

1937.
NEW ZEALAND.

THE NATIVE PURPOSES ACT, 1936.

REPORT AND RECOMMENDATION ON PETITION No. 123 OF 1936, OF WAAKA TE ARAKAI AND OTHERS, SO FAR AS IT RELATES TO WHAREWAKA RESERVE.

Presented to Parliament in pursuance of the Provisions of Section 13 of the Native Purposes Act, 1936.

Native Land Court (Chief Judge's Office), Wellington, C.1, 22nd October, 1937.

The Right Hon. the NATIVE MINISTER, Wellington.

PETITION No. 123 OF 1936, WHAREWAKA RESERVE.

PURSUANT to section 13 of the Native Purposes Act, 1936, I herewith transmit the report of the Court herein.

It appears that the Native owners of the Tauhara Middle Block, by deed dated 10th August, 1875, ceded a portion containing 11,594 acres to the Crown, excepting three areas named in the deed, which were reserved for Native use and occupation. One of the exceptions is that referred to in the petition as the Wharewaka Reserve, which was not to exceed 10 acres. These three reserves were surveyed in 1878, the Wharewaka Reserve being found to contain 6 acres 1 rood 20 perches. The Crown made application to the Native Land Court to have its interest defined and, although the three exceptions were mentioned in the deed and expressly referred to in the evidence, the Court made a vesting-order which had the effect of rendering the whole, including the reserves, Crown land. Some one who had noticed the error made a minute which had the effect of causing the two larger reserves to be granted back to the Natives, but evidently Wharewaka was overlooked, and it is still Crown land. Later the Court endeavoured to rectify the oversight by including it in a residue order, but the fact that it was Crown land was a bar. No further steps appear to have been taken by the authorities.

I respectfully recommend that reasonable compensation be granted to the Natives. Possibly, as the claimants for such a grant would be numerous, it might be applied to some object for their general good instead of being apportioned into infinitesimal shares.

R. N. JONES, Chief Judge.

In the Native Land Court of New Zealand, Waiariki District; in the matter of section 13 of the Native Purposes Act, 1936, and of Petition No. 123 of 1936, of Waaka te Arakai and others, so far as it relates to Wharewaka Reserve.

At a sitting of the Court held at Taupo on the 24th and 25th days of August, 1937, before Hugh Fraser Ayson, Esquire, Judge, the claims and allegations made by the petitioners in the above-mentioned petition were inquired into as directed by the Chief Judge.

The following matters relative to the Wharewaka Reserve are set out in chronological order:—

1. The investigation of title to Tauhara Middle took place at Oruanui, 5th June, 1868, when Judge Smith ordered a certificate of title to issue for Tauhara Middle in favour of six owners.
2. A further hearing took place on 16th March, 1869, when a certificate of title was ordered to issue if within twelve months claimants furnished a proper survey. (Taupo Minute Book 1/195-201.)
3. A Crown grant certificate of title under Native Land Acts dated 8th February, 1873, as from 28th March, 1872, was issued and registered as certificate of title 9/71. The land was called Tauhara Middle, and comprised 106,080 acres as shown on Plan 1546 (red).

4. By deed made on the 10th August, 1875, Mere Hapimana Huriwaka and others, in consideration of the sum of £1,150, conveyed to Her Majesty the Queen all that block or parcel of land containing 11,594 acres or thereabouts, called Tauhara Middle, excepting "reserve for Native occupation at Waipahihi Stream (at mouth of Lake), area, say, fifty to one hundred acres, also a small landing reserve at Wharewaka of, say under ten acres, and another occupation reserve at Patuiwi as sketched on plan and tinted yellow".

App. A. A copy of the deed is set out in Appendix A.

5. The Crown also entered into negotiation for a lease of the balance of the area.

See Deed 773, Lands and Survey, dated 10th July, 1875.

This latter transaction was abandoned and portion of the area was purchased by deed of 7th June, 1881, as Tauhara No. 3.

6. On the 19th April, 1879, a document confirming the above and other transactions was executed.

This document recited that "Whereas in the years 1870–1871/2 and 1873 the block of land known as Tauhara Middle in the District of Taupo Colony of New Zealand was dealt with by owners thereof by deeds of conveyance of three several portions of said Block and by deed of lease of the remaining portion thereof to Her Majesty the Queen: And whereas various obstacles legal and technical and relating to reserves have hitherto intervened preventing a final settlement thereof and whereas these obstacles are now removed"; and goes on, "We hereby now confirm the said deeds of conveyance and lease to Her Majesty of the said portions of Tauhara Middle Block the boundaries of which are described in the Schedule written underneath . . ."

In the Schedule appears, *inter alia*, the following words "Area 10,946 acres, more or less, excepting the reserves at Waipahihi Patuiwi and Wharewaka as surveyed."

App. B. A copy of the deed is set out in Appendix B.

NOTE.—From a note on the old Native land purchase papers it appears that the purchase made by deed of conveyance of the 10th August, 1875, was undertaken in 1873, and it is evident that the confirmatory deed embraces this transaction.

7. (a) The next step was an application to the Native Land Court to ascertain and determine what interest in the Tauhara Middle Block had been acquired by the Crown.

This application was heard by the Court (Judges Symons and O'Brien), and on the 10th December, 1880, an order was made declaring Tauhara Middle No. 1, containing 14,050 acres, to be the property of Her Majesty.

(b) The proceedings are recorded in Taupo Minute Book No. 2, pages 47–9.

The only evidence which relates to reserves is that of Maihi Maniapoto, who stated, *inter alia* :—

"*Maihi Maniapoto* (sworn): I know this land; I am one of the grantees. I know the portions sold and leased. I can show it on the plan. There is a piece also that has been sold called Opape. The rest is leased to Government. Waipahihi is a reserve in the sold part at Tapuaeharuru containing 146 acres, at Wharewaka 6 acres 1 rood 2 perches, at Wharepatuiwi 75 acres. The sale of the pieces mentioned by me, with the exception of the reserves, has been completed. There is a reserve of 2 acres to be made to Poihipi Tukairangi called Parakiri at the mouth of the Lake."

(c) No mention of the reserves is made in the Court order, but on the registered copy of the order appears the following minute—

"This order is subject to an agreement to return by Crown grant to the Native owners the Patuiwi and Waipahihi Reserves containing respectively 75 acres and 146 acres, as shown on the plan marked A and attached.

"(Sgd.) R. J. Gill, Under-Secretary."

App. C. (d) The Court was acting pursuant to section 4 of the Government Native Land Purchases Act Amendment Act, 1878 (see Appendix C), and included the reserves in the order (although it could have excluded them), leaving it to the Governor to execute a Crown grant or other instrument vesting such reserve or reserves in the persons interested therein.

(e) A proper survey plan (as well as the deeds referred to above) was before the Court on which, *inter alia*, reserves were delineated and shown in the following words :—

Patuiwi Reserve	..	..	..	..	..	..	75	0	0
Waipahihi Resv.	..	..	..	..	..	..	146	0	0
							A.	R.	P.
Wharewaka Resv.	..	..	..	..	..	..	6	1	20

App. D. (f) Wharewaka had also been separately surveyed in April, 1878. Plan 4214 (red). See copy in Appendix D.

(g) The plan on deed 1272 (see paragraph 4) shows Wharewaka marked as "Landing Reserve," and it is also called "A landing reserve" in the deed itself.

App. E. 8. (a) Tauhara Middle No. 1 was, by Proclamation issued on the 14th June, 1881, and published in the *Gazette* of that date at page 751, declared waste land of the Crown. See copy in Appendix E.

(b) A certificate of title (Vol. 46, folio 110, Auckland Registry) for all that parcel of land containing 14,050 acres, more or less, called or known by the name of "Tauhara Middle No. 1," issued in the name of Her Majesty on the 28th September, 1883.

(c) The two reserves, known as "Waipahihi, 146 acres, and Patuiwi, 75 acres," were shown as excepted from both the Proclamation and certificate of title.

9. Crown grant certificate of titles under the fourth section of the Government Native Land Purchases Act Amendment Act, 1878, as from the 28th March, 1872, were issued for Patuiwi on the 3rd November, 1881, and for Waipahihi on 3rd March, 1881.

The grantees were Paora Hapimana Huriwaka, Hamuera Takurua, Te Poihipi Tukairangi, Maniapoto te Hina, Ihakara Kahuaao, and Popoki te Kurapae, who were the original grantees of Tauhara Middle.

10. Mr. Darby in his written statement—page 2, paragraphs 4 to end of page—refers to certain correspondence as follows:—

Memorandum of 24th April, 1877, from Mr. Hy. Mitchell to Hon. J. D. Ormond, with marginal note by Mr. R. J. Gill (Under-Secretary).

Memorandum of 21st March, 1878, from Mitchell to Under-Secretary.

Memorandum of 22nd February, 1879, from Gill to Native Minister.

Memorandum of 1st March, 1879, Gill to Mitchell, with memoranda thereon from Mitchell to Gill and to Hon. J. Sheehan.

These are in Mr. Darby's Appendix D 2, E, D 3, E 2.

He states (page 3) that the principle in these purchases appeared to be that landing reserves were apparently not treated as reserves for Natives alone, but for the public.

It is to be noted that all this correspondence was prior to the date of the confirmatory deed—viz., 19th April, 1879.

Note also that the statement in Mr. Darby's paragraph 5 that "Mr. Locke advised by wire that it was a public landing reserve" referred only to Parakiri and not to Wharewaka.

11. (a) The Tauhara Middle Block next came before the Native Land Court, 29th May, 1886, when Judge Scannell made orders for further subdivision, including the reserves at Patuiwi, Waipahihi, and Wharewaka.

(b) The validity of the orders affecting the reserves was questioned by Mr. P. Sheridan, of the Native Department, who wrote to Judge Scannell as follows:—

"In judgment on Tauhara Middle partition you include in order to Natives for 4A three reserves—viz., Waipahihi, Patuiwi, and Wharewaka—over which the Court had no jurisdiction, the Native title having already been extinguished by a conveyance to the Crown. Grants to the ten original owners were issued under the provisions of the fourth section of the Government Native Land Purchases Act, 1878, for Waipahihi and Patuiwi in 1881, and it was then decided not to grant Wharewaka, but simply to reserve it under the provisions of the Land Act."

On this memorandum there is a minute, dated the 22nd August, 1888, in Mr. Sheridan's handwriting in these terms:—

"Major Scannell took a note of this with a view of revising the judgment."

Judge Scannell's partition orders for the reserves were not drawn up and completed.

Judge Scannell's minutes are in Taupo Minute Book 6, pages 1 to 81.

Appendix F 1 and F 2 set out the parts of the evidence and judgment relevant to Wharewaka. App. F 1 and F 2.

12. An Order in Council was made on 18th May, 1899, under section 14 of the Native Land Court Act, 1894 (copy set out in Appendix G), conferring jurisdiction on the Court to determine the beneficial owners, if any, of, *inter alia*, Waipahihi and Patuiwi. App. G.

13. In 1905 applications pursuant to this Order in Council came before Judge Johnson at Taupo. He was in doubt as to the Court's jurisdiction regarding Waipahihi and Patuiwi, and in a memorandum (copy in Appendix H) to the Chief Judge he dealt fully with the position of these two reserves and also Wharewaka, and asked for directions. App. H.

It is clear that the Natives were then claiming Wharewaka.

14. In Appendix I 1 and I 2 will be found correspondence between Judge Johnston and Mr. Sheridan which relates to Wharewaka. Judge Johnson stated, *inter alia*:— App. I 1 and I 2.

"It is for the Native Land Purchase Department to show why Crown grants for those two proposed reserves—viz., Wharewaka and Parakiri—were not issued."

