

1850

#### THE McCLEVERTY TRANSACTIONS

(Waitangi Tribunal, 2003)

- ▶ These Maori groups also had take raupatu over the son block.

At this point in time, some 150 years after the 1844 deed, it is not possible to determine with any precision the lands in the Port Nicholson block which Maori had ahi ka rights. The closest the Tribunal can get to resolving this question is to assume that Maori had ahi ka over those lands which were surrendered under the deeds of release as described in the schedule to such deeds, plus the pa, cultivations, urupa, and tenths reserves which were reserved to them.

In the case of Ngati Toa, we have used the same touchstone in section 9.5.1 in concluding that, when in 1845 Te Rangihaeata finally acceded to the November 1844 'agreement', he surrendered Ngati Toa's ahi ka rights to the lands allotted to the New Zealand Company under the schedule to the 1844 or later deeds of release, subject to the condition that land be reserved for Ngati Rangatahi in Heretaunga. But Ngati Toa retained their take raupatu over the remaining land in Heretaunga and elsewhere in the Port Nicholson block over which the other Maori in the Port Nicholson block also had take raupatu (see 9.7.2).

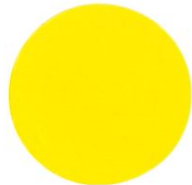
#### 10.8.6 Tribunal findings of Treaty breach

The Tribunal finds that:

- ▶ As at January 1848, when Grey issued his Crown grant to the New Zealand Company, Ngati Toa, Te Atiawa, Taranaki, Ngati Ruanui, and Ngati Tama had customary take raupatu rights over the remainder lands of some 120,626 acres in the Port Nicholson block.
- ▶ Maori having rights in this block had not, as the 1848 Crown grant claims, made a full and valid cession of all their rights to the land in the Port Nicholson district. In particular, such Maori had not relinquished their take raupatu rights over some 120,626 acres or thereabouts included in the grant to the New Zealand Company.
- ▶ As a result, the Crown failed to act reasonably and in good faith towards its Treaty partners in disposing of the remainder lands without making any payment to or gaining the consent of such Maori and, further, failed actively to protect the rights of such Maori having an interest in such lands under article 2 of the Treaty of Waitangi, and such Maori have been seriously prejudiced thereby.

#### 10.9 THE COLLAPSE OF THE NEW ZEALAND COMPANY

By 1850, the affairs of the New Zealand Company were in a critical state. On 18 June, the directors of the company wrote to Earl Grey complaining that, in the three years allowed, the company had not been able to recoup its losses. It had anticipated that large tracts of demesne land of the Crown would have been made available to it, but this had not occurred. It sought



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TE WHANGAN

10.9

an extension of time and a variation of the letter was a statement showing that between only 2½ acres to private individuals in

An interim reply to this letter from Earl Grey would not be able to recommend the amendment embodied in the Loans Act.<sup>82</sup> The

directors to Earl Grey, enclosing a formal notice under section 19 of the Loans Act, in which the company advised that it was 'ready to surrender the Charters of this Company to Her Majesty, and all claim and title to the lands granted or awarded to them in New Zealand'.<sup>83</sup>

Section 19 of the Loans Act provided that, if the company advised the Crown by no later than 5 July 1850 that it was ready to surrender its charter and lands in New Zealand, then, among other consequences, all the company's lands in New Zealand would 'thereupon revert to and become vested in Her Majesty as Part of the Demesne Lands of the Crown'. On 5 July 1850, company secretary T C Harrington wrote to William Fox, who had succeeded the late Colonel Wakefield as the company's principal agent in New Zealand, enclosing a copy of the section 19 notice and advising that, as a consequence, the company had discontinued its colonising operations in New Zealand as from 5 July 1850.<sup>84</sup>

Soon after the cessation of the company's business, several shareholders wrote to Earl Grey seeking a reprieve.<sup>85</sup> Earl Grey responded to this letter, sending a copy to the company, on 22 July 1850.<sup>86</sup> He denied that the British Government had in any way caused or contributed to the company's lack of success. He then dealt with the directors' complaint that they had expected that a large area of demesne lands would be placed at the company's disposal clear of native titles. As to this, he said:

That it was anticipated from the first that there were native titles to land in New Zealand, which would require to be extinguished, and that this could only be effected by purchases by the Company, is abundantly clear. The Act of Parliament [ie, the Loans Act 1847] (section 6.) expressly states that the compensation, if any, to be made to the aboriginal inhabitants of New Zealand, for the purchase or satisfaction of their claims, rights, and interests in the demesne lands, is to be regarded as among the first charges on the Company's income to be derived from the sale of them. Consequently, it clearly was not contemplated that the demesne lands would, or could, pass at once into the Company's hands free of all pecuniary liability for the extinction of native titles. And in the despatch communicating the agreement to Governor Grey (June 19th, 1847), his Lordship informed the Governor 'when

80. Harrington to Earl Grey, 18 June 1850, BPP, vol 7, [1398], pp 5-10

81. BPP, vol 7, [1398], p 11

82. Hawes (for Earl Grey) to Harrington, 1 July 1850, BPP, vol 7, [1398], pp 11-12

83. Harrington to Earl Grey, 4 July 1850, BPP, vol 7, [1398], pp 2-3

84. Harrington to Fox, 5 July 1850, BPP, vol 7, [1398], p 4

85. Drane and others to Earl Grey, 9 July 1850, BPP, vol 7, [1398], pp 15-18

86. Hawes (for Earl Grey) to Drane and others, 22 July 1850, BPP, vol 7, [1398], pp 18-23