School of Social Policy and Social Work

The Mining Township

at

Kuaotunu

A Report Commissioned by the Waitangi Tribunal for WAI 686

By Grant Young

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opinions expressed are those of the author only

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Contents

Abbreviations

AJHR *Appendices to the Journals of the House of Representatives.*

CT Certificate of Title.

LINZ Land Information New Zealand.

NA National Archives.

PR Provisional Register.

Maps

The Author

In September 1999 the author graduated with a Master of Arts degree with first class honours in history from the University of Auckland. From 1997 to 1999 he was assistant-lecturer in the Department of History at the University of Auckland. He has been awarded a scholarship to study for the degree of doctor of philosophy by Massey University and will begin a programme of study at that university's Albany campus in February 2000.

Acknowledgments

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Part 1: Introduction.

This research has not been commissioned in relation to a specific claim and so there is no statement of claim which raises particular issues for investigation. This research has been commissioned to fill an apparent gap in the work so far undertaken on goldfields in the Hauraki region: the establishment and subsequent development of mining townships.

This report was in part designed to explain comments made by David Alexander regarding the Kuaotunu blocks in his comprehensive study of land in the Hauraki region for the Hauraki Maori Trust Board. He has also commented specifically on the establishment of the mining township at Kuaotunu. According to Alexander, gold was discovered at Kuaotunu in 1888 and the following year a mining district was proclaimed.[1] Using this authority, the Mining Warden at Thames, H.W. Northcroft, laid out a township. However, the township was laid out on Maori-owned land, and because a mining district could only cover land either owned by the Crown or land over which mining rights had been ceded to the Crown, the township was illegal. Alexander has found that '[t]he Maori owners employed James Mackay to set up a system of regulation of gold mining activity on their land, thereby doing without the need to cede their lands to the Crown.'[2] However, Alexander argues, 'Mackay betrayed their wishes by negotiating secretly with the Crown.'[3] The Mining Warden was eventually instructed by the Mines Department to obtain a cession of mining rights, and later the freehold to the land was purchased by the Crown.

The Kuaotunu blocks, situated north of Whitianga, were subject to a significant level of partitioning. Survey plans show the town was located on the blocks listed below. The subsequent partitions were made after the town had been established.

Block	Area	Subsequent Partitions	Area		
	a		a	r	p
Kuaotunu No. 1C	210	—	—		
Kuaotunu No. 1D	197	Kuaotunu No. 1D1	122	2	27
		Kuaotunu No. 1D2	40	3	22
Kuaotunu No. 2A	544	Kuaotunu No. 2A1	50		
		Kuaotunu No. 2A2	138	1	

[1] David Alexander, 'A Summary of Crown Purchase Activity,' n.d., Wai 686, F5, paras 37-8.
[2] ibid.
[3] ibid.

Kuaotunu No. 2A3	340	2	23
Allotment 58	1	1	17

The direction from the Waitangi Tribunal on 28 July 1999 commissioning this research required the following issues be examined:

1. the attempt by some of the Maori landowners to establish a township themselves;

2. the role of the Mining Warden in laying out the township that was eventually established;

3. the cession of mining rights by the Maori owners;

4. the legislative framework under which the above actions occurred;

5. the subsequent involvement of Maori with the township, including their relationship with the Mining Warden;

6. the alienation of Maori land within the township, including Kuaotunu No. 1D2 and the two reserves originally laid out by the Mining Warden.

This report is based on archival research undertaken at the following institutions:

- National Archives, Auckland.
- National Archives, Wellington.
- Land Information New Zealand, Auckland.
- Land Information New Zealand, Hamilton.
- Land Information New Zealand, Wellington.
- Maori Land Court, Hamilton.
- Auckland Institute and Museum Library.
- Alexander Turnbull Library, Wellington.

It focuses on the issues outlined in the commission, but also examines the general administration of the Native revenue in the Hauraki Mining District.

The report is, where possible, organised in chronological order. Part 2 provides a general introduction and overview to gold mining in the Coromandel peninsula and the Hauraki Mining District. Particular emphasis is placed on mining law as it related to Maori land, legislative developments and the situation at Kuaotunu after the discovery of gold but prior to the cession of mining rights. The development of

mining at Kuaotunu is also located in the context of the mining industry in Hauraki at the end of the nineteenth century.

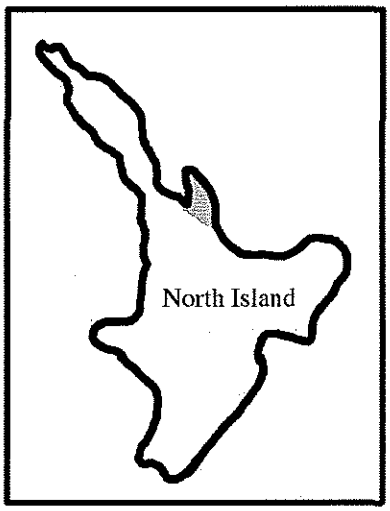
Part 3 discusses the cession of mining rights and the establishment of the township. The statutory authority of the Warden is outlined in the first section, followed by a detailed examination of the cession of mining rights by the Maori landowners. The circumstances of the survey and opening of the township are also assessed. Finally, the dispute between the Warden and Pierce Lanigan is explored. It is not strictly relevant as it did not involve the Maori landowners in any significant way, but it is important in assessing James Mackay's role in relation to the Kuaotunu blocks.

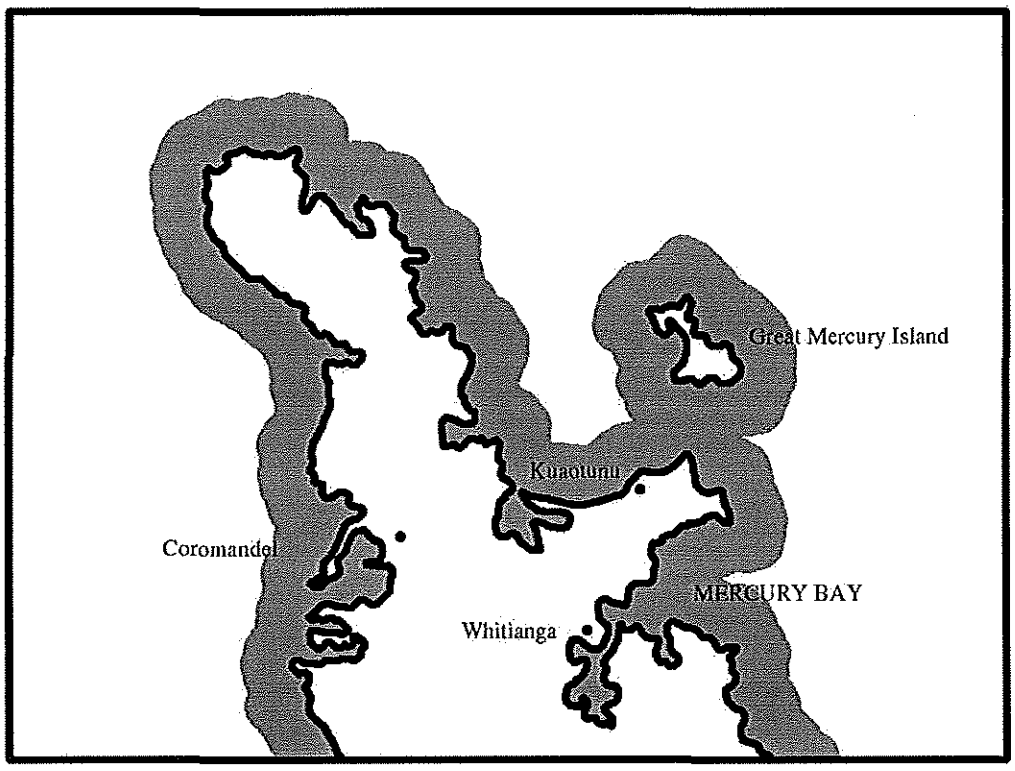
Part 4 focuses on the alienation of the land, although a major issue is the partition of Kuaotunu No. 1D. This block was subject to a significant level of litigation between two opposing groups of owners, and the three lengthy hearings are examined in some detail. The eventual alienation of Kuaotunu No. 1D2 is included as an appendix as it occurred sometime after the alienation of the other blocks, and at a time when mining was almost non-existent. It was eventually sold to private interests, not the Crown.