Mr. Sheridan's statement of 14th November, 1905 (I 2), that Wharewaka is a "public reserve" by the deed is incorrect, as the deed clearly calls it a "landing reserve".

It appears from this correspondence that the Native claimants were not at all satisfied with Mr. Sheridan's explanation.

15. The minutes of this inquiry are attached (Appendix J, page 12).

App. J.

16. The following on file N.D. 21/3/39 may be referred to:—

- (1) Memorandum of 18th June, 1936, from Under-Secretary of Native Affairs to the Under-Secretary for Lands.
- (2) Copy memorandum of 9th July, 1936, from Commissioner of Crown Lands to Under-Secretary for Lands.
- (3) Report dated 5th August, 1936, from Under-Secretary, Native Affairs, to the Chairman, Native Affairs Committee.

CONCLUSIONS.

17. (a) At the present time the Crown has a legal title to Wharewaka Reserve by land transfer certificate of title.

(b) Mr. Darby (for the Crown) referred to section 115 of the Native Land Act, 1931, which deals with extinguishment of customary title by lapse of time.

(c) The question which arises is whether the Crown should, in respect of Wharewaka, have issued to the Native owners a Crown grant or other instrument of title pursuant to section 4 of the Government Native Land Purchases Act Amendment Act, 1878, or whether (as contended by the Crown at this inquiry) there was no intention to return Wharewaka to the Natives, but to treat it as a "public landing reserve".

18. The Court is of opinion that the Wharewaka Reserve should have been returned to the Natives by the Crown in the same way as Waipahihi and Patuiwi were returned. The reasons for this opinion are as follows:—

- (a) The basis of the transaction between the Crown and the Natives and the crux of the whole position is the deed of 10th August, 1875, as confirmed by the deed of 19th April, 1879.

In this deed Wharewaka is called a “landing reserve” both in the body of the deed and in the plan thereon, whilst in the confirmatory deed Wharewaka is excepted as a reserve. See paragraphs 4 and 6, *supra*.

- (b) The correspondence mentioned in paragraph 10 took place prior to the confirmatory deed of 19th April, 1879, and it is submitted is of no value in deciding the rights of the Natives under the deeds of 1875 and 1879, which contain definite provisions as to certain reserves.

These deeds actually exclude Wharewaka as a reserve.

- (c) As pointed out in paragraph 7 (d) above, the Court in 1880 could either have excluded the reserves mentioned in the deeds from the Crown title or could have included them and left the Crown to grant them back to the owners, pursuant to section 4 of the Government Native Land Purchases Act Amendment Act, 1879.

The provisions of this section, set out in Appendix C (page 6), should be read.

- (d) The three reserves—viz., Waipahihi, Patuiwi, and Wharewaka—having been included in the Crown title, the onus was placed on the Crown in regard to revesting them in the Native owners.

The Crown issued grants for Waipahihi and Patuiwi, but not for Wharewaka.

- (e) The alleged reason given by the Crown why Wharewaka was not Crown-granted back is that it was a public landing reserve.

- (f) The onus is on the Crown to prove this.

It seeks to discharge this onus by the statement of Mr. Sheridan made after the deeds were signed. For the Crown to succeed, this statement must be taken to override the plain provision in the deeds of 10th August, 1875, and 19th April, 1879, excluding Wharewaka from the sale to the Crown.

- (g) It is abundantly proved by the evidence that Wharewaka was a place used by the Natives for fishing for kokopu. As to this see—

(1) Evidence of Wi Maihi Maniapoto, given at Taupo on 15th May, 1886, Taupo Minute Book 6/31. Appendix F 1, at page 8.

(2) Evidence of Waaka te Arakai, Paora Tauhau, and others, given at this inquiry. Appendix, page 13.

- (h) The meaning of the word “Wharewaka” is “Canoe house”. See evidence of Paora Tauhau, who says, “We used to turn our canoes upside down and use them for shelter, at night. Canoe used as a whare—hence the name ‘Wharewaka’, meaning ‘Canoe house’.” Appendix, page 13.

- (i) Attention is drawn to the fact that when the deeds were signed (1875–1879) there was no road on the eastern side of Lake Taupo and no thought of a road.

There was no need for a public landing reserve at Wharewaka. The Crown, through its purchase under the deeds mentioned, owned a considerable part of the shores of the lake on that side, and it was shown by the evidence at this inquiry that Wharewaka was not in any way required in the military operations of that time. On these points see pages 13 and 14 of Appendix.

- (j) There is another point: That if Wharewaka was reserved as a “public landing reserve” it would not have been the irregular shape it is and the boundaries would not have been left to be shown by Ngamotu Wiremu. See evidence on page 14 and plan on page 7 of Appendix (attached only to original copy of this report).

19. There is still some rankling in the minds of the Natives over the Tauhara Middle transactions. They sold some 11,594 acres for £1,150, or about 2s. per acre, but when surveys and other charges were deducted the net amount received by them was only about 5d. per acre. See Appendix, page 14.

20. The Crown asks that in the event of the report being favourable to the petitioners the Crown should retain possession of Wharewaka and that the Native owners should be compensated in money.

21. Attention is drawn to section 14, subsection (3), of the Native Land Amendment and Native Land Claims Adjustment Act, 1926, by which there is reserved to the public a right-of-way over a strip of land *not exceeding* 1 chain in width around the margin of Lake Taupo. A copy of this provision is set out on page 21 of the Appendix. This chain reserve, so far as Wharewaka is concerned, would cover 2 acres 2 roods 38 perches and materially affects its value for subdivisional purposes. See minutes of this inquiry at page 14 and plan on page 7 of Appendix (attached only to original copy of this report).

As witness the hand of the Judge and the Seal of the Court.

[J.S.]

H. F. AYSON, Judge.

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APPENDIX A.

[Copy.]

THIS DEED, made the tenth day of August, 1875, between Her Majesty Queen Victoria on the one part and Mere Hapimana Huriwaka, Hamuera Takurua, Te Poihipi Tukairangi, Maniapoto Ihakara Kahuaio and Te Popoki Te Kurupae, Tawhiau Maniapoto Tukorehu.

Of Taupo in the province of Auckland, Aboriginal Natives of the Colony of New Zealand (herein-after called "The Vendors") of the other part, witnesseth that, in consideration of the sum of Eleven hundred and fifty pounds (£1150 0 0) by Her Majesty paid to the Vendors on the execution hereof (and the receipt whereof is hereby acknowledged) the Vendors do, and each of them doth, hereby surrender, convey and assure unto Her said Majesty, all that block or parcel of land containing eleven thousand five hundred and ninety four acres or thereabouts known or called Tauhara Middle, as the same is more particularly described in the Schedule hereto, and delineated on the plan drawn on this Deed and coloured red; together with all rights and appurtenances thereto belonging or appertaining.

Reserve for Native occupation of Waipahihi Stream (at mouth of lake) area say fifty to one hundred acres, also a small Landing Reserve at Wharewaka of say under ten acres and another occupation reserve at Patuiwi as sketched on plan and tinted yellow.

(Sgd.) HY. MITCHELL.

To Hold the said land and premises with the appurtenances unto Her said Majesty, Her Heirs and Successors, for ever.

In witness whereof the Vendors have hereunder set their hands the day and year first above written.

(This deed is No. 1272 in Lands and Survey Office.)

APPENDIX B.

[Copy.]

AUCKLAND LAND AND SURVEY DEED No. 4964.

WHEREAS in the years 1870–1871/2 and 1873 the Block of Land known as Tauhara Middle, in the District of Taupo Colony of New Zealand was dealt with by owners thereof by Deeds of Conveyance of three several portions of said Block and by Deed of Lease of the remaining portion thereof to Her Majesty the Queen, and whereas various obstacles legal and technical and relating to Reserves, have hitherto intervened preventing a final settlement thereof and whereas these obstacles are now removed we hereby now confirm the said Deeds of Conveyance and Lease to Her Majesty of the said portions of Tauhara Middle Block, the boundaries of which are described in the schedule written underneath, and we hereby acknowledge receipt of all the consideration monies embodied in the said Deeds of Conveyance to Her Majesty, and also all the monies for rental of the portion leased from the date and according to the terms of the original agreement of Lease namely from the fifteenth of July eighteen hundred and seventy three up to the fifteenth of July eighteen hundred and seventy eight, dated at Tapuacharuru this nineteenth day of April one thousand eight hundred and seventy nine.

TAUHARA MIDDLE PURCHASE BLOCK.

COMMENCING at south east corner of Nukuhau Block along margin of Lake Taupo to Kaitaha, thence to Maunganamu thence to Ngataraturua thence by survey lines 8421 links 865 links 4669 links and links to the northern boundary of Tauhara Middle Block, thence North west along said boundary to Waikato River thence up said River to Otumuheke Stream to south east corner of Otumuheke Block thence along east boundary of said block to Waikato again thence up Waikato River to boundary of Nukuhau Block thence along north eastern and eastern boundaries of said Block to Lake Taupo starting point area 10,946 acres more or less—excepting the Reserves at Waipahihi Patuwi and Wharewaka as surveyed.

(This deed is No. 4964 in Lands and Survey Office.)

APPENDIX C.

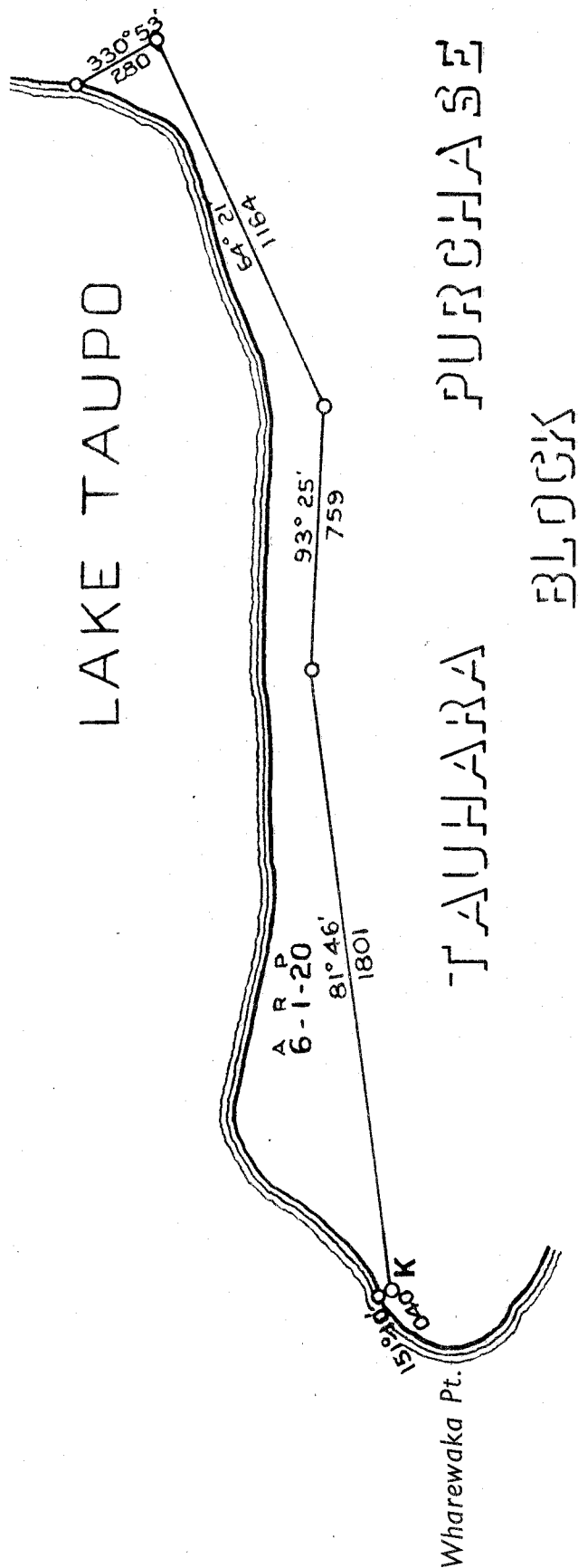
THE GOVERNMENT NATIVE LAND PURCHASES ACT AMENDMENT ACT, 1878.

2ND NOVEMBER, 1878.

Section 4.—When the claim of the Governor to any piece or parcel of land shall be heard under the provisions of the one hundred and seventh section of the Native Land Act, 1873, or the sixth section of the Native Land Act Amendment Act, 1877, it shall be lawful for the Court to award all or any portion of such land to the Governor, and, if any agreement shall have been entered into for reserving for the use and occupation of any person of the Native race any lands comprised within any such block, it shall be lawful for the Governor to execute a Crown grant or other instrument vesting such reserve or reserves in the persons interested therein: Provided that it shall be lawful for the Governor to insert in such Crown grant or other instrument such restrictions as he shall deem fit as to the alienability of such reserve, either by sale, lease, or otherwise.

APPENDIX D.

LAKE TAUPŌ



TAUHAHA PURCHASE
BLOCK

APPENDIX E.

[Copy.]

LANDS DECLARED TO BE WASTE LANDS OF THE CROWN.

ARTHUR GORDON, Governor.

A PROCLAMATION.

WHEREAS the lands described in the Schedule hereto have been purchased out of the sums authorized under "The Immigration and Public Works Act, 1870," and Acts amending the same, to be issued and expended in the purchase of lands in the North Island of New Zealand, and it is expedient that the said lands should be declared to be waste lands of the Crown.

Now, therefore, I, Arthur Hamilton Gordon, the Governor of the Colony of New Zealand, being satisfied that the lands described in the Schedule hereto are free from Native claims and all difficulties in connection therewith, in pursuance and exercise of the power and authority vested in me by the seventeenth section of "The Waste Lands Administration Act, 1876," and the twenty-eighth section of "The Land Act, 1877 Amendment Act, 1879," and all other authorities enabling me in that behalf, do hereby proclaim and declare the said lands to be waste lands of the Crown, subject, except as in the first-mentioned Act provided, to be sold and dealt with according to the provisions of the laws regulating the sale and disposal of waste lands of the Crown in force in the Land District of Auckland.

TAUHARA MIDDLE.

ALL those two pieces of land in the District of Taupo, in the Provincial District of Auckland, being portions of the Tauhara Middle Block, containing together 14,440 acres more or less. One piece bounded towards the North-east by the Tauhara North Block, 34950 links, towards the East by lines 54467 links; towards the south by a line, 24830 links; and towards the West by Lake Taupo, Moana and Waikato River, the Otumuheke Block 2650 links, by the Otumuheke Stream, and again by the Waikato River: *excepting two Native Reserves known respectively as Waipahihi and Patuiwi* and containing by admeasurement 146 acres and 75 acres, more or less. The other piece bounded towards the North by a line, 9661 links; towards the East and South-east by lines, 7249 links; and towards the South-west and West by lines, 9653 links.

APPENDIX F 1.

EXTRACT FROM TAUPO MINUTE BOOK 6, PAGE 31, ETC.

D. SCANNEL, JUDGE. TAUPO, 15TH MAY, 1886.

TAUHARA MIDDLE—SUBDIVISION CASE.

Extract from Wi Maihi Maniapoto's Evidence.

AT Wharewaka we have a settlement; it is a fishing-ground (settlement) from an early period down to the present time there are no cultivations nor plantations, the fish were dried there on strings stretched from poles, baskets for catching fish were also made there, and kouras were used as bait and these nets conveyed to proper fishing-grounds. The name of the particular fishing-ground was Pouwharawhara; another fishing (ground) called Oaia off Wharewaka, and worked from there. Tutaewata was another fishing-ground, this was a general fishing-ground and extended parallel to the beach for some distance on the south side of Wharewaka and from thence to Waimatamate. Tarau another extends from Tutaiwata to the beach to Rotongaio at a stream called Mangatoitoti. The point is called Wharewaka, and also the beach about the point on either side. When the fish were taken they were conveyed by a track to Opepe and settlements thereabout, where they were consumed. I cannot state exactly the earliest period these fishing-grounds were occupied, but they were in use I personally know in my father's and grandfather's time. We have never been molested, if anyone had interfered we should not have spared them.

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Ihakara never joined us in our fishing, he has his grounds on opposite side of the Lake. I cannot say if they ever fished there. I never saw them; if I had heard of his and his people fishing I should have sent him warning to desist, and if he came there again he would be dealt with very severely.

At Waipahihi we have a settlement; it is a very old settlement and has been permanently occupied from a long time back up to the present time; it is a small stream and there are hot springs there. There is a hot spring there in which we can cook food and another in which we bathe. The waters of the stream flow into the Lake. It is the means of attracting large quantities of inanga to its mouth and when that takes place they are caught in nets.

In the former times kumaras were cultivated there, and after kumaras in my own time potatoes were cultivated, and the inanga taken were eaten with the kumaras, and from former times down to present time including the four hapus are living in the same way.

During my own time Ihakara and his people never occupied about Waipahihi; they would perhaps come on a visit, have food with us, and go back.

It was on account of plentiful supply of inanga that the land thereabout as shown on map was made a reserve, and the reserve was made by myself, Hamuera, Mere Hapi, and Te Popoki, and the men who were employed to cut the lines of survey were men of these four hapus and not Ihakara's people. At Wharewaka we have also made a reserve for a settlement for the purpose of taking fish from fishing-grounds. This reserve was also made by the same four people. Both reserves were made for ourselves and not for Ihakara; he has no claim there, his place is Rangatira.

I do not remember any disputes occurring at Waipahihi.

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APPENDIX F 2.

EXTRACT FROM TAUPU MINUTE BOOK No. 6.

PAGES 73-81, SUBDIVISION CASE,

TAUHARA MIDDLE—JUDGEMENT, 29TH MAY, 1886.

[Extract.]

THIS block consisting originally of 700,000 acres passed through the Native Land Court by arrangement at the Court which sat at Oruanui on the 16th March, 1869, and the following grantees were inserted in the Crown grant to represent the hapus set opposite their respective names Paora Hapimana Huriwaka (N'Tutemohuta)

Hamuera Takurua (N'Tutetawha)
 Te Poihipi Tukairangi (N'Rauhoto)
 Maniapoto te Hina (N'Hineuru)
 Ihakara Kahuaao (N'Hinerau)
 Te Popoki te Kurupae (N'Te Urunga)

since that time two separate portions have been alienated to the Government, the first on the north western side between Tauhara mountain and the Waikato River and partly along the shores of Lake Taupo to Kaitaha containing 1405.0 acres within which three reserves are made viz. : Patuiwi 75 acres Waipahihi 146 acres and *Wharewaka 6 acres 1 rood and 20 perches.*

The second portion south east running along the main road from Napier to Taupo from the Rangitaiki river containing about 13,000 acres. A piece of land for a township was also disposed of to the Government but this was afterwards included in the first mentioned block.

Four of the six grantees have died since the block passed the Court and the surviving grantees together with the Successors of those who have died now apply for a subdivision of the remainder of the Block.

The representatives of N'Tutetawha, N'Te Urunga N'Tutemohuta N'Rauhoto and N'Hineuru propose that the subdivision shall be as follows :

A piece of land at Kaitaka to contain two hundred acres to be awarded to the successors of Te Poihipi Tukairangi as representatives of N'Rauhoto, a piece adjoining to contain 100 acres to be awarded to Ihakara Kahuaao as representative of N'Hinerau.

The remaining unalienated portions of the block including the reserves at Patuiwi Waipahihi and Wharewaka to be shared in common by the remaining four hapus viz ; N'Tutemohuta, N'Tutetawha, N'Hineuru and N'Te Urunga.

The representatives of those four hapus as well as Eru Poihipi, Henare Poihipi and Kararaina Poihipi and Ngamo (these being the successors of Te Poihipi Tukairangi) and questioned separately agree.

[Extract.]

The judgment of the Court is that the following subdivisions shall be made :—

To N'Rauhoto as represented by Eru Poihipi, Henare Poihipi, Kararaina and Ngamo as successors of Te Poihipi Tukairangi, Two hundred acres at Kaitaha as shown in the plan to be called Tauhara Middle A.

To Ihakara Kahuaao one hundred acres adjoining, as also shown in the plan to be called Tauhara Middle " B "

To the following viz : N'Tutemohuta as represented by Mere Hapi successor to Paora Hapimana Huriwaka.

N'Tutetawha as represented by Hionia Takurua and Te Matawai Takurua the successors of Hamuera Takurua.

N'Hineuru as represented by Wi Maihi Maniapoto, Tawhirau. Te Hau Motutaiko, Te Rangi, Ngote, Kapu, Mere Axford, Karipa and Tukorehu successors to Maniapoto te Hina.

N'Te Urunga as represented by Te Popoki, Te Kurupae and that portion of N'Hinerau proper represented as parts of and living with those four hapus and of which hapu Hohepa Hinerau, Hemopo and Te Rutene are said to be the representatives the whole of the remaining portion of the block as well as the Reserves at Patuiwi Waipahihi and *Wharewaka.*

Court ordered certificates of titles should issue in favour and on properly certified plans being deposited in Native Land Court Office, Auckland.

Names to be sent in without delay.

APPENDIX G.

CONFERRING JURISDICTION ON NATIVE LAND COURT.

RANFURLY, Governor.

ORDER IN COUNCIL.

At the Government Buildings, at Wellington this 18th day of May, 1899.

Present :

THE HONOURABLE W. C. WALKER PRESIDING IN COUNCIL.

WHEREAS by section fourteen of "The Native Land Court Act, 1894," it is enacted that the Native Land Court shall, as regards all lands within the meaning of subsection ten of section fourteen aforesaid, have jurisdiction as in the said sub-section mentioned: Provided that the Court shall not proceed to exercise such jurisdiction unless the Governor in Council shall by Order authorize the same to be done :

And whereas the land specified in the Schedule hereto is land in respect whereof the Court has jurisdiction as aforesaid, and it is expedient that the Court should be authorized to exercise the same :

Now, therefore, His Excellency the Governor of the Colony of New Zealand, by and with the advice and consent of the Executive Council of the said colony, doth hereby authorise the said Court to exercise in respect of the said lands the jurisdiction conferred as aforesaid—that is to say, to determine whether or not the said lands or any part thereof was, on the investigation of title thereto, intended by the Native Land Court, or by the nominal owner or owners of such lands, to be held by such nominal owner or owners in trust for Natives not named in the title and to determine who are the Natives (if any) entitled beneficially to such lands, and to order the inclusion of such Natives in the title, either together with or in lieu of the nominal owners or any of them, and for the Purpose aforesaid to order the cancellation or amendment of any existing instrument of title, and the issue of such new Crown grants or other instruments of title as may be necessary, and generally to exercise in respect of the said lands all the jurisdiction and powers conferred on the Native Land Court by sub-section ten of section fourteen of "The Native Land Court Act, 1894."

SCHEDULE.

ALL those parcels of land known as Tauhara Middle No. 4A, Pahautea, Rotokui, Patuiwi and Waipahihi, containing respectively about 30,148 acres, 2,294 acres, 276 acres, 75 acres, and 146 acres, being unsold portions of and reserves in the Tauhara Middle Block, as comprised in Crown grant, vol. ix, folio 71, of the Land Transfer Register of the Auckland District.

ALEX WILLIS, Clerk of the Executive Council.

APPENDIX H.

[Copy.]

THE CHIEF JUDGE,—

Before proceeding to deal with the lands known as Tauhara Middle No. 4A etc. specified in the O in C dated 18/5/99, I would like to know whether the Patuiwi and Waipahihi Reserves are really *within the jurisdiction of the Court* in terms of Sub-Sec. 10 of Sec. 14/94, as amended by Sec. 21/96. I have not before me the correspondence referred to in the Under-Secretary's memo of 25/5/99 which resulted in the issue of the O in C and am therefore uncertain whether the special position of those reserves had been considered. They, and also the Wharewaka Reserve, containing 6a. 1r. 2p. and the Parakiri Reserve of 2 acres, were mentioned in proceedings on 9/12/80, when application to cut out the Crown interest in the Tauhara Middle Block was dealt with (see Taupo Vol. 2 pp. 47/8) but were not excepted by the Court. An order in favour of Her Majesty was made on the following day for the whole of the land named Tauhara Middle No. 1 (See Taupo Vol. 2 p. 49) and subsequently Crown grants were issued under Section 4 of the Govt. N.L. Purchases Act Amendment Act, 1878, for Patuiwi and Waipahihi in favour of the six original grantees. It would appear that those parcels of land were thus removed from the jurisdiction of the Court under Sub. Sec. 10 of Sec. 14/94.

It is true that, when dealing with the balance of the Tauhara Middle Block in 1886, the Court made (*inter alia*), an award to certain representatives of hapus of "the whole of the remaining portion of the block, as well as the reserves at Patuiwi, Waipahihi and Wharewaka" (See Taupo Vol. 6 p. 81). Attached to the draft judgment in the file is a note by Mr. Sheridan, dated 1/8/88 that the Court had no jurisdiction over the reserves, and that Crown grants had been issued for two of them several years previously. Attached to the file is also a copy of the O in C of 18/5/99 forwarded for Mr. Sheridan's information, upon which he noted as follows: "Mr. Browne—Waipahihi and Patuiwi are reserves in the first Tauhara Middle purchase (Tauhara Middle No. 1) They were returned by Crown grants under Sec. 4 of The Government Native Land Purchases Act 1878 to the six original owners (Sgd.) P. Sheridan 9/6/99.

The Court further dealt with the balance of Tauhara Middle on 14/9/87 when another award was made in favour of the Crown—for 40,000 acres, named Tauhara Middle No. 4 (Other portions of the Tauhara Middle Block awarded to the Crown besides Tauhara Middle No. 1, were named Tahuatangata (Opepe) and Tauhara East, on 10/12/80 and 1/4/86 respectively—See Orders on file). (See Taupo Vol. 9 p. 242.) The Pahautea and Rotoakui Reserves were excepted from the Crown award. The Court then ordered the issue of the Certificate for Tauhara Middle A, Tauhara Middle B and balance of Tauhara Middle, referred to in judgment of 29/5/86 (See Taupo Vol. 9 p. 243). Orders in respect of Tauhara Middle A, Tauhara Middle B, Tauhara Middle No. 4, Tauhara Middle No. 4A, Rotoakui Reserve and Pahautea Reserve, all dated 14/9/87, are on the file, but there are no separate Orders in respect of Patuiwi, Waipahihi and Wharewaka, which were referred to in the judgment of 29/5/86 as included with the balance of Tauhara Middle in the award then made. As these lands were included in the previous Crown award made *re* Tauhara Middle No. 1 can they be looked upon as included in the Order for Tauhara Middle No. 4A? Wharewaka is marked on the plan, but no Crown grant appears to have been issued for it, as was done in respect of Patuiwi and Waipahihi. The Natives claim it, and say that it should have been included with others in the O in C, but at present it is nominally Crown land. Parakiri is also claimed by Natives, but is not marked on the plan, and was not referred to by the Court in its judgment of 29/5/86. Possibly the Land Purchase Department may have arranged matters with Poihipi Tukairangi for monetary consideration in lieu of the 2 acres at the outlet of Lake Taupo.

I shall feel greatly obliged by your letting me know at your earliest convenience your opinion as to the true position of the Patuiwi, Waipahihi and Wharewaka Reserves. It will considerably affect the proceedings under the O in C.

File 42/T *re* Tauhara Middle and Taupo M. Books Nos. 2, 6 and 9 are forwarded under separate cover. The plan is at present in the Survey Office, Auckland.

(Sgd.) H. D. JOHNSON,
Judge, Native Land Court.

(Taupo 1, 29/9/05.)

APPENDIX 11.

[Copy.]

Tapuaeharuru, Taupo, October 21st, 1905.

The Honourable Minister for Native Affairs,

GREETINGS,—

This is to tell you of some trouble that has affected land that was set apart in the Tauhara Middle Block, Parakiri is its name, containing two acres, it was set apart, for Te Poihipi Tukairangi as a reserve, soil was taken (therefrom) to improve another piece, they wishing to do so, I stopped it, because I knew that that piece was ours, this is to inform you that the certificates for some divisions in Tauhara have issued, namely for Patuiwi and Waipahihi, why ever did it not issue for this one—the Parakiri, Taupo. This is an application to you to issue the certificate for this land, because I know quite well that that land has not gone to any one, or been disposed of in any way.

That is all.

From your friend,
PITIROI MOHI.

THE REGISTRAR, NATIVE LAND COURT, AUCKLAND,—

Please furnish a report on this matter. 27/10/05.

JUDGE JOHNSON,—

All books and papers relating to this matter are with you. Please give me what information is obtainable.

(Sgd.) A. HOLLAND. 31/10/05.

MR. HOLLAND,—

Applications Nos. 15, 23 and 25 in Panui were for investigation of Title to Te Parakiri, but were dismissed by me, as the land in question had been already clothed with a title. It is one of four reserves mentioned in proceedings on 9/12/80 when application to cut out the Crown interest in the Tauhara Middle Block was dealt with. On the following day, an Order was made in favour of Her Majesty for the whole of the land called Tauhara Middle No. 1, no reservations being then made by the Court. Out of these four proposed reserves, three are marked on plan—namely, Patuiwi, Waipahihi and Wharewaka and Crown grants have been issued for the first two under Section 4 of the Govt. N.L. Purchases Act Amendment Act, 1878. The whole position is shown in a memo recently addressed by me to the Chief Judge, a copy of which I forwarded to Mr. Sheridan (with N.L.P. 1905/80) on the 14th ultimo. I then asked him to give me an early reply as to the actual position of the Wharewaka and Parakiri Reserves, but he has not yet done so. It is for the N.L. Purchase Department to show why the Crown grants for those two proposed reserves were not issued.

(Sgd.) H. JOHNSON. 4/11/05.

THE UNDER-SECRETARY,—

Please see Judge Johnson's memo attached.

(Sgd.) A. G. HOLLAND. 8/11/05.

APPENDIX I 2.

[Copy.]

NATIVE LAND PURCHASES.

Date of Paper : October 5th, 1905. From : Popoki te Kurupae Tapuaeharuru.
 Date when registered : October 10th, 1905. Subject : Wishes to sell Tauhara Maunga.
 Previous Paper : 00/54 attached.

MINUTES.

JUDGE JOHNSON,—

Please inform me whether Tauhara Middle No. 4A has been dealt with by your Court in any way. The relative interests were not defined when inquiries were made on a previous occasion.
 (Sgd.) P. SHERIDAN. 10/10/05.

MR. SHERIDAN,—

It had been arranged that case *re* Tauhara Middle No. 4A and Reserves specified in O. in C. should follow the Tahorakuri Partition cases, but just when I was nearly ready to go on with it, Te Popoki te Kurupae wrote to the Chief Judge, asking that it should be held over until after planting season, and meanwhile wants to sell the land to Government. When the matter was discussed in Court others interested supported his request and I have therefore started another case.

With regard to the non-definition of relative interests by Court on previous occasion, referred to by you, I think it desirable to forward an extract from Taupo Vol. 9, p. 242, for your information. It will be contended that what then took place was practically a definition of relative interests by consent as between the four original grantees (or their successors) found to be owners of Tauhara Middle No. 4A, the other two original grantees (or successors) having been awarded 200 acres and 100 acres respectively as representing their interests in the Tauhara Middle Block.

I also forward a copy of memo recently addressed by me to the Chief Judge in connection with this case. Kindly let me know what is the actual position of the Wharewaka and Parakiri Reserves referred to therein.
 (Sgd.) H. D. JOHNSON. 14/10/05.

JUDGE JOHNSON,—

I presume "Parakere" is the reserve in the Nukuhau purchase. If so you will perceive by the deeds endorsed that both it and Wharewaka are public reserves and that the Natives have no rights in connection with them other than as British subjects generally, including of course your self and myself.
 (Sgd.) P. SHERIDAN. 14/11/05.

MR. SHERIDAN,—

I have shown the deeds to the Natives interested but they are not at all satisfied. They will move further in the matter. Deeds returned herewith.
 (Sgd.) H. D. JOHNSON.

APPENDIX J.

EXTRACT FROM TAUPO MINUTE BOOK No. 32, FOLIOS 208-219.

TAUPO, 24TH AUGUST, 1937. H. F. AYSON, JUDGE.

Re Wharewaka Reserve.—Inquiry upon Petition 123/1936 of Waaka te Arakai and others referred to Court pursuant to Section 13 of Native Purposes Act, 1936.

Present.—Waaka te Arakai, Paora Tahau, Tupara Maniapoto, Arihia Pua, Rore Rutene, Hurae Wiremu, Panapa Maniapoto, and others.

Mr. Bird for Natives ; Mr. Darby for Crown Lands Department.

Petition read at request of Mr. Bird.

At request of Court Mr. Darby put in statement in writing with Appendix (No. 1).

Mr. Darby's statement read and explained by Court.

Mr. Darby stated that Crown's contention is that Wharewaka is a "Public Landing Place."

(NOTE.—Plans on Deed 1272 show Parakiri defined and marked "Public Reserve" but Wharewaka as "Landing Reserve".)

Mr. Darby's contentions are in statement and particularly on pages 5 and 6.

Case for Petitioners.

Waaka te Arakai.] Wharewaka was reserved by Natives to fish for Kokopu. It was a landing reserve for canoes to fish. It was on second purchase of Township of Taupo that three reserves were made—viz., Wharewaka, Patuiwi, and Waipahihi. The latter two for occupation and Wharewaka for fishing for Kokopu. They have a fishing trap laid out in the lake—for distance of chain and half starting at shore to a tree in lake named Te Pere-a-ngatoroirangi—really an atua. It grew from an arrow shot from top of Tauhara. Trap made of fern and timber. A chain of traps extending into lake. All from ancient times. I remember the time we caught Kopopu there but not now. Some people lived there—one man named Matewaru; I saw him—also Hemepo; not permanent but for a month or so at a time. No one buried there. Fishing seasons for Kopopu is the winter time. Many people fished there for some time after deed signed, but not in recent times. Trout have fed on Kokopu and now pretty well extinct. (Tupara Maniapoto says he fished there up to about 30 years ago.) I remember when these lands reserved from sale to Crown. When sale proceeding our elders asked for 7 acres to be reserved. Maniapoto asked Court. My father was Hunia Takarua, the father of Hamuera Takarua named in title. I think Hunia signed deed.

(Tauhara,
1875.)

(NOTE.—Hamuere signed deeds of 1875 and 1879.)

No one lived there recently. At Wharewaka only Kokopu fishing ground on that side of lake. On other side there is Rangatira. We always looked on Wharewaka as our own. We looked on Parakiri as our land. We wanted our reserves for landing and occupation. Only for Maoris. Wharewaka not for Pakehas. No European occupation on that side of lake when deeds signed. No European used lake at time or wanted to land on eastern side. No road at that time. No connection between Taupo and any other place via Wharewaka. Wharewaka only required by Maoris. Never used by pakehas. Only since trout came did Europeans use the lake. Crown never asserted claim to Wharewaka and not even in recent times. I only knew Crown claimed it when Parakiri came up and I put in my petition.

Cross-examined by Mr. Darby.] People came to fish in canoes. People came from Waitahanui, Waipahihi, and Rangatira. They all came in canoes. Sometimes stayed two or three nights, some a week, sometimes a month. Only fishing houses—of raupo and manuka but no permanent buildings—only shelters. Only used land for fishing purposes. Only koura, inanga, and kokopu in lake at that time. Europeans didn't fish there. Soldiers here but not using lake—busy looking after Te Kooti. Before purchase Wharewaka was the Maori name for this place and owned by all owners of Tauhara.

Mr. Bird.] We recognize the chain reserve and without further compensation than already given in the grant to N' Tuwharetoa of £3,000 (approx.) per year. But claim balance of land and would consider an exchange on valuation. We do not require it any further for Kokopu fishing. I have heard Mr. Darby's case. I must refer to Parakiri too as it is in petition. Judge Holland did not put forward the case based on the confirmatory agreement. This deed covers the other deeds. We claim Parakiri as a reserve. It is mentioned in evidence. Wharewaka excepted from sale by both deeds. Reserved for natives alone. See Waaka's evidence to-day. Natives always thought Wharewaka was theirs. I say we should get Wharewaka. One main condition of sale to Crown was that Government pay all survey costs. It is in deed. We are prepared to accept Wharewaka back with the chain off but will lump area left at western end.

Paora Tahau.] Am descendant of Mere Hapi—one of the grantees. The position as disclosed yesterday is new to me. I knew there were three reserves set aside for the natives—Patuiwi Waipahihi, Wharewaka also Parakiri. Patuiwi a permanent reserve for the Maoris. Waipahihi also the same. Both reserved out of the sale. And Wharewaka also reserved. Our elders fished from Wharewaka right down to our time. Fishing there at time of sale. Fished for Kokopu. My father, myself, and Maniapoto used to go from Waipahihi to fish. We used to turn our canoes upside down and use them for shelter at night. Canoe used as a whare—hence the name "Wharewaka," meaning "canoe house." Area 6 acres 1 rood 20 perches. Always understood Wharewaka was a permanent reserve for the Maori owners of Tauhara for all time. Reserved from sale to Crown accordingly. I humbly pray to Court that Wharewaka should be reserved for all time to the Maori. I think Crown has already derived sufficient revenue from camping sites and should leave us Wharewaka. 25/8/1937.

Questioned by Mr. Darby.] Remembered Wharewaka since I was a child. Waipahihi never used for fishing for Kokopu, but inanga caught there. A stream there and that is the reason. Inanga came up stream but not the Kokopu. Since sale to Crown of Tauhara people have fished for Kokopu at Wharewaka. About 30 years ago approximately the last fishing for Kokopu.

To Court.] I live at Wharewaka. I don't think Crown has exercised acts of Ownership since the sale.

Tupara Maniapoto.] I endorse previous statements on our side.

Rore Rutene.] Ditto.

Panapa Maniapoto.] Ditto.

Mr. Darby.] At outset I would like to correct statement made yesterday by Mr. Bird regarding survey fees. Nothing in deed to say Crown should pay survey fees. See copy in Appendix. Natives actually paid survey fees—probably also for the Crown piece. The confirmatory deed of 1879 was made for several reasons—one was that Judge Rogan had appointed successors to one of the original grantees—many successors and Crown embarrassed. Question of reserves also cropped up in

connection with whole of Tauhara Block. It covered other blocks in the Tauhara Middle. Crown contemplated buying 92,000 acres, balance of Tauhara Middle, but succeeded only as to a part, roughly 12,000 acres. Correspondence *re* reserves produced and shown in appendix, shows view which Government through its officers took regarding reserves under occupation by the Maoris and gave them back. Under fourth section of Government Native Land Purchases Amendment 1878, Court could give whole of purchased land to Crown including reserves but onus thereon Crown to *re* grant. Court could have given only area less reserves under Section 4. Crown didn't recognize any claim by Maoris to Wharewaka as in the other two cases. Nothing in titles to show any particular reason. But see what Sheridan said and actions of officers there at the time. Value then small and of little value to Crown. After deed signed C. O. Davies who interpreted deeds only wanted to give 5 acres at Waipahihi for fishing—dated 6/9/75. Deed 10/8/75. From Waipahihi to Wharewaka, about 2 miles, and from Waitahanui about 4 miles. The Crown cut up portion of Tauhara Middle—Sec. 55/6 near to Wharewaka—as act of ownership. One of sections included Wharewaka and advertised. No. 36 Block 6. Subdivisional scheme took in whole of Wharewaka—about 20 years ago. (To let me have particulars.) See p. 219. (Maoris say they did not know of it.) Latest valuation about £5 acre in 1931.

					A.	R.	P.
Area of chain reserve is approximately	..	..	..	..	3	2	22
Left of Wharewaka	..	..	..	..	2	2	38
					6	1	20

See Plan 4214. Greatest width at west end left about 3 chains. I think Crown has discharged the onus on it under the deed and arrangement at that date. Survey made April, 1878. Fourth section 78 came into force 2nd November, 1878. Might have influenced shape of land—if to be returned.

(NOTE.—Maoris present—say Ngamotu Wiremu, brother of Maniapoto (a grantee) showed the boundaries to Captain A. C. Turner.)

Mr. Darby.] Crown wishes in any event to retain land and if necessary to pay compensation. (Maoris say they don't want compensation but the land.)

Mr. Darby.] Crown is prepared to proclaim whole area. 6 acs. 1 rd. 20 pchs. a public landing reserve.

(Maoris—No but agree to proclamation as landing reserve (as in deed) for Maoris.)

Court.] Can Crown suggest why a public landing reserve required at Wharewaka in 1875.

Mr. Darby.] A military settlement at Taupo then and may have wanted to cross lake.

Court.] But there was whole of Tauhara Middle to land on. No roads there.

Maoris.] No boats.

Mr. Darby.] Action of Crown, if taken now, to proclaim a public landing reserve would not hurt Maoris over fishing.

Court.] But public could camp there.

Mr. Darby.] I submit any basis of consideration shows that Maoris would depend on Crown for access. That would affect value if compensation ordered.

Court.] Report will be prepared as directed by Native Purposes Act, 1936.

NOTE A.—Regarding question of payment of surveys, see file N.L.P. 1905/80—

- (1) Memo. by Mr. Gill dated 10th November, 1875, shows that of total purchase money in Deed, viz £1,150, the parties received only £231. Balance made up of:—

	£
	736 original money.
11,594	80 recent surveys (£1,875).
acres.	100 to Mr. C. O. Davies for arranging business between Grantee and Mr. Mitchell.
	3 Court fees.
	21 held over (may have gone to Natives).
	940
	210 to grantees.
	<u>£1,150</u>

£231 to natives = 5d. per acre.

£916 to hands of Government purchase agents, shown by memo.

Matter that might bring serious charges against Native Office.

- (2) Also Mr. Davies memo. showing these figures.

NOTE B.—See page 216.

Mr. Darby wrote as per attached letter regarding the proposed sale by the Crown in 1911.

[Copy.]

Department of Lands and Survey, Private Bag, Auckland, C. 1, 27th August, 1937.

MEMORANDUM for—

Judge Ayson, Native Land Court, Rotorua.

Referring to your request to Mr. Darby of the 26th for further information relative to Wharewaka Block, I now forward the following particulars for the purpose of your report :—

The area adjoining what is called Wharewaka was cut up for sections in 1911 and offered for selection by notice in the Crown Lands Guide on the 24th October, 1911. I enclose herewith a photostat of the Sale Plan from which you will observe that the area comprising Wharewaka was almost absorbed into the Chain Reserve allowed for in terms of Section 13 of the Land Act, 1908. The balance of the area is, from an inspection of the plan, absorbed in Section 36 comprising 72½ acres.

From a perusal of the file at that date, there is no record of any objection being made by the Native owners though I am unable to say whether the sale poster or Crown Lands Guide would come before their notice. In the schedule of Upset Prices the value placed on Section 36 is £100. Evidently the demand for land in that locality was not keen as this section was not taken up. Sections 33 and 34 were taken up and 34 was later surrendered.

(Area,
72½ acres.)

In regard to the authority for setting aside areas of Crown Land for Landing reserves, this is apparently contained in Section 12 of the Waste Lands Act of 1858 which reads as follows :—

“ It shall also be lawful for the Governor in Council, at any time and from time to time, to except from sale, and either reserve to Her Majesty or dispose of in such other manner as for the public interest may seem best, such of the waste lands of the Crown in any of the said Provinces as may be required for the purposes of military defence, or for the construction of trunk lines of road, or as sites for public buildings for the use of the General Government, or for other purposes of public utility or convenience ; and all such exceptions shall be deemed to have been made whenever the Governor by writing under his hand shall have notified to the Superintendent of the Province in which any land so excepted is situate that the same is required for any of the purposes aforesaid, and such notification shall have been published in the “ New Zealand Gazette ”.

I think this covers all the additional ground required.

Yours sincerely,

A. O. DARBY,

Native Lands Draughtsman.

P.S.—I will be away up North during the week and will attend to any further communication on my return.

PARLIAMENTARY PETITION No. 123/1936 OF WAAKA TE ARAKAI AND OTHERS *RE*
WHAREWAKA RESERVE IN TAUHARA MIDDLE No. 1 BLOCK, TAUPO COUNTY.

REFERRED to the Native Land Court in pursuance of section 542 of the Native Land Act, 1931, and included in the Schedule to the Native Purposes Act, 1936.

In order that the Commission of Inquiry may be seized of the general position, I shall deal with the various matters affecting the Tauhara Block chronologically.

The evidence submitted will be largely documentary.

The investigation of title to Tauhara Middle was held at Oruanui, 5th June, 1868, when Judge Smith ordered a certificate of title to issue for Tauhara Middle in favour of six (6) owners.

A further hearing took place on 16th June, 1869, when a certificate of title was ordered to issue if within twelve months claimants furnished a proper survey. Taupo, M.B. 1/195, &c., 201, &c.

A Crown grant certificate of title under Native Land Acts dated 8th February 1873, as from 28th March, 1872, was issued and registered as C.T. 9/71. The land was called Tauhara Middle, and comprised 106,080 acres, as shown on plan 1546 (red). G.T. 9/71.

From out of this area the Crown purchased by deed No. 407, dated 19th July, 1870, an area of 534 acres, called Nukuhau Block, and by deed No. 1272, dated 10th August, 1875, an area of 11,594 acres. Deed 1272, 10/8/75. App. A.

The Crown also entered into negotiation for a lease of the balance of the area—see deed 773, dated 10th July, 1875. Deed 773.

This latter transaction was abandoned and portion of the area was purchased by deed of 7th June, 1881, as Tauhara No. 3.

The two conveyances, the lease, and also the purchase of Opepe Block were confirmed by a further document, deed No. 4964, dated the 19th April, 1879. Deed 4964, 19/4/79. App. B.

In pursuance of an application under the Native Land Act Amendment Act, 1877, the Native Minister caused application to be made to the Native Land Court to ascertain and determine what interest in Tauhara Middle No. 1 Block had been acquired by the Crown. An order was made by Judge Symonds on the 10th December, 1880, in favour of Her Majesty for an area of 14,050 acres, less reserves, 221 acres : net, 13,829 acres.

The area was proclaimed waste lands of the Crown by notice in *New Zealand Gazette* of 14th June, 1881. Gazette 14/6/81, page 751. App. F.

The area is comprised in certificate of title, folio 110, dated 28th September, 1883, in the name of Her Majesty the Queen excepting those portions containing 221 acres, being called Patuiwi and Waipahihi. C.T. 46/110. App. G.

The area known as Wharewaka forms portion of the land comprised in deed 1272 of 10th August, 1875, by which the Native owners "conveyed to Her Majesty all that block or parcel of land containing 11,060 acres and known or called Tauhara Middle excepting" reserve for Native occupation at Waipahihi Stream (at mouth of Lake) area, say fifty to one hundred acres, *also a small landing reserve at Wharewaka of say, under ten (10) acres*, and another occupation reserve at Patuiwi as sketched on plan and tinted yellow.

The confirmatory deed in respect of Tauhara Middle No. 1 contains a schedule of the boundaries, but excepting "*the Reserves at Waipahihi, Patuiwi, and Wharewaka as surveyed.*"

Deed 4964,
19/7/79.
App. B.
Plan 4214
(red). App. D.
Extracts D2
and 3.

Wharewaka was surveyed in April, 1878 (see plan 4214, red).

On 24th April, 1877, Mr. H. W. Mitchell, the officer conducting the purchase of Tauhara Middle No. 1, reported to the Hon. J. D. Ormond on the position of Native land purchases in Taupo District. On the margin of the report is a note by Mr. R. J. Gill, Under-Secretary, as follows, *inter alia* "Mr. Mitchell should see that the reserves promised in these blocks are duly made."

About this period, 8th May, 1877, the question of the status of the *landing reserve* at Taupo was raised, and Mr. Mitchell referred the matter to Mr. Locke who conducted the purchase. Mr. Locke advised by wire that it was a public landing reserve.

App. E.
21/3/78.

Mitchell, reporting to the Under-Secretary of Tauhara Middle lease, mentioned the difficulties arising over reserves, and throws some light on the policy of the Government: "The agents therefore informed the Natives that these proposals could not be entertained, and meeting after meeting was held with the grantees, and those outside the grant, with the object of arriving at some conclusion *which would satisfy the majority of the Natives concerned and yet better protect the interests of the public*, but the only decision agreed to was that the proposed reserves should be roughly surveyed and sketched on a plan for reference to the Government."

Captain Turner was therefore asked to do this work when in the neighbourhood.

Although this memo refers to Tauhara lease—that is, the balance of Tauhara Middle after cutting out Tauhara Middle No. 1—Turner surveyed Wharewaka in April, 1878 (see plan 4214), Patuiwi in April, 1878 (see plan 4215), and Waipahihi the same month (see plan 4216).

A further extract reads: "It was agreed by the agents that sufficient provision be made within the block for Native cultivation and residence."

E 2. 1/3/79.

This appears to be the principle laid down in these purchases—landing reserves were apparently not treated as reserves for Natives alone, but for the public.

Waipahihi
C.T., 24/204.
Patuiwi C.T.,
24/205.

Crown grant certificate of titles under the fourth section of the Native Land Purchase Act, 1878, as from the 28th March, 1872, were issued for Patuiwi on the 3rd November, 1881, and for Waipahihi on 3rd March, 1881, the grantees being Paora Hapimana Huriwaka Hamuera Takurua, Te Poihipi Tukairangi, Maniapoto te Hina, Ihakara Kahua, and Popoki te Kurapae, corresponding to the original grantees of Tauhara Middle.

On 11th June, 1881, a request was received from Poihipi te Kume to issue a grant for Patuiwi, but no mention is made of Wharewaka.

Taupo M.B.,
2/47-48.
Date
9/12/1880.

At the proceedings of the Court at Taupo on the 9th December, 1880, when the application by the Crown for definition of its interest in Tauhara Middle No. 1 was dealt with, evidence given by Maihi Maniapoto states, *inter alia*, "Waipahihi is a reserve in the sold part at Tapuaharuru containing 146 acres, at Wharewaka 6 acres 1 rood 20 perches, at Wharepatuiwi 75 acres. The sale of the pieces mentioned by me, with the exception of the reserves, has been completed." The original plans of survey were apparently produced. The order made, as the outcome of the proceedings, declared Tauhara Middle No. 1 to be the property of Her Majesty, and contained no reference to reserves.

However, the following minute is endorsed on the order:—

"The order is subject to an agreement to return by Crown grant to the Native owners the Patuiwi and Waipahihi Reserves, containing respectively 75 acres and 146 acres, as shown on plan marked "A" and attached.

"(Sgd.) R. J. GILL, Under-Secretary."

The minute of Mr. Gill, in view of his previous direction that Mr. Mitchell should see "that the reserves promised in these blocks are duly made," rather indicates that those in authority did not contemplate the return of the landing reserve to the Natives.

Extract
N.Z. Gazette,
1881, p. 752.
App. F.

The Crown's title to Tauhara Middle was completed by Proclamation in *New Zealand Gazette*, 1881, page 752, and by issue of certificate of title, Volume 46, folio 110, Auckland Reg. District, on 28th September, 1883.

Taupo M.B.,
6/73-81.
29/5/1886.

The Tauhara Middle Block next came before the Native Land Court 29th May, 1886, when Judge Scannell made orders for further subdivision, including the reserves at Patuiwi, Waipahihi, and Wharewaka.

The question of the validity of the orders as affecting the reserves was raised by Mr. Sheridan, of the Native Department Office in Wellington, and appended hereto are copies of the original memoranda relative thereto. It would appear that the Court had no jurisdiction in respect of two of the reserves—Waipahihi and Patuiwi—as these had already been dealt with and titles issued in pursuance of the fourth section of the Government Native Land Purchase Amendment Act, 1878, while Wharewaka formed part of the area proclaimed Crown land on 16th June, 1881. In the absence of any authority conferring jurisdiction on the Court, the Court clearly could not make any order in favour of the Natives over Crown land.

App. G.
29/9/05.

Mr. Sheridan, in his memo to Judge Scannell, stated that it was then (1881) decided not to grant Wharewaka, but simply to reserve it under the provisions of the Land Act.

There is a note to the effect that "Major Scannell took a note of this with a view to revising his judgment."

Mr. Sheridan was an officer of the Native Department in 1877, and perhaps before that date and from my knowledge of the purchase operations of the Department he handled most of the transactions from the Wellington end and he would know the Government's policy in respect of these purchases.

There appears a hiatus between 1886 and 1899. In the later year an Order in Council (see *N.Z. Gazette*, 1899, page 1013) conferred jurisdiction on the Native Land Court, in pursuance of section 14 subsection (10), of the Native Land Act, 1894, to inquire into the status of various reserves in Tauhara Blocks, including Waipahihi and Patuiwi, but making no reference to Wharewaka.

App. G 1.

Judge Johnson raised the question of jurisdiction and also the question as to whether Wharewaka and Parakiri should be included in the Order in Council, and asks, among other things, what is the position of these reserves.

App. G 2.,
29/9/05.

Judge Johnson, in reply to a letter from Pitiroi Mohi to the Native Minister relative to Parakiri, refers to his memorandum of 29th September, 1905, to the Chief Judge, and states, *inter alia*, "It is for the Native Land Purchase Department to show why the Crown grants for these two proposed reserves were not issued."

App. I.

Mr. Sheridan replied that both Parakiri and Wharewaka were public reserves.

App. H.

The matter appears to have lain dormant in respect of Wharewaka until the present petition was lodged, although a petition was lodged in respect of Parakiri and came before the Native Land Court for inquiry and report on 25th January, 1927 (see Taupo M.B. 30, folio 377). Copy of minutes and report is contained on Native Department file N.D. 21/3/39.

The attitude and actions of the various Governments has been consistent throughout with the view that both Parakiri and Wharewaka are public landing reserves—Parakiri was gazetted a reserve for a landing-place as early as 1874, before the confirmatory deed was contracted.

Apparently there was no immediate use by the public of Wharewaka landing, otherwise it might have been similarly dealt with as the landing reserve at Parakiri—*i.e.*, by public notification in the *Gazette*.

In reviewing the circumstances surrounding the purchase operations relative to the Tauhara lands, Wharewaka has been referred to always as a landing reserve, while Patuiwi and Waipahihi were known as occupation reserves. The correspondence shows that certain areas in occupation were to be reserved to the Natives, but no mention is made of returning landing reserves.

The titles to reserves of an occupational character were duly issued.

Once the land became Crown land the Government was able to deal with the landing reserves without reference to the Native Land Court, under the provisions of the Land Act, by gazetting them public reserves.

I submit that it was on account of this attitude that no action was taken under the fourth section of the Native Land Purchase Act Amendment Act, 1878, that Sheridan's dictum was in accord with that attitude and that both Parakiri and Wharewaka were excluded from the Order in Council of the 18th May, 1899 (see *N.Z. Gazette*, page 1013).

The purpose for which the reserves were made—*i.e.*, public landing reserves—throws no disabilities or hardship on the Native owners in regard to their utilization as such.

Wharewaka, as surveyed on plan 4214 (red), comprises 6 acres 1 rood 20 perches fronting Lake Taupo, and if it were Native land would be subject to the Taupo Waters legislation (see section 14, subsection (3), of the Native Land Act, and Native Land Claims Adjustment Act, 1926), by which a public easement of 1 chain is created, thereby rendering it unfit for subdivisional purposes.

App. K.

The purchase-price of Tauhara Middle was approximately 2s. per acre, the last Government valuation of the area of which Wharewaka forms part, Section 36, Block VI, Tauhara Survey District, is approximately £5 per acre, made in 1931.

The legal position is clear, the Crown has acquired a legal title—

- (1) By Proclamation.
- (2) By certificate of title.
- (3) By virtue of section 115 of the Native Land Act, 1931.

I would submit that the merits of the petition would be met by proclaiming the area of 6 acres 1 rood 20 perches a public landing reserve, with equal rights for Maori or pakeha.

I produce to the Court for its inspection alone the following documents and records—

- Native Department File 1905/80.
- Native Department File 21/3/39.
- Auckland Crown purchase deeds 407, Tapuaeharuru.
- Auckland Crown purchase deeds 1272, Tauhara Middle.
- Auckland Crown purchase deeds 4964, Confirmatory.
- Auckland District plans 1545-6-7 and 8.
- Auckland District plans 3989, sketch.
- Auckland District plans 4214s, Wharewaka.

NOTE.—Copies of Mr. Darby's other exhibits are attached to my report.

H. F. AYSON.

“ D 2.”

[Copy.]

Ohinemutu, 24th April, 1877.

The Hon. J. D. Ormond, Wellington.

SIR,—

I have the honour to inform you that in accordance with your letter of instructions (18th December, 1876) I proceeded to Taupo for the purpose of preparing the Natives in that District for the contemplated opening of the Native Lands Court, and to arrange the claims of succession, subdivision and new claims necessary for the completion of the Government land purchases and leases there.

My arrival at Taupo was delayed in consequence of the Hon. Native Minister's visit in January to the Awara tribe at Tauranga, but I reached Topuaoharuru in February and in the month of March I was joined by Captain Mair, the District Officer of the Native Land Court, and we then took advantage of a general meeting of the Taupo Natives at Taupo (caused by the Hon. Dr. Pollen's interview with Rewi Maniapoto) to complete the various matters demanding our attention, so far as we could. The blocks thus prepared for the first sitting of the Court consist of the following :—

- | | |
|---------|--|
| 30,000. | (1) Oruarua, sale and lease, Succession claim (2 blocks). |
| 96,000. | (2) Tauhara Middle lease ditto and excision of minors interests and appointment of guardian. |
| 41,000. | (3) Runanga No. 2 lease. Excision of one grantee's interest. |
| | (4) Mangatainoko purchase, new clause. |
| 60,000. | (5) Mohaka purchase, new clause. |
| | (6) Taharua purchase, new clause. |
| 10,000. | (7) Tauhara Middle purchase is also hampered with the minors difficulty which is not, as is the case with the lease, surmountable by the appointment of a guardian. Mr. Davies and myself recommended, in a previous report, that a special Act be prepared for the purpose of legalising this purchase, but in the absence of that course being adopted the only other alternative seems to be the excision of the N.L. Court of the Minors interests which may be found to exist in the portion of the Tauhara Middle Block purchases etc. |

(Sgd.) HENRY MITCHELL.

Blocks 1, 2 and 3 have been already before the Native Land Court. All that is wanted to complete the Crown's Title can be done at the next sitting. Subdivision orders and successors claims—Mr. Mitchell *should see that the Reserves promised in these blocks are duly made.*

(Sgd.) R. J. GILL.

“ D 3.”

[Copy.]

TAUHARA MIDDLE BLOCK, TAUPU, 106080 ACRES.

FOR NATIVE MINISTER,—

The “Tauhara” Block purchase and lease has been under reference many times, its present position has little altered since 1873. The land passed the Courts in March 1869 and was awarded to six Grantees. In 1873 Messrs. Mitchell and Davies for the Government purchased 11,594 acres and leased 93,871 acres, four of the six Grantees signing the deeds, the other two Grantees being dead. The accession orders were applied for. The Court ordered the interests of Hapiurana to Meri Hapi and the interest Maniapoto to one Adult and nine others (minors). The deeds have since been signed by Meri Hapi and the Trustees of the minors.

The deed of Lease recited “Tenancy to begin so soon as the Grantees complete legal lease.” No mention is made of any reserves. The money paid on account of purchase has been £1590 and on account of rent £195. The balance due to July 1878 supporting the fixed rent to be paid is £305. *The reserves to be made are not arranged for, either in the purchased or leased portion of the Block.*

I submit it would be a bad precedent to pay further rents on this until the Crown's title is perfect, probably if it were known to the Grantees that on the settlement of the Reserves question and the completion of the Title, the Government would pay all the back rent due from the date of Agreement to lease (July 1873) to the present time; they would exert themselves to have the deeds of purchase and lease at once completed.

(Sgd.) RICH'D JOHN GILL. 22/2/79.

"E."

[Copy.]

Rotorua, 21st March, 1878.

The Under Secretary, Native Department.

SIR,—

I have the honor to enclose herewith a tracing from the map of "Tauhara Middle lease" block, Taupo District for the purpose of showing you the various places therein, indicated by the Natives as necessary reserves for cultivation and residence.

These proposed reservations if agreed to would very materially depreciate the value of the lease to Government, absorbing as they do the bulk of the forests and the few localities within the block suitable for homesteads. The agents therefore informed the Natives that these proposals could not be entertained and meeting after meeting was held with the Grantees, and those outside the grant, with the object of arriving at some conclusion which would satisfy the majority of the Natives concerned, and yet better protect the interests of the public, but the only decision agreed to was that the proposed reserves should be roughly surveyed and sketched on a plan for reference to the Government.

Captain Turner was therefore asked to do this work when in that neighbourhood and I received the accompanying tracing showing same, from the survey office a few days since. Under the terms of the Deed of lease of this block the Government may decide absolutely what reserves are to be allowed, no stipulation having been made on the subject at the time of signing the deed. On the representation, however, of some of the grantees subsequently, it was agreed by the agents that sufficient provision be made within the block for Native cultivation and residence. But the present proposals appeared to us to go far beyond that and with the view—we had reason to believe, of leasing these choice reserves to private individuals at the expense of the original Government lease. A Sergeant of the Armed Constabulary named Straughan, stationed at Taupo now occupies "Motukino" and pays rent I understand, and "Motukino" is one of the places asked for as a reserve. A settler named Griffiths also rents a small portion of the Opepe Bush which is included in the area asked for there as residence and cultivation reserve, whereas the fact of the Natives leasing these places proved that the lands are not immediately required for native use. In the case of "Motukino" and "Opepe" it must be noted that these two places were occupied by Europeans (squatters) at the time of the Government Agents leasing the whole block to Government, but these original Europeans have left some time ago. "Pahautea" has not been occupied by Natives for generations and was only visited of late years during the bird season. "Waitahanui" contains a large swamp of no use for Native residence or cultivation and "Tauhara Mountain" while being a very desirable portion of the block for European occupation is only of value to the Natives for bush cultivations where a few acres only to each hapu have been used for many years past.

If I am permitted to make any suggestion I would recommend that the District Officer, Captain Mair be deputed to exercise the right which the Government hold of deciding the number and area of Reserves which may be deemed necessary for the Natives within the "Tauhora lease" as I believe, with his assistance, the question could be settled satisfactorily. This appears to be the only question now hindering the completion of the "Tauhora Middle lease." (Sgd.) HENRY W. MITCHELL.

"E 2."

[Copy.]

TELEGRAM.

1st March, 1879.

HENRY MITCHELL, Esq., Taupo.

No. 1342. Pending other instructions please close the Middle Tauhara Lease question using every means first to make it a purchase. Back rent will be paid on the understanding that the Reserves embrace only lands under *cultivation and occupation by Native owners*. The account for rent to be forwarded to Wellington for payment with report from yourself that Title to purchased portion of the Block as well as the lease is now complete. The deed of purchase is with you this should be returned with your report.

(Sgd.) RICHARD JOHN GILL.

26/3/1879.

RICH. J. GILL,

Re forests in Tauhora Middle Block lease will Government approve of a clause to following effect viz. that free access to forests be secured for all timber required for use within and on the block but not for sale such as the proviso re forests in Oruanui lease made by Auckland and possibly it might suit both natives and Government in this case also please reply to this question with the previous ones.

(Sgd.) HY. MITCHELL.

The HON. J. SHEEHAN, Wellington.

Re Taumara Middle Block the lease and purchase have been signed by all the living grantees and by the trustees appointed for the minors in the succession to the deceased grantees the trustees signed the deeds of conveyance and lease on the 30th August 1877 I have seen Poihipi and he is firmly in favour of completing the lease he and the grantees agreed to in 1873. He advocates giving no reserves at all except the summit of Tauhara Mountain, that of course will not satisfy the people who are living and cultivating on the block and who rather than not have considerable reserved would

prefer the lease cancelled if you would say what particular reserve you would be willing to authorise my giving out of those denoted on the map. I would like your decision before them and if this is coupled with the payment of the back rentals I do not think we would find much difficulty in settling this business the Natives live mostly at Opepe and sometimes at Waitahanai. They also cultivate a little on Tauhara Sergeant Strachan of the A.C. leases Motukino from them and he has a farm there I would suggest that the reserve asked for by them at Opepe as per plan be granted excepting perhaps a small patch of good timber at the west end I would also allow them a small reserve on the lake at mouth of Waitahauru Stream and perhaps ten or twenty acres in the bush on Tuhara Hill. I have delayed meeting the people because having made their demand for reserves within the lease and a plan showing same having been made they expect me to inform them what decision the Government have come to regarding the reserve and the question of back rent. Your suggestion re keeping the monies for back rents if authorised pending the complete settlement of every difficulty is decidedly the proper course to adopt and what I intended doing. Requesting of freehold Pohipi says he will as soon as the original lease is finally whakamaui introduce the proposal of sale to the Government of the bulk of the Block. I will await your reply before seeing them all in a body.

(Sgd.) HY. MITCHELL.

[Copy.]

Tapuaeharuru, 11th June, 1881.

To the Native Minister, Wellington.

FRIEND GREETING,—

This is a request of ours that the Crown Grant may be issued for our land Te Te Patuiwi-o-Tumoheke—it is within the Tauhara Middle block, on the Waikato River, below the Township of Papuaeharuru and is more particularly described upon the attached plan.

Now friend, that piece of land is an old settlement of ours, the children Reweti Te Kume and Te Kurupae, and was for that reason set apart for us by the officers of the Government when the rest of the Tauhara Block was ceded to the Crown, and we now ask that the Crown Grant for it may be issued in our favour.

There are papers in the (Native) office there (Wellington) having reference to the land, do you refer to them. Friend do you accede to our request.

That is all from

POIHIPI TE KUME AND OTHERS.

NATIVE OFFICE.

N.L.P 81/261, with N.L.P. 81/385.

Date of paper : 11/6/1881. From Poihipi Te Kume and others, Tapuaeharuru.

Date when registered : 13/7/1881. Subject : Requesting that the Crown grant for Te Patuiwi-o-Tumoheke be issued to them.

Previous paper : 81/241 attached.

MINUTES.

Referred to the Under Secretary Land Purchase Department.

(Sgd.) P. W. LEWIS. 15/7/81.

The names of the original owners of the Tauhara Middle, as given in the Order of the Native Land Court are : Paora Hapemana Huriwaka, Hamuera Takurua, Te Poihipi Tukairanga, Maniapoto te Hina, Ihakara Kahua, and Te Popoki Te Kurupae. A Crown grant for the reserve in question has been ordered in their favour.

Grants Nos. 21075-21076.

MR. DAVIES,—

Please reply that instructions have already been given for the issue of Crown grants for the pieces of land *reserved from sale* in the Tauhara Middle purchase, *Waipahihi* and *Patuiwi*. In such case the Grantees are the persons to whom the Court awarded the land. The land is inalienable in any way except with the consent of the Governor

(Sgd.) R. J. GILL. 25/7/81.

[Copy.]

88/180.

NATIVE LAND PURCHASES.

Date of paper : May 17th, 1888. From : Asst. Surveyor General, Auckland.

Date when registered : July 27th, 1888. Subject : Tauhara Middle Subdvn. ; Survey would cost about £130.

Previous paper : 86/417.

DEAR MR. GRACE,—

On the deed plan of Tauhara Middle No. 4 there is a reserve called Pahautea shown. Can you please supply any information respecting it ? It is not mentioned in any of your reports and is apparently no portion of the 40,000 acres sold to the Crown.

(Sgd.) P. SHERIDAN.

Wellington, 27th July, 1888.

Kindly reply soon as matter is delaying surveys.

P. S.

MAJOR SCANNELL.

In judgment on Tuahara Middle partition you include in order to Natives for 4A, three reserves, viz. *Waipahihi, Patuiwi and Wharewaka over which the Court had no jurisdiction*, the Native title having already been extinguished by a conveyance to the Crown. Grants to the 10 original owners were issued under the provisions of the fourth section of "The Government Native Land Purchases Act 1878" for Waipahihi and Patuiwi in 1881, and it was then decided not to grant *Wharewaka but simply to reserve it under the provisions of The Land Act*.

Mr. Mitchell informs me that "Pahautea" is no portion of the 40,000 acres included in last order in favour of the Crown, but is a portion of the balance remaining in possession of the Natives under order for 4A. I have written to Mr. W. H. Grace about it and will communicate his reply to you if it does not clear the matter up.

(Sgd.) P. SHERIDAN.

Wellington, 1st August, 1888.

MR. SHERIDAN,—

Pahautea was reserved by the Natives owing to their having a settlement there and is exclusive of the 40,000 acres bought by the Government. It is a small bush and the boundaries were made so as to take it all in. I have no information that I can give.

(Sgd.) W. H. GRACE.

Otorohanga, August 9th, 1888.

Seen by Major Scannell at Wellington, 22nd August, 1888. He said that Pahautea was covered by the order for Tauhara Middle No. 4A which included the whole of the unsold portions of the block.

(Sgd.) P. SHERIDAN. 24/8/88.

[Copy.]

NATIVE LAND AMENDMENT AND NATIVE LAND CLAIMS ADJUSTMENT, 1926.

Section 14, Subsection (3).—Subject as herein mentioned, there shall be reserved to the public a right of way over a strip of land not exceeding one chain in width around the margin of the said lake. Should any dispute arise as to the position or location of such right-of-way the matter shall be referred to the Surveyor-General, whose decision thereon shall be final :

Provided that the Governor-General may from time to time, by Proclamation, exempt any portion thereof from public use, or restrict or limit the right of such public user in such manner as he may think fit, and thereupon the public right of user over the portion specified shall cease or be limited accordingly.

Subsection 4 (b).—The Governor-General may from time to time, by Proclamation, reserve to holders of special licenses a right of way over a strip of land not exceeding one chain in width along the banks of the beds of rivers or streams so vested in the Crown, and such holders shall be deemed to have the right of access accordingly :

Provided that the Governor-General may from time to time, by Proclamation exempt any defined portion thereof from use by the holders of special licenses, or may restrict or limit the right of user thereof in such manner or to such persons or class of persons as he thinks fit, and the right of user on the portion specified shall cease or be limited accordingly.

Major Scannell took a note of this with a view to revising the judgment. Sgd. P. S. 22/8/88.

[Copy.]

N. 1926/378.

6th September, 1926.

The Chairman, Native Affairs Committee,
House of Representatives, Wellington.

Re PETITION NO. 91 OF 1926: PARAKIRI RESERVE.

I have not been able to go fully into this matter, but sufficient has been shown to warrant further enquiry into the matter.

The Tauhara Middle Block containing what was estimated at 100,000 acres was investigated by the Native Land Court and an Order for title issued to six Natives on 5th March, 1869.

About 1870 the question of locating a Military township at Taupo arose and a deed was executed on 19th July, 1870, purporting to be signed by the grantees and conveying to the Queen that portion of the Tauhara Middle Block containing about 534 acres and known as Nukuhau Tapuaeharuru (see Turtens Deeds page 680). There is no reservation mentioned in the deed, but on the plan the portion now in question is outlined in red and marked public reserve. On 28th March, 1877, Poihipi Tukairangi one of the principal grantees wrote claiming that this was a Native Reserve, but Mr. Locke who had negotiated the purchase, and to whom the matter was evidently referred, telegraphed that Poihipi had no right whatever to the reserve at the outlet of the lake, but a promise was made that a public reserve should be kept open there. Further Deeds of Sale and Lease were executed of further portions of the block (exclusive of the 534 acres). A document was executed, dated 19th day of April, 1879, which refers to the previous deeds of 1870, 1871 and 1873. This recites that various obstacles legal and technical and relating to reserves have hitherto intervened, preventing a final settlement, are now removed and that the Natives confirm the deeds with the boundaries set out. In the case of the Nukuhau Block it says "Excepting the piece at the outlet which is marked on the plan which is reserved". This document clearly excludes the portion in question from the plan. This document bears Poihipi's signature. The next step in the proceedings was when the matter came before the Native Land Court. It appears that in these proceedings, the Parakiri Reserve was mentioned on 9th December, 1880, when application to cut out the Crown interest was dealt with (2 Taupo p. 47 and 48.) This was not accepted by the Court but an Order made on 11th December, 1880, in favour of the Crown for Tauhara Middle No. 1 Block took the place of the former deeds. This shows no reserves but there is a note by the Under Secretary that it is subject to an agreement to return two reserves which are named but do not include the Parakiri. On 29th September, 1883, a Certificate of Title was issued in favour of the Crown for 13,829 acres excluding the two reserves mentioned but inclusive of Parakiri portion.

Petition is returned herewith.

(Sgd.) R. N. JONES,
Under-Secretary.

[Copy.]

Wellington, C. 1, 5th August, 1936.

The Chairman, Native Affairs Committee,
House of Representatives, Wellington.

DEAR SIR,

Re PETITION NO. 123/1936 OF WAAKA TE ARAKAI AND OTHERS, PARAKIRI AND WHAREWAKA RESERVES,
TAUHARA MIDDLE SALE.

(1) The Parakiri Reserve was the subject of an enquiry by the Native Land Court in 1927, and a copy of the Court's report to the Chief Judge will be found attached to the Committee's papers for Petition No. 223/1927. In transmitting the copy of the report to the Chairman of the Committee, on the 6th September, 1927, the then Under Secretary pointed out that the report left without adequate explanation two things, viz.

- (a) The document of the 19th April, 1879, which purports to except the piece of Nuhuhau Tapuaeharuru Block at the outlet, which probably refers to Parakiri, and
- (b) The evidence in Court of 1880 of Maihi Maniapoto; "There is a reserve of 2 acres to be made to Poihipi Tukairangi called Parakiri at the mouth of the lake."

but remarked that unfortunately the people who could give such explanation are all dead. The House, on the 9th October, 1928, ordered that Petition No. 223/1927, together with the report of the Committee thereon, be referred to the Government for favourable consideration. No action has been taken.

(2) Hereunder I set forth the position with regard to Wharewaka as it appears from the records of this office—

(a) By deed made on the 10th August, 1875, Mere Hapimana Huriwaka and others in consideration of the sum of £1,150. 0. 0 conveyed to her Majesty the Queen all that block or parcel of land containing 11594 acres or thereabouts (this area which was given in the schedule has been amended to read 11060 acres) called Tauhara Middle, excepting "reserve for Native occupation at Waipahihi Stream (at mouth of Lake area, say fifty to one hundred acres also a small landing reserve at Wharewaka of, say, under ten acres and another occupation reserve at Patuiwi as sketched on plan and tinted yellow."

(b) On the 19th April, 1879, a document confirming this and other transactions were executed. This document after reciting that "Whereas in the years 1870-1871/2 and 1873 the block of land known as Tauhara Middle in the District of Taupo Colony of New Zealand was dealt with by owners thereof by Deeds of Conveyance of three several portions of said Block and by Deed of Lease of the remaining portion thereof to Her Majesty the Queen and whereas various obstacles legal and technical and relating to Reserves have hitherto intervened preventing a final settlement thereof and whereas these obstacles are now removed"—goes on—"We hereby now confirm the said Deeds of Conveyance and Lease to Her Majesty of the said portions of Tauhara Middle Block the boundaries of which are described in the Schedule written underneath" . . . In the Schedule appears, *inter alia*, the following description :

"*Tauhara Middle Purchase Block* : Commencing at southeast corner of Nukuhau Block along margin of Lake Taupo to Kaitaha thence to Manganamu thence to Ngataraturua thence by survey lines 8421 links, 865 links, 4669 links and . . . links to the northern boundary of Tauhara Middle Block thence north-west along the said boundary to Waikato River thence up said river to Otumuheke Stream to south east corner of Otumuheke Stream to south east corner of Otumuheke Block thence along east boundary of said Block to Waikato again thence up Waikato River to boundary of Nukuhau Block thence along north eastern and eastern boundaries of said block to Lake Taupo starting point area 10,946 acres more or less—*Excepting the Reserves at Waipahihi Patuiwi and Wharewaka, as surveyed.*"

(c) It will be noticed that the deed mentioned in the paragraph (a) *supra* is made as of the 10th August, 1875, and that the confirmatory deed (sic) recites that the land was dealt with by the owners by deeds of conveyance etc. in the years 1870-1871/2, and 1873. From a note on the old Native Land Purchase papers it would appear that the purchase witnessed by the deed of conveyance made on the 10th August, 1875 was undertaken in 1873, and it is very evident that the confirmatory deed embraces this transaction.

(d) In December of 1880, the matter of the definition of the Crown's interest in the Tauhara Middle block came before the Court and, on the 10th December 1880, an order declaring Tauhara Middle No. 1 to be the property of Her Majesty was made. No mention of the reserves is made in the order, but on a copy of the order which I have before me appears the following minute :

"This order is subject to an agreement to return by Crown grant to the Native owners the Patuiwi and Waipahihi Reserves containing respectively 75 acres and 146 acres as shown on the plan marked A and attached."

"(Sgd.) R. J. GILL, Under Secretary.

(e) Tauhara Middle No. 1, was, by proclamation issued on the 14th June, 1881 and published in the *Gazette* of that year at page 751, declared waste land of the Crown. A certificate of title (Vol. 46 fol. 110, Auckland Registry) for all that parcel of land containing 14050 acres more or less being a block of land called or known by the name of Tauhara Middle No. 1 excepting those portions containing 221 acres more or less being called or known by the name of Patuiwi and Waipahihi, issued in the name of Her Majesty on the 28th September, 1883.

(f) The following is an extract from a copy memorandum dated the 1st August 1888 addressed to Major Scannell by Mr. P. Sheridan (Native Land Purchase Officer) :—

"In judgment on Tauhara Middle partition you include in order to Natives for 4A three reserves, viz. Waipahihi Patuiwi and Wharewaka over which the Court had no jurisdiction, the Native title having already been extinguished by a conveyance to the Crown. Grants to the 10" [quære 6] "original owners were issued under the provisions of the fourth section of the Government Native Land Purchases Act, 1878, for Waipahihi and Patuiwi in 1881, and it was then decided not to grant Wharewaka but simply to reserve it under the provisions of the Land Act."

On this memorandum there is a minute, dated the 22nd August 1881 in Mr. Sheridan's handwriting in these terms :—

"Major Scannell took a note of this with a view of revising the judgment."

(g) On the 21st October, 1905, Pitiroi Mohi raised the question of the issue of a title for Parakiri, and on the papers referred to Judge Johnson for report, the Judge wrote, under date the 4th November, 1905, as follows :—

"Appns. Nos. 15, 23 and 25 in Panui were for investigation of title to Te Parakiri, but were dismissed by me as the land in question had already been clothed with a title. It is one of four reserves mentioned in proceedings on 9.12.80 when application to cut out the Crown interests in the Tauhara Middle Block was dealt with. On the following day, an Order was made in favour of Her Majesty for the whole of the land called Tauhara Middle No. 1—no reservations being then made by the Court. Out of these four proposed reserves three are marked on plan—namely, Patuiwi, Waipahihi and *Wharewaka*—and Crown grants have been issued for the first two under Section 4 of the Government N.L. Purchases Act Amendment Act, 1878. The whole position is shown in a memorandum recently addressed by me to the Chief Judge, a copy of which I forwarded to Mr. Sheridan (with N.L.P. 1905/80) on the 14th ultimo. I then asked him to give me an early reply as to the actual position of the *Wharewaka* and Parakiri Reserves, but he has not yet done so. *It is for the N.L. Purchase Department to show why the Crown Grants for those two proposed reserves were not issued.*"

(h) A copy of the memorandum to the Chief Judge mentioned by Judge Johnson in the minute quoted in the last preceding paragraph is attached hereto. The order in Council dated the 18th May 1899 referred to in that memorandum did not confer jurisdiction on the Native Land Court in respect of Parakiri or Wharewaka. In reply to Judge Johnson's enquiry as to the actual position of these two reserves, Mr. Sheridan wrote, on the 14th November, 1905, as follows:—

“ JUDGE JOHNSON.

“ I presume ‘Parakiri’ is the reserve in the Nukuhau purchase. If so you will perceive by the deeds enclosed that both it and *Wharewaka* are public reserves and that the Natives have no rights in connection with them other than as British subjects, generally, including of course yourself and myself.”

In returning the deeds to Mr. Sheridan, Judge Johnson wrote on the 1st December, 1905:—

“ I have shown the deeds to the Natives interested but they are not at all satisfied. They will move further in the matter.”

I am unable to find that any action has been taken by the Natives until now. I am also unable to find in the papers in this Office anything to support Mr. Sheridan's statement that “it was then decided not to grant Wharewaka but simply to reserve it under the provisions of the Land Act” —*vide* paragraph (f), *supra*.

The Registrar of the Native Land Court, Rotorua, reports that there is nothing in the Court records which throws any light on the matter.

3. A copy of the petition was referred to the Under-Secretary for Lands for comment. A copy of a report and plan supplied by the Commissioner of Crown Lands, Auckland, is enclosed.

4. Petition No. 123/1926 is returned herewith.

Yours faithfully,

(Sgd.) O. N. CAMPBELL,

Under Secretary.