Tawhiti Capital of Whakatōhea: The Story of Whakatōhea's struggle during the nineteenth and twentieth centuries*. Auckland: Penguin. Pp 50-51.

<sup>72</sup> Turton, H.H. 1882. *Māori Deeds of Old Private Land Purchases in New Zealand, from the Year 1815-1840, with Pre-emptive and Other Claims*. Wellington: George Didsbury, Government Printer. P. 382.

<sup>73</sup> Ibid; see also Walker, R. 2007. *Ōpōtiki-Mai-Tawhiti Capital of Whakatōhea: The Story of Whakatōhea's struggle during the nineteenth and twentieth centuries*. Auckland: Penguin. Pp 50-51.

<sup>74</sup> Turton, H.H. 1882. *Māori Deeds of Old Private Land Purchases in New Zealand, from the Year 1815-1840, with Pre-emptive and Other Claims*. Wellington: George Didsbury, Government Printer. P. 382; Gilling, B. 1994. *Te Raupatu o te Whakatāne: The Confiscation of Whakatōhea Land 1865-1866*. Wellington: Treaty of Waitangi Policy Unit. P. 7; Johnston, E. 2003. *Ōhiwa Harbour*. Wai 894, #A116. P. 85.

<sup>75</sup> Walker, R. 2007. *Ōpōtiki-Mai-Tawhiti Capital of Whakatōhea: The Story of Whakatōhea's struggle during the nineteenth and twentieth centuries*. Auckland: Penguin. P. 50.

<sup>76</sup> Bell, F. D. 1862. *In the Matter of the Grant issued 15 February 1845 to John Alexander Wilson and James Stack for 2,987 acres at Opotiki, Bay of Plenty*. 20 June 1862. Archives New Zealand. OLC 866. C 315 4620. R 18461900. P. 1; Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 65; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329.

<sup>77</sup> Bell, F. D. 1862. *In the Matter of the Grant issued 15 February 1845 to John Alexander Wilson and James Stack for 2,987 acres at Opotiki, Bay of Plenty*. 20 June 1862. Archives New Zealand. OLC 866. C 315 4620. R 18461900. P. 1.

the survey provided it did not exceed £60. Tenders were called for and Thomas Florance's tender of £75 was eventually accepted on 8 December 1852.<sup>78</sup>

49. The survey went ahead in late 1852 and early 1853 and Florance discovered that the area in question contained 11,470 acres (4,641 hectares), far in excess of the estimated 3,840 acres (1553 hectare) originally claimed by Wilson, Stack and Brown. Owing to the much larger than expected size of the survey, Florance's fee was £216, substantially higher than expected. Wilson and Stack were required to pay £144 to cover the costs of the survey and the Crown contributed £72.<sup>79</sup>
50. The Bell Commission investigated the Wilson, Stack and Brown old lands claim and reported its findings on 20 June 1862. Bell's final judgement was as follows, Wilson and Stack would receive the 2,987 acres (1,208 hectares) remaining after Brown's share was removed. To this was added a one sixth share of an additional 497 acres (201 hectares) adding up to 3,484 acres (1409 hectares) in total. The reason for the additional share is not recorded. 288 acres (116 hectares) previously subtracted for the survey fee and 60 acres (24 hectares) to cover court fees were added. This left 3,832 acres (1550 hectares) – which was divided into two portions of 1,916 acres (775 hectares) to be chosen, within the boundaries of the block, by Wilson and Stack at a later date.<sup>80</sup>
51. The two blocks sit in what was once the Parish of Waiotahi between Ōpōtiki and the Ōhiwa Harbour. Both were included in the Eastern Bay of Plenty confiscation zone proclaimed on 18 January 1866. In both cases appeals were lodged and on 13 February 1867 the Colonial Secretary wrote to Wilson informing him that the Crown had 'abandoned the right to take the following land under The New Zealand Settlements Act'.<sup>81</sup>
52. As detailed above, of the 11,470 acres (4,641 hectares) that were surveyed, 3,832 acres (1550 hectares) were granted to the claimants. That left a surplus of 7,638 acres (3,090 hectares) which reverted to the Crown. The surplus lands were investigated by the Myers Commission in the 1940s. The Myers Commission paid compensation for surplus lands at a rate of 14s an acre. According to the Myers Commission there were 6,641 acres (2,687 hectares) of surplus land in the Ōpōtiki District. At 14s an acre that amounts to £4,648 14s. The Whakatōhea Māori Trust Board received £4,648 14s in compensation for the 6,641 acres of surplus land in the Ōpōtiki District.<sup>82</sup>

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<sup>78</sup> Ibid.