The final part of the report examines the Native revenue, focusing in particular on problems with its administration in general. Some details regarding payments made for the Kuaotunu blocks are also provided.

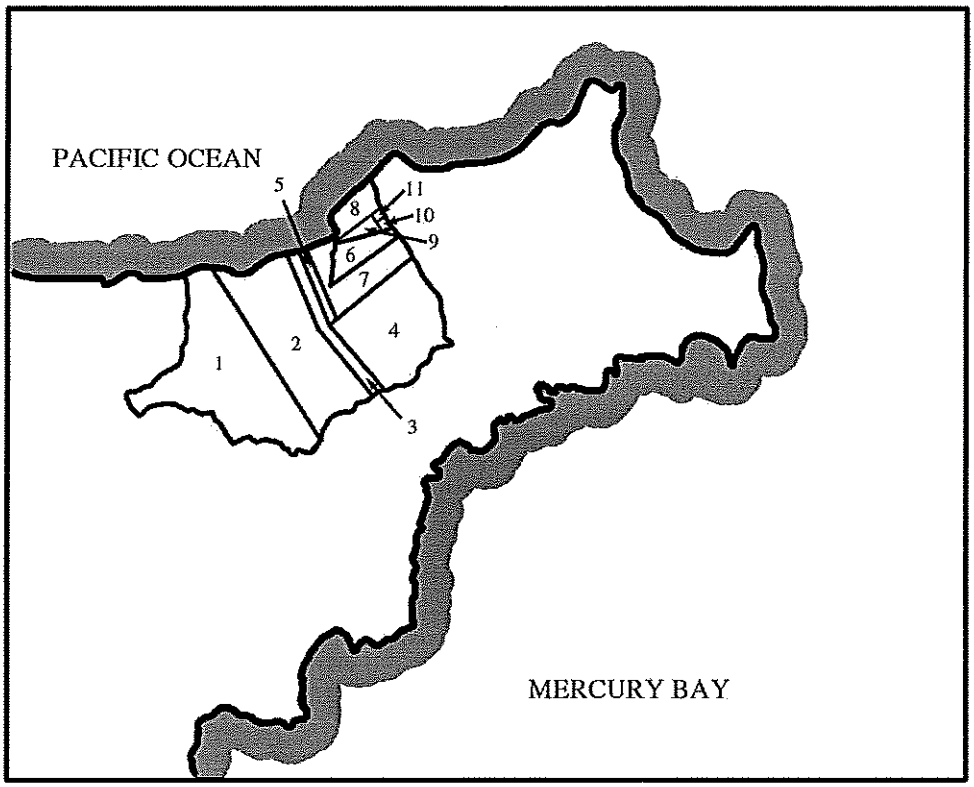
It should be noted that Maori names and words have generally been spelt as they were recorded in contemporary documents. This may be inconsistent with current preferred spellings.

Map 1: Location of the Kuaotunu Blocks



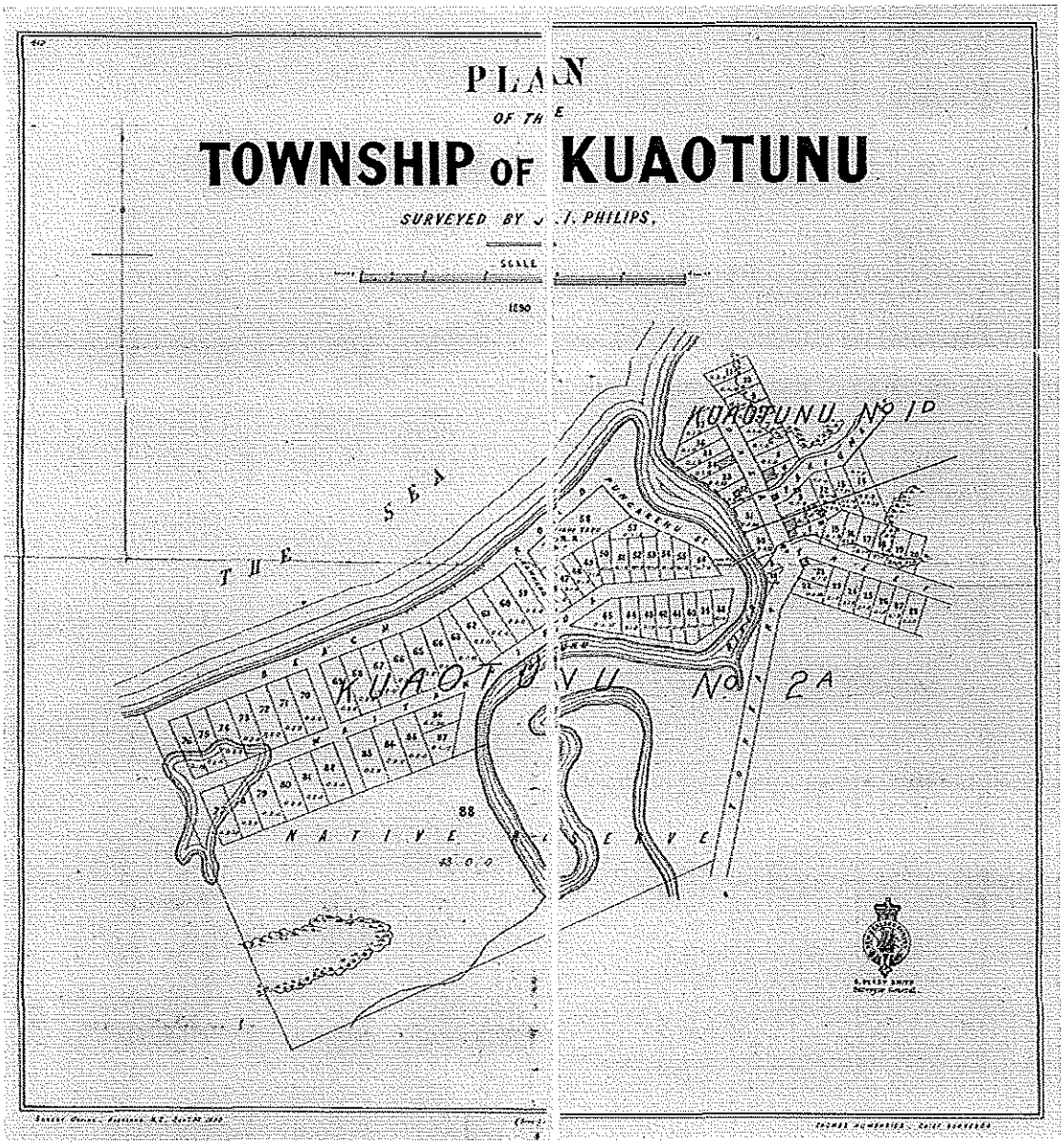


Map 2: The Kuaotunu Blocks



1.	Kuaotunu No. 1A	1455	0	00
2.	Kuaotunu No. 1B	1151	0	00
3.	Kuaotunu No. 1C	210	0	0
4.	Kuaotunu No. 2B	811	0	00
5.	Kuaotunu No. 2A1	50	0	00
6.	Kuaotunu No. 2A2	138	1	00
7.	Kuaotunu No. 2A3	342	0	00
8.	Kuaotunu No. 1D1	122	2	27
9.	Kuaotunu No. 1D2	40	3	22
10.	Kuaotunu No. 1D4	13	0	00
11.	Kuaotunu No. 1D3	20	1	31

Map 3: The Kuaotunu Township



Part 2: Gold Mining at Coromandel.

2.1 Overview.

When gold was first discovered in the Coromandel Peninsula in 1852, the provincial government had no legislation in place to deal with the find.[4] In response, the New Ulster government decided that while Maori would retain ownership of the land it would manage the goldfield and pay the landowners a proportion of the revenue generated through license fees as rental. The Governor, George Grey, approved the proposal to negotiate with the Maori landowners for their consent but rejected the suggestion that they should be paid a portion of the revenue. His concern was that they would be unable to manage the sums of money which might accrue. He favoured a single payment to open the land and the use of a proportion of the revenue to endow schools and hospitals. The outcome was that a single payment would be made rather than a proportion of the income.

The first mining legislation was enacted in 1858, but as the major rushes in New Zealand occurred on land in Otago and Canterbury which had already been 'purchased' by the Crown, mining activities on land held under customary title were not addressed.[5] Despite no legislative provision for mining on Maori owned land, the policy of negotiation for consent continued. And although not specifically stated in the legislation, the governor could probably have declared such land to be a goldfield. Once a proclamation had been issued, a system of regulation and licensing was established to manage mining activity on the land. The Crown's principal mining official was the Warden, a semi-judicial figure who administered the field. According to Anderson, the Warden's multiple functions had implications for Maori landowners because '[i]ncreasingly, the warden was to take on a dual function, interpreting and applying the mining legislation affecting Maori land, and acting as trustee for any revenues received by them, from the goldfield.'[6]

The next major gold find was on Maori land in Nelson in early 1862.[7] After negotiations between the Crown and the landowners, agreement was reached allowing

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[4] Robyn Anderson, *Goldmining: Policy, Legislation, and Administration*, Waitangi Tribunal Rangahaua Whanui Series National Theme N, Wellington, 1996, pp. 10-11.

[5] ibid., pp. 17-19.

[6] ibid., p. 18.

[7] ibid., pp. 19-22.

the Crown to regulate and license miners. The landowners would be paid a sum for each license issued. It was this model of an annual payment for each person working a goldfield which was applied to the Hauraki district. As different forms of payments were added to this model in agreements negotiated in the 1860s, confusion about payments to landowners developed. Significantly, in agreements negotiated in the 1860s, the government accepted that in return for ceding land for mining purposes, payments of compensation should be made.

As noted above, early mining legislation did not explicitly provide for mining on customary land.[8] This situation did not change until the Gold Fields Amendment Act 1868. It amended the Gold Fields Act 1866 and was a response to the opening of the Thames goldfield.[9] According to Anderson it was primarily designed to give the government greater control over the revenue generated from gold mining. In addition, the legislation was 'broadly intended to confirm the legality of proclamations of goldfields wherever the Governor had won consent to mining operations.'[10] This provision was a result of private individuals challenging cession agreements and negotiating new terms after the land had passed through the Native Land Court. The Governor-in-Council was also given the power to make regulations governing goldmining on ceded land.

Anderson has found that legislative developments in the latter nineteenth century shifted power away from a model of partnership based on negotiation with Maori landowners. She identifies two key areas which affected Maori – in the revenue due to them under cession agreements (to be discussed below) and through the expansion of 'the Crown's power at the expense of Maori authority over the land and its subsurface properties.'[11] In particular, the protections contained in the mining agreements were progressively superseded by legislation dealing with the governance of the gold fields. This is seen in the passage of legislation after 1880 which gave the Crown rights to gold and other minerals in Maori land, whether that land was held under customary title or by Crown grant.[12] This included land specifically reserved from mining in earlier cession agreements. Such issues became significant in the 1890s when there was a revival in mining as a result of the development of new technology.[13] Anderson argues that among Crown officials and politicians there was

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[8] ibid., pp. 17-19.
[9] ibid., p. 36.
[10] ibid.
[11] ibid., p. 52.
[12] ibid., p. 59.
[13] ibid., p. 61.

'a growing assertion ... of the common law view that the ownership of precious metals lay with the Crown.'[14]

Amendments to mining legislation included provisions giving the Crown power to enter Maori land held under any title, and 'expanded definitions of the rights expressed within the Royal Prerogative.'[15] The impact: negotiation with Maori landowners for the cession of mining rights was no longer necessary. For example, the Mining Act (No. 2) 1887 allowed the Governor to alter agreements made with Maori landowners for the cession of mining rights without the landowners consent. Several amendments also gave the Governor power to bring land reserved for Maori occupation and use under the operation of the Mining Act. The Mining Act Amendment Act 1892 gave the Native Land Court power to declare land ceded for mining purposes with the consent of the majority of the owners.[16] The interests of any minority could be ignored. A further amendment in 1896 placed all land reserved in earlier cession agreements under the operation of the Mining Act. According to Anderson this and other provisions in the amendment 'firmly espoused the position that the Crown did not need to purchase the right to mine from Maori, but already held it.'[17]

The payment of revenue due to Maori under the mining cession agreements was also highly problematic. The records regarding the payments made from the Native revenue were very poorly managed, and Anderson has found it impossible to determine whether correct payments were made to Maori landowners. In 1864, the Coromandel agreements had to be renegotiated because Crown records of payments to Maori landowners were highly deficient, and neither could agree as to the amounts owed. Furthermore, Anderson argues the money received by Maori 'comprised only a fraction of the general returns from the goldfield,' and notes that in the period 1881 to 1897, gold production dropped 30 percent, whereas Maori revenues declined by nearly 60 percent.[18] The administration of the goldfield revenues and the agreements themselves were the cause of much complaint by Maori. There were also significant problems in the distribution of the revenues and these will be examined in detail in Part 5.

Furthermore, changes in legislation impacted adversely on the goldfield revenue due to Maori landowners. The Mining Act 1886 changed the organisation and structure of

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[14] ibid., p. 62.
[15] ibid.
[16] ibid., p. 63.
[17] ibid., p. 64.
[18] ibid., p. 45.

the system of administering miners' fees after agitation by miners and local bodies in the Hauraki mining district.[19] The new legislation retained provisions for paying Maori revenue from licenses and miners' rights. However, it significantly reduced the income received in several ways.[20] First, it removed the requirement that miners working under a license had to hold miners' rights. Second, the area of land covered by a miners' right was increased fourfold. Third, the number of men who had to be employed in a lease was reduced – from three men per acre to one man for every two acres – and none had to hold miners' rights. Fourth, the cost of exchanging an old license for a license under the new Act was also reduced. Finally, an amendment in 1887 exempted 'wages men' and 'tributers' from the requirement to hold miner's rights.[21]

According to Anderson, '[o]fficials had previously warned that Maori would not understand the sudden withdrawal of revenues which they had been in the habit of receiving, and Maori themselves expressed their concern about the Government's legislative intentions, reminding officials of the existence of agreements which would be violated by the proposed changes.' In these legislative developments, the Government progressively ignored the arrangements negotiated with Maori in favour of different arrangements established by legislation. In effect, the agreements were amended by statute without consent. Crown agents were concerned with these developments, especially Wilkinson who believed the original commitments were being undermined and that Maori would only receive a small proportion of the original revenue. The result was that Maori lost revenue through the reduction of rents and the size of licensed ground and the termination of the requirement for miners employed by companies and tributers to hold miners' rights.

However, some of the Maori complaints regarding declining revenues were accepted by the Government. In 1891, action was taken to remedy the concerns. Section 50 of the new Mining Act required miners and tributers employed to mine on Native land to hold miners' rights.[22] This provoked significant protest from miners, for which the only solution suggested by the Government was the purchase of the freehold from Maori. In the meantime, Anderson argues, Seddon, as Minister of Mines, attempted to undermine the impact of the provision by trying to prevent its implementation by the Warden. He instructed the mining inspector that the 1891 amendment was to apply only to agreements made after its enactment. In 1893, 1894, 1895, 1900 and

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[19] ibid., pp. 55-6.

[20] ibid., p. 56.

[21] 'Wages men' were employed by an owner of a licensed holding to work a mine while 'tributers' negotiated with an owner of a licensed holding to mine in exchange for a part of the gold extracted.

[22] Anderson, p. 57.

1905 Maori landowners petitioned Parliament regarding the loss of revenues but despite favourable recommendations, the government took no action.

By the late nineteenth century, therefore, Anderson has found mining on Maori land developed in two significant ways. First, the partnership model which had been applied in the early discoveries had been replaced. The Crown was less willing to negotiate with Maori landowners for mining rights and used legislation to ensure any objections could be ignored. Second, the revenue derived from mining on Maori land, a central feature of the negotiation model, was also being undermined by legislation. The revenue received was reduced through technical amendments to statutes, changes which often breached the conditions of the original cession deeds. As will be discussed in a later section, the fairness of the changes was challenged by the Crown's own agents, but by the late nineteenth century the solution envisaged was purchase of the land. A return to a more balanced partnership model was not even considered.

It should be noted however, that in the case of the Kuaotunu blocks the Crown did negotiate to cede mining rights to the land. Thus, although gold was discovered at Kuaotunu in the last decade of the nineteenth century, the Crown's actions were somewhat different to the general situation at that time as described by Anderson.

2.2 Mining at Kuaotunu.

Gold was first discovered in Coromandel in 1852. The merchant community in Auckland was keen to locate gold, in order to stem the flow of migrants to the rushes in Victoria. Salmond describes the outcome as a 'fiasco.'[23] This was not of great concern though because conflicts in the mid-North Island stimulated the Auckland economy in the 1860s. When the troops departed the pressure returned for gold discoveries at Thames and Coromandel. This provided a major source of profit for Auckland based land speculators and was a means of avoiding depression in the province. However, the high level of speculation and the greatly variable gold yields meant the mining industry never developed any substance during the nineteenth century. Morrell has argued that the 'occasional discoveries and intermittent work' in the region led to a small rush in August 1867.[24] The district reached a high point in the late 1870s and thereafter, with the exception of some significant finds which caused major fluctuations, the industry steadily declined to the end of the nineteenth

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[23] J.H.M. Salmond, *A History of Goldmining in New Zealand*, Government Printer, Wellington, 1963, p. 177.

[24] W.P. Morrell, *The Gold Rushes*, A. and C. Black, London, 1940, Second Edition, 1968, p. 279.

century. The discovery of gold and the development of the mine at Waihi was a major challenge to this trend. But in the Hauraki Mining District generally, and the Coromandel district specifically, the impact of mining was felt environmentally and socially. In economic terms the effect was much more limited, especially when compared to the gold rushes in Canterbury and Otago, Victoria and California.

In Hauraki, the miners began by looking for alluvial gold, but found quartz. There were many claims which were good, and inexpensive to work at first. But such mining was not conducive to the individual digger, and although numbers reached 11,500 in 1868, by 1874, there were less than 2000 miners left. Morrell adds that the Coromandel goldfields 'acquired a reputation for speculative holding of unworked ground' which caused many to collapse.[25] This trend has also been noted by Salmond who found the 'early history of the Hauraki goldfields marked the decline of the alluvial miner, and the transformation of the industry through a number of stages towards large-scale capitalist enterprise.'[26]

It should be noted at this point that there are two types of gold mining. Both involve quartz because it holds the gold. Quartz is formed in seams when volcanic pressure forces it between older rock. A quartz seam does not necessarily contain gold, but it is a sign that gold may be found. Quartz mining involves extracting the gold from the quartz by excavating the rock and then crushing it. The quartz is then washed across a mercury table and the gold recovered from the mercury. The second method of mining is alluvial. Over thousands of years water may wash the reef away carrying with it the gold fragments and depositing them downstream. Alluvial gold can often be found in the beds of long covered rivers. The alluvial miner collects what has already been washed out of the quartz through the erosive impact of rivers and glaciers. Gold mining in the Coromandel peninsula was quartz mining, and the gold remained in the quartz from which it was extracted. As a result, stampers were common.

When gold was first profitably extracted at Kuaotunu in 1889, the Coromandel goldfields were almost non-existent. Goldfields further south, in other parts of the Hauraki Mining district, were still productive, but overall, mining was in decline. The industry which had provided an economic and population boom in the 1860s and 1870s was declining as the easy gold was extracted and the diggers left for bigger rushes elsewhere. A new discovery in the late nineteenth century, such as that at Kuaotunu, was therefore greeted in the Coromandel area, and by politicians and the public in Auckland and nationally, with enthusiasm.

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[25] ibid., p. 280.

[26] Salmond, p. 206.

According to the local historian of the area, R.A. Simpson, gold was discovered at the Try Fluke claim in 1889 by 'Coffin' – probably Kawhina Rangitu, an owner of the block.[27] Another account by an early settler at Kuaotunu, Charles F. Horn, suggested gold was discovered by Kawhina much earlier in 1887. Apparently he 'had caused great excitement in Coromandel by displaying samples of ore,' but he would not reveal the source of the minerals.[28] Eventually he did agree to disclose the location but only if he were given a share in the proposed mining company. When the Warden was asked to report on the discovery of gold at Kuaotunu, he was in no doubt that Kawhina was the first to establish the existence of payable gold.[29] Early enquiries were also received from William White in September 1888 and Alexander Peebles in December the same year.[30] Peebles had marked out a claim but because there were blocks of Crown, Maori and private land in the area, the Warden had to consult the Chief Surveyor at Auckland to determine the areas over which he had jurisdiction.[31] Peebles was very keen to begin working the claim and in early February 1889 again asked the Warden to take action, adding that:

> the natives say they will sign any paper you wish them to for the purpose of opening the place ... We have been waiting for the last two months to get on the ground but have been afraid to on account of having no clear title.[32]

The Warden replied that he had no power 'to grant mining rights on any native land over which the owners have not given the Government power to authorize mining.'[33] However, he added, if Peebles could 'obtain the consent of the native owners of the blocks on which you wish to mine to an agreement with the government to allow mining on the land I will communicate with the government with a view to obtain their consent to such an agreement being prepared and forwarded for the natives signatures.'

In any case, the Inspector of Mines at Thames was despatched to investigate the discoveries on the Kuaotunu blocks. He found considerable mining activities already underway.[34] One reef had been 'discovered about 6 months ago and worked by a party who obtained permission from the Native owners of the land.' A number of other claims were also being worked on the Maori-owned land at Kuaotunu:

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[27] R.A. Simpson, *This is Kuaotunu*, Thames Star, Thames, 1971, p. 7.

[28] Charles F. Horn, *My Golden Century*, Thames Valley News, Thames, n.d., p. 1.

[29] Northcroft to Eliott, 18 July 1891, MD 1, 92/932, NA, Wellington.

[30] Peebles to Northcroft, 7 December 1888, ibid.

[31] Burgess to Peebles, 11 December 1888, ibid.

[32] Peebles to Northcroft, 13 February 1889, ibid.

[33] Northcroft to Peeble, 15 February 1889, BACL A208/633, NA, Auckland.

[34] Wilson to Northcroft, 7 September 1889, MD 1 89/663, NA, Wellington.

> A considerable amount of prospecting is carried on on Native Lands on the line of reef, but, as they (the prospectors) make their own terms with the owners of the land, I do not know what land they claim but estimate that 35 men are employed on or about the Kuaotunu Native Blocks.

Other claims were being worked by about 39 men on Crown land.

Wilson suggested it was desirable to have the boundaries between the Crown and Maori land defined on the ground, so that miners could be certain of the title of the land on which they were working.[35] He estimated the total number of miners working in the district to be approximately 100. One store had been built and supplies were brought from Mercury Bay by packhorse. Negotiations had commenced to build a battery site, and Wilson believed 'the shew of gold in the Trifluke and the prospects obtained from the reef in several of the other claims are sufficient to warrant the erection of a battery in the district.' Road access was under construction, although accommodation was needed. He found that 'a considerable amount of work has been done since gold was discovered,' and outlined in his report the gold extracted from the various claims. The work of opening up the reefs was well underway, and the quantity of gold recovered was significant. According to Wilson, 'a large amount of prospecting has been done on the Native Blocks, drives have been put in and trenching done on many of the spurs' and he intended to inspect those on his next visit to the district.

The Mining Inspector's report was forwarded by the Warden to the Mines Department asking that a surveyor be instructed to define the blocks of Crown land in the area 'to prevent future complications with the owners of the adjacent private lands for as the matter now stands I cannot with any certainty deal with the applications lest I should grant claims on private land over which I have no jurisdiction.'[36] A surveyor from the Survey Office at Auckland was instructed accordingly.[37]

Since parts of the Kuaotunu goldfield were located on Crown land, mining could be undertaken as the Warden had control over some parts of the district. In November 1889, for example, the *Coromandel County News* reported the Warden enquired into several applications at Kuaotunu.[38] According to the paper, 'all applications for residence sites were granted, provided they are on Crown land.' At this hearing at

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[35] ibid.

[36] Northcroft to Eliott, 15 September 1889, ibid.

[37] Smith to the Chief Surveyor, Auckland, 24 September 1889, ibid.

[38] *Coromandel County News*, 22 November 1889.

least, the Warden seems to have taken care to ensure his decisions referred only to the land over which he had jurisdiction, that is, Crown land.

The paper's end of year message also indicates that mining activities were well under way by late 1889.[39] It reported that 'some magnificent returns have been obtained, and the payable character of the field over and again demonstrated; payable reefs have been opened up in various parts of the district, and many of them proved at considerable depths.'

By early 1890, building was underway, and merchants and traders had established themselves to support and profit from the mines. In April it appears that Loram's hotel at Kuaotunu was under construction but open for service.[40] The paper also reported that a boarding house, bakery, blacksmith, bootmaker and tailor were all either operating at Kuaotunu, or were about to open there, and that the steamer visited once a week. Claims were pegged out and mining was underway. By May the construction of Loram's hotel was complete and the same month the paper reported there were about 400 miners at Kuaotunu.[41] In addition that month a public meeting was held to discuss the construction of a battery site.

The Maori-owned land was also affected by the discovery of gold. The circumstances in which all this activity occurred were described by James Mackay when he wrote to the Native Minister in April 1890.[42] According to Mackay, a public meeting had been held at Kuaotunu to arrange the terms for mining although there is no indication of when this meeting occurred. Six conditions were agreed to. First, that the rent for a mining claim would be one pound per acre per annum, payable half yearly in advance for a lease of twenty one years. Second, that claims would be worked with a reasonable number of men, but if abandoned for more than three months, the landowners or their agent could re-enter the land. Third, the agent could agree to leave a claim unworked for a period greater than three months. Fourth, if rent remained unpaid for three months, the landowners or their agent could re-enter the land. Fifth, land taken up for agricultural purposes were to be leased at ten shillings per acre per annum for twenty one years, the money payable half yearly in advance. Sixth, buildings facing the main road were to be leased at four shillings per foot frontage, payable quarterly in advance. Mackay added that 'up to the present time I have arranged with miners to lease thirty nine mining claims, two agricultural holdings, and eleven town lots.'

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[39] *Coromandel County News*, 30 December 1889.

[40] *Coromandel County News*, 3 April 1890.

[41] *Coromandel County News*, 1 May 1890; 8 May 1890; 22 May 1890.

[42] Mackay to Mitchelson, 4 April 1890, MA-MLP 1, 90/144, NA, Wellington.

So even before the Maori landowners had ceded the mining rights to their land, mining and other activities were being undertaken on the land. Since some of the land in the area was Crown land, it would have been subject to the Mining Act. But it is also clear that a building like Loram's hotel was being constructed on the Maori-owned land. No evidence has emerged to indicate the existence of an agreement between the owners of the hotel and any of the Maori landowners, although the hotel proprietor must have gained the permission of the owners. Furthermore, there is some indication that the land on which the hotel was built was sub-let from another person. This is discussed in a subsequent part of the report. At this point, it is significant to note that mining activities were well advanced before the Warden began negotiating for the cession of mining rights.

2.3 Mining in Hauraki in the Late Nineteenth Century.

The gold field at Kuaotunu needs to be located in the context of mining in Coromandel and Hauraki in the late nineteenth century, and the official reports show the trends in mining with some clarity. They indicate that gold mining in the Hauraki district was declining, but that the Kuaotunu goldfield was a major source of optimism for the industry. However, there were further problems. The first was that throughout the Hauraki mining district, the easy gold was rapidly extracted, so that deep level mining was necessary. In order to mine at a lower level, greater capital investment in plant and machinery was essential, but the mining industry had traditionally operated on the basis of the individual digger. A shift away from the single miner to companies attracting capital was required for the industry to develop further.

For example, in the year gold was first mined at Kuaotunu, the Warden's report shows that the year ending 31 March 1889 was disappointing in terms of gold returned. However, Northcroft was optimistic for the coming year, due to 'a determination to, and an understanding that we must in the future, mine on more scientific and business-like principles than admitted.'[43] For mining to expand in the Hauraki district, capital was necessary because '[g]old at the Thames must be looked for at much deeper levels than heretofore, where richer deposits are again expected to be reached; and there is a disposition on the part of English and Australian capitalists to invest in ground that has proved auriferous in the past, but where hitherto the deep

[43] 'The Mining Industry: Appendix I,' AJHR, 1889, C-2, p. 92.

levels have been left untouched for want of capital to undertake the necessary expense connected with deep-sinking.'[44] Northcroft could report that land reworked was bearing good quantities of gold, but he was also concerned that the failure of new extraction processes which drew heavily on capital could undermine confidence in the industry. He believed that the major problem was attracting capital to make mines into profitable enterprises.[45] He was particularly concerned at the number of poorly organised ventures which attracted investment and then failed, and the impact this had on encouraging capital into the mining industry. In addition, in 1893, Northcroft reported that mining was at a standstill, except for Ohinemuri and Kuaotunu.[46] He believed speculation had meant the easy gold was extracted and significant profits made, but now that mining at lower depths was required, more capital was required to make mining profitable and it was not available. The necessary capital could not be provided and, as a result, mining in the region was declining significantly.

The following year, H.A. Gordon, the Mines Department's Inspecting Engineer, made similar observations regarding mining in the Coromandel district:

> The yield of gold from this district last year is not so large as for the former one; nevertheless mining ventures on the whole present a more healthy aspect than they have presented for some years. This is in a great measure due to the introduction of English capital, which has been expended on mines with the view of working them on a commercial basis. This is a district which is remarkable for rich auriferous veins, leaders, and lodes; at the same time it may be termed very patchy.... It is a field that is likely to afford profitable employment to individual miners in the high ranges for many years to come – at least, for the present generation.[47]

By the 1890s, then, mining in the Hauraki district had declined significantly. A major problem was the development of mining at deeper levels, and for this work to occur significant capital was required.

Nevertheless, there was optimism about the new find at Kuaotunu. In 1890, Gordon expected the field 'to yield a large quantity of gold.'[48] He had visited the district and found claims which extracted gold of a high quality. Although few of the claims were sufficiently tested due to the absence of batteries to crush the rock, he believed 'rich

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[44] ibid.

[45] 'Report on Goldfields, Roads, Water-Races, and other works in connection with Mining,' AJHR, 1891, Sess. II, C-4, pp. 145-6.

[46] 'The Goldfields of New Zealand: Report on Roads, Water-Races, and other works in connection with Mining,' AJHR, 1893, C-3, p. i.

[47] 'Report on Goldfields, Roads, Water-Races, and other works in connection with Mining,' AJHR, 1890, C-3, p. 27.

[48] ibid., p. 29.

patches of auriferous stone will be found.'[49] And the same year, Northcroft was again disappointed with the performance of the industry in the Hauraki district as there had been a number of failures and closures. However, he was very optimistic about Kuaotunu which he considered the most important find in the previous year.[50] He advised caution as to the success of the new find, but did comment on the quality of the gold so far obtained, and noted that better methods of extraction were needed to ensure that the greatest quantity of gold was removed. For several years, the Kuaotunu gold field was one of the few areas of expansion in the mining industry in Hauraki. It was also anticipated that the goldfield would have some permanence, a characteristic, as has been seen, not common in the Hauraki district. The Warden and Gordon agreed in this regard. Furthermore, in his ministerial statement of 1892, Seddon was confident that the field, although not rich, 'is likely to afford permanent employment to a considerable population for many years.'[51]

However, there was another major problem, specific to Kuaotunu, which was the problem of extracting the gold. For example, although in 1891 the Warden reported that Kuaotunu was one of the major points of expansion in the Hauraki Mining District:

> The great want of some process at once efficient and cheap, by which the refractory and complex ores of this peninsula may be profitably treated, is still one of the causes which militate against a greater prosperity in the mining industry throughout the whole district... At Kuaotunu, owing to the fineness and lightness of the gold, it is found impossible, with the ordinary treatment by stampers and grinding-pans, to save more than about 60 per cent of the bullion.[52]

In his report the same year, Gordon spent some time outlining the process which ought to be used to extract the gold most effectively.[53] In 1892, he addressed the problems of extracting the gold at Kuaotunu again, since 'the gold is disseminated through the quartz in particles much finer than the finest silk-dressed flour.'[54] Gordon believed that the miners were not willing to experiment with different methods of extraction, and the problem of developing an efficient process of extraction continued to receive his attention. He recognised that because of the fineness of the gold, extraction required 'not only very fine crushing but also very careful treatment, to be

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[49] ibid., p. 30.

[50] ibid., pp. 136-39.

[51] 'Mines Statement by the Hon. R.J. Seddon, Minister of Mines,' AJHR, 1892, C-5, p. 4.

[52] 'Report on Goldfields, Roads, Water-Races, and other works in connection with Mining,' AJHR, 1891, Sess. II, C-4, p. 145.

[53] ibid., pp. 25-6.

[54] 'The Goldfields of New Zealand: Report on Roads, Water-Races, and other works in connection with Mining,' AJHR, 1892, C-3, p. 32.

able to extract a fair proportion of the gold the ore contains.' [55] He was convinced, nevertheless, that the gold could be mined profitably.

Year after year, the Minister's report and the Warden's report comment on the decline of mining in the Hauraki region. Yet the Kuaotunu gold field was a constant source of optimism. Until 1894, when H.E. Kenny, the new Warden at Thames, reported a decrease in the yield of gold. [56] He expected the change to be short term but this was not the case. The Kuaotunu goldfield appears to have rapidly declined, although optimism remained that better extraction processes could improve the gold yield, and Gordon continued to believe that the field had yet to show its full potential. By the turn of the century, James Coutts, the new Inspector of Mines at Thames, reported that there were very few claims being worked at Kuaotunu and two had closed down during the year in order to raise capital to develop the mines at greater depth.[57] By 1914, gold mining on the blocks had collapsed entirely.

The hope that mining activities might resume at Kuaotunu was strong among the local settler community. When the Royal Commission on the Hauraki Mining District sat at Kuaotunu in July 1914, a local settler believed the prospects for gold were good, and only needed capital. He added that 'everyone welcomes the prospector.'[58] John Carroll, a mine manager, also gave evidence, telling the commission that about 30 miners were working in the area, and that any mining would have to be deep working and not surface prospecting. However, the Government surveyor was much more pessimistic, indicating that there was only one mine in the area, and that 'the opinion round here is that mining has just about come to an end.'[59]

The discovery of gold at Kuaotunu was a significant boost to an industry in decline. As a result and in hindsight, its significance may have been overrated by those administering the mining industry. There was a great deal of confidence in the success of the field and a belief that mining would be sustained for some time. This was not to be the case. The easy gold was quickly extracted and the cost of lower level mining prevented further development of the mines. The rush did not last much beyond the last decade of the nineteenth century. Miners may have realised the limited future of the field early: in May 1890, the *Coromandel County News* found

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[55] 'The Goldfields of New Zealand: Report on Roads, Water-Races, and other works in connection with Mining,' AJHR, 1894, C-3, p. 33.

[56] 'Report on Goldfields: Wardens' Reports,' AJHR, 1894, C-3A, p. 1.

[57] 'The Goldfields of New Zealand: Report on Roads, Water-Races, and other works in connection with Mining,' AJHR, 1901, C-3, p. 44.

[58] Copy of Evidence, LS 77 2, NA, Wellington, fol. 76.

[59] ibid., fol. 72.

there were 400 miners on the blocks; in July the following year, the Warden reported there were about 200.[60]

As has been shown there were two major problems. The first was recognised by the Warden and the Mine Department's Inspecting Engineer, but the structure of the mining industry, based on the individual miner, prevented a solution. The need for significant capital expenditure on machinery and the formation of companies to attract capital was not possible as a result. Furthermore, the high level of speculation and the huge number of failures did not encourage investment in what was always a volatile industry. Another problem, specific to Kuaotunu, was the problem of extracting the very fine particles of gold. Much was probably wasted, but the gold was just too difficult to treat using existing methods. Perhaps most importantly though, was the confident expectation that an industry in decline could be saved. The excitement created is significant because it was in these circumstances that the land at Kuaotunu was ceded and sold. Optimistic expectations regarding the potential success of the goldfield and subsequent disappointment when these estimates were not realised had important implications for the value of the land and affected the prices paid. These issues will be examined further in subsequent sections of the report.

[60] *Coromandel County News*, 22 May 1890; Northcroft to Eliott, 18 July 1891, MD 1, 92/932, NA, Wellington.

Part 3:The Discovery of Gold at Kuaotunu.

3.1 The Legislative Framework.

The Warden's actions with regard to the Kuaotunu goldfield and the Kuaotunu township were based on the Mining Act 1886 and its amendments. The Mining Act 1891 did affect the payment of gold revenues, but this legislation did not come into force until January 1892. By this time, the cession of mining rights and the laying out of the township had been completed. The 1891 legislation did not affect the Warden's role in this process as a result, although the proclamation declaring the cession of the blocks referred to this statute.

It should be noted that the mining legislation and its associated regulations only applied to land subject to the Mining Act. As shown in the introduction, on this basis the Warden had to negotiate the cession of mining rights to the land from the Maori owners before he could take action. This did not, of course, preclude the Warden from having the land surveyed if he gained the permission of the landowners. It did mean that he could not deal with the land under the provisions of the Mining Act.

The Mining Act 1886 contained two sets of provisions relating to Maori land. One group governed mining on Maori land, and the other provided for prospecting on Maori land. The sections relating to mining gave the Governor in Council power to apply the Act to Native reserves; required that fees, 'such sums as may from time to time be prescribed,' be paid for machine, business and residence sites; imposed penalties for mining on Maori land without authority and allowed agricultural leases over Maori land to be issued. The sections on prospecting gave the Governor power to authorise prospecting on Maori land. The Mining Act Amendment Act (No. 2) 1887 stated that Maori land within a mining district was deemed to be Crown land for the purposes of mining.

Another set of provisions in the Mining Act laid out the conditions under which machine, business and residence sites could be held. Section 61 stated that every holder of a miner's right, every person on whose behalf a consolidated miner's right is granted and every holder of a business license could occupy part of the Crown land in a mining district 'for the purpose of residence or residence and cultivation or for carrying on his business, or both, and for either the purposes aforesaid to put up any building or other erection, and at any time remove the same.' Section 64 set out the process to be followed to acquire a business or residence site. A person had to apply

to the Warden in writing describing the situation, area and boundaries of the land. The Warden would then enquire into the matter and determine any objections. If there were no objections the license could be granted. Section 65 stated that licenses would be granted for 21 years and section 67 set the maximum areas for each type of site. Section 69 to 72 involved the payment of rents and stated the Warden's powers where rent remained unpaid for the forfeiture of a license.

Mining regulations were also proclaimed under the Mining Act.[61] These regulations did not specifically refer to Maori land, but they did relate to residence, business and other sites. Part 21 of the regulations related to residence sites. These regulations set out the size of a site, process of applying for a license, the conditions on which a license was issued and other matters. Part 22 of the regulations dealt with business sites. These regulations also determined the size of a site and process for application. Regulation 174 is significant:

> The Warden may, wherever it shall be necessary for the public convenience, set apart land to be occupied for business purposes, and direct a surveyor to divide such land by streets and roadways, and to lay it off into sections in the most convenient manner, and such section may be of less area and frontage than hereinafter provided. If after such survey as aforesaid it shall be found that any holder of a business license has a section so laid off he shall be entitled to occupy such section, or, if the building is upon a street, to occupy the section nearest to the building: Provided that the nearest section be not in the legal occupation of some other person previous to the survey of the street.

The other regulation in Part 22 set out the process by which a license could be granted and the circumstances in which such a license was forfeited.

The Warden thus had the power to set aside and survey land for the purpose of a township, although the rights of existing 'legal' occupants of any site had to be respected. This is of some significance to the Lanigan dispute, to be discussed below. However, as indicated above, he only had authority over land subject to the Mining Act and Maori landowners had to cede mining rights to the land before the Mining Act applied.

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[61] *New Zealand Gazette*, 31, 16 May 1887, pp. 639-41.

3.2 The Cession of Mining Rights.

On 11 December 1891, A.J. Cadman submitted an application to the Chief Judge of the Native Land Court at Auckland, asking, under section 7 of the Native Land Court Act 1886 Amendment Act 1888, that the interest the Crown had acquired in the Kuaotunu No. 1C, No. 1D and No. 2A block be determined at the next sitting of the Native Land Court at Thames. Mining rights were considered an interest in the land. A note at the bottom of the form submitted stated that the 'object of this application is to have the title made subject to the deed of cession for mining purposes by Native owners to Her Majesty dated 31 October 1891.'[62]

The records regarding the Native Land Court hearing for this application are confusing. Held at Coromandel before Spencer von Sturmer on 11 May 1892, the minutes record that on this day the Court opened, but as the building was needed for the Assessment Court, the Native Land Court was adjourned to the next morning. However, the application of the Native Minister for Kuaotunu No. 1C, 1D and 2A was referred to, although there is no indication the application was actually called. The minutes state:

> Re application of the Hon. the Native Minister for Kuaotunu 1C, 1D and 2A. Hohepa Mataitaua, appears and states he is going away, but having had the Government Gazette read and explained to him he has no objection of any kind to offer and that all subdivisions of this land may be made subject to the Proclamation, and further states that the land has been handed over to the Crown for Gold Mining purposes.[63]

The minutes do not record any further comments regarding the application nor do they indicate that orders were made. However, three separate orders, one for each block, were prepared and signed by Judge von Sturmer that same day. They show that the land 'has been ceded by the Native owners to Her Majesty the Queen for mining purposes for so long as Her said Majesty shall require the said land for the said purposes, subject nevertheless to the conditions set out in a Proclamation under the hand of His Excellency the Governor, dated the 5th day of February, 1892 ...'[64] The deed itself was not presented to von Sturmer until 14 June 1892. He signed the deed, but no hearing was held in the Court.

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[62] Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

[63] Auckland Native Land Court minute book, 11 May 1892, fol. 35.

[64] Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

The proclamation referred to in the Court's orders declared the three Kuaotunu blocks open for mining purposes under the provisions of the Mining Act 1891.[65] The proclamation stated that the land was ceded by the Maori owners for mining purposes by a deed dated 31 October 1891.[66] The cession was subject to eight conditions contained in the deed and these were quoted in the second schedule of the proclamation. They were:

> i. Any person mining for gold or other metal or mineral or otherwise occupying any parts of the said land shall be the holder of a miners right for which the sum of twenty shillings shall have been paid issued under the provisions of "The Mining Act 1886" or any Act for the regulation of mining for the time being in force within the Colony.
> ii. Any person holding a miners right shall be entitled to cut timber (other than kauri or reserved trees) within the said pieces of land provided such timber is used for himself for mining and domestic purposes. Any person cutting timber for sale must be the holder of a timber license duly authorising him in that behalf for which he shall pay a fee of five pounds for any area prescribed on such timber license and all persons employed by him shall each be the holder of a miners rights issued at twenty shillings.
> iii. Any holder of a miners right may at any time purchase any Kauri trees required for mining purposes for the sum or price of one pound five shilling for each tree.
> iv. Mining and occupation licenses of land and Machine, Business and Residence Sites situated on the said land shall be granted at such rents and on such terms and conditions as are prescribed by "The Mining Act 1886" and its amendments and the regulations made thereunder or as shall from time to time be prescribed by the mining act then being in force in the mining district including the said land or any regulation made thereunder.
> v. Lands required for townships within the said Blocks mentioned in the schedule mentioned hereto shall be reserved and proclaimed. Any person occupying any allotment in such townships for business purposes shall pay a business license fee of five pounds annually. Any person occupying any allotment for residence shall pay a fee or rental of one pound annually.
> vi. Any person digging the kauri gum within the said land or doing any act of occupation not herein specified shall be the holder of a miners right for which a fee of one paid shall have been paid.
> vii. Reserves for native occupation and residence shall be set aside and proclaimed and such reserves shall not be subject to the provisions of the mining act or any act amending or repealing the same.
> viii. All rents royalties revenues moneys and fees (other than registration fees) payable to the Receiver of Gold Revenue for the Hauraki Mining District whether the same shall arise or accrue under the Mining Act 1886 or otherwise shall be deemed to be the property of the Native overs of the land comprised in

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[65] *New Zealand Gazette*, 14, 11 February 1892, p. 294.

[66] Auckland Crown Purchase Deed, No. 1763.

> the said Blocks and all such money shall be paid to the native owners of such Blocks quarterly.

The deed stated that each of the owners was paid 10/- by the Warden, H.W. Northcroft, and that they ceded the land to Her Majesty Queen Victoria for mining purposes. Two copies of the deed were produced, and together they were signed by nineteen individuals:

Signature	Date	Place	Interest	As trustee for:	As successor to:
Katerina Hauruia	19 April 1890	Mercury Bay	1C		
Matini Kopehu	5 July 1890	Whangarei	1C		
Hemi Wa	5 July 1890	Whangarei	1C	Raniera Matini	
Hemi Wa	5 July 1890	Whangarei	1C	Matini Kopehu	
Hemi Wa	5 July 1890	Whangarei	1C	Hamiora Matini	
Hemi Wa	5 July 1890	Whangarei	1C	Heria Matini	
Hemi Wa	5 July 1890	Whangarei	1C	Ripeka Matini	
Hemi Wa	5 July 1890	Whangarei	1C	Ruihi Matini	
Hamuera Matini	19 December 1890	Whangarei	1C		Maraea Ripeka
Hiria Matini	19 December 1890	Whangarei	1C		Maraea Ripeka
Hemi Wa	28 September 1891	Auckland	1C	Wiri Raniera	Raniera Matini
Hemi Wa	28 September 1891	Auckland	1C	Toeke Raniera	Raniera Matini
Katerina Hauruia	19 April 1890	Mercury Bay	1D		
Rawinia Taiporutu	19 April 1890	Mercury Bay	1D		
Taumaha Kara	19 April 1890	Mercury Bay	1D		
Matini Kopehu	5 July 1890	Whangarei	1D		
Hemi Wa	5 July 1890	Whangarei	1D		
Harata Taiporutu	5 August 1890	Thames	1D		
Wiremu Taiporutu	5 August 1890	Thames	1D		
Wikitoria Ranaipiki	29 August 1890	Thames	1D		
Wikitoria Ranaipiki	29 August 1890	Thames	1D	Pare Hura	Te Reiti Maihi
Maihi Te Hura	29 August 1890	Thames	1D	Pare Hura	Te Reiti Maihi
Mere Kaimanu	29 August 1890	Thames	1D	Te Tiki Patene	Wi Patene
Mere Kaimanu	29 August 1890	Thames	1D	Mata Patene	Wi Patene
Pati Tutere	7 August 1890	Thames	1D	Te Tiki Patene	Wi Patene
Pati Tutere	7 August 1890	Thames	1D	Mate Patene	Wi Patene
Hohepa Hikairo	Uncertified		1D		
Hamuera Matini	19 December 1890	Whangarei	1D		
Hiria Matini	19 December 1890	Whangarei	1D		
Kawhena Rangitu	24 April 1890	Coromandel	2A		
Katerina Hauruia	19 April 1890	Mercury Bay	2A		
Karaitiana Kihau	12 September 1890	Paeroa	2A		
Reripiti Tatiparu	19 December 1890	Whangarei	2A		
Hemi Wa	10 January 1891	Whangarei	2A		
Kereama Matai	19 April 1890	Mercury Bay			
Hohepa Mataitaua	31 October 1891	Thames			

The collection of these signatures was a nightmare for the Warden for several reasons, and these circumstances are significant. First, there were so many owners. Second, a

number of original owners had died and no successors had been appointed. Finally, very few of the owners actually lived on the block and the majority were scattered about the Coromandel peninsula and Northland. It is important to note at this point however, that the collection of signatures is a separate issue to the disagreement between the Warden and Pierce Lanigan, even though the Lanigan dispute developed while the Warden was collecting the signatures. This issue is examined in a separate section as a result.

Even before the government instructed the Warden to acquire the mining rights to the block, it was decided to attempt to purchase the land. In January 1890, Mitchelson, the Native Minister, wrote to Lewis, stating that he had been told 'that the Kuaotunu Gold Fields near Mercury Bay were turning out exceedingly good, and that the Government should take steps to acquire the native land in the vicinity and within the gold field.'[67] He requested information regarding the cost. Lewis asked the Native Land Purchase Department for details of the block and Sheridan replied that the block was a substantial piece of land, a large part of which was already owned by the Crown, and that it was of 'no particular value for settlement purposes.'[68]

It would seem James Mackay was involved in the decision to purchase the land, having suggested to Mitchelson at this time that the Crown acquire the blocks.[69] The matter was not referred to for several months, although the Government may have been attempting to deal with issues raised by Mackay. On 4 April 1890, Mackay wrote to Mitchelson at Auckland, referring to a conversation regarding the Kuaotunu gold field.[70] He outlined the ownership of the land in the area as different parts were owned by the Crown, Maori (some of whom lived in Whangarei) and Pakeha settlers. He also discussed the circumstances in which mining was permitted on the land. The Pakeha settlers allowed miners to occupy claims on their land for £3 per acre per annum. The Maori owners, according to Mackay, 'were not willing to hand them [the other three blocks of land] over to the Crown for gold mining purposes, and requested me to act as their Agent and lease claims to European and Maori miners, (who were already in many instances prospecting on the land).' Mackay had done so and had negotiated a number of mining claims, agricultural leases and residence sites.

According to Mackay, the Warden had discussed with the Maori landowners the possibility of ceding their land to the Crown for mining purposes, 'but so far they had

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[67] Mitchelson to Lewis, 10 January 1890, MA-MLP 1, 90/144, NA, Wellington.

[68] Sheridan to Lewis, 10 January 1890, ibid.

[69] Mackay to Northcroft, 14 May 1890, BACL A208/1, NA, Auckland.

[70] Mackay to Mitchelson, 4 April 1890, MA-MLP 1, 90/144, NA, Wellington.

declined to do so.' Mackay suggested instead that the Crown purchase the land, especially as there would be severe problems in acquiring the mining rights:

> As there are difficulties in completing the titles as between the Native owners and the miners, owing to several of the former being scattered about the Hauraki district and the remainder at Whangarei and the Bay of Islands. And also from there being Trustees to deal with in some instances. It would simplify matters if the Government could acquire the Native lands at Kuaotunu, subject to