<sup>79</sup> Bell, F. D. 1862. *In the Matter of the Grant issued 15 February 1845 to John Alexander Wilson and James Stack for 2,987 acres at Opotiki, Bay of Plenty*. 20 June 1862. Archives New Zealand. OLC 866. C 315 4620. R 18461900. Pp 1-3.

<sup>80</sup> Ibid; see Appendix 1 for the location of the two parcels of land.

<sup>81</sup> *Colonial Secretary to J. A. Wilson*. 13 February 1867. Archives New Zealand. OLC 866. C 315 4620. R 18461900.

<sup>82</sup> Māori Purposes Act. No. 112. P. 1605. *New Zealand Legal Information Institute*.  
[http://www.nzlii.org/nz/legis/hist\\_act/mpa19531953n112220/](http://www.nzlii.org/nz/legis/hist_act/mpa19531953n112220/)

53. The discrepancy between the 7,638 acres (3,090 hectares) listed as ‘surplus’<sup>83</sup> and the 6,641 acres (2,687 hectares) compensated for by the Myers Commission results from a ‘most searching and exhaustive overhaul’ of earlier estimates and the elimination of ‘all areas which have or had been the subject of Government purchase and other areas which in the opinion of the Commission the Maoris did not have a claim’.<sup>84</sup>

### **Conclusion: Surplus lands in the Whakatōhea rohe**

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54. To summarise, Te Whakatōhea rangatira sold the 3,840 acre (1,553 hectare) Pākihi block on 27 January 1840. Their motivation for doing so was to attract influential Pākehā into the region. When the land was surveyed, it was found to contain some 11,470 acres (4,641 hectares) – 3,832 acres (1550 hectares) of which were granted to the purchasers and the remaining 7,638 acres went to the Crown. The Crown subsequently confiscated 143,870 acres (58,222 hectares) of Whakatōhea land under the New Zealand Settlements Act 1863. The surplus lands and the blocks granted to Wilson and Stack were in Waiotahi Parish in the middle of the confiscation zone. Wilson and Stack’s properties were exempted from the confiscation zone, but the surplus lands remained part of the confiscation.
55. In the 1940s the Myers Commission recognised that Māori should be compensated for surplus lands. Compensation of £4,648 14s was paid to the Whakatōhea Māori Trust Board.<sup>85</sup>
56. The surplus lands in the Ōpōtiki district were among the largest of all the blocks that later became the property of the Crown. After raupatu Whakatōhea were left with very little land. Indeed, in 1908 the Native Land Commission prepared an interim report on Māori land in the Ōpōtiki region. With regard to Whakatōhea the report found that the group had ‘little land left in their hands’. At that time Whakatōhea retained an estimated 35,449 acres (14,345 hectares) including 20,290 acres (8,211 hectares) at Ōpape that were granted to them in the Compensation Court.<sup>86</sup> Whakatōhea were left in a perilous position. With such a small area of land remaining to them, 6,641 acres (2,687 hectares) of flat coastal land may have made a significant difference to the wellbeing of the iwi.

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<sup>83</sup> Appendix to the Report of the Land Claims Commissioner. *Appendix to the Journals of the House of Representatives*. Auckland. 1863. D. – No. 14. P. 65; Moore, D., Rigby, B. and Russell, M. 1997. *Old Land Claims*. Rangahaua Whanui Series. P. 329.

<sup>84</sup> Myers, M., Reedy, H. T. and Samuel, A. M. 1948. Report of Royal Commission to Inquire into and Report on Claims Preferred by Members of the Maori Race Touching Certain Lands Known as Surplus Lands of the Crown. *Appendix to the Journals of the House of Representatives*. G.-8. 1948. P. 32.

<sup>85</sup> Māori Purposes Act. No. 112. P. 1605. New Zealand Legal Information Institute. [http://www.nzlii.org/nz/legis/hist\\_act/mpa19531953n112220/](http://www.nzlii.org/nz/legis/hist_act/mpa19531953n112220/)

<sup>86</sup> Native Land Commission. 1908. *Native Lands and Native Land Tenure: Interim Report of Native Land Commission, On Native Land in the County of Opotiki*. Wellington: Government Printer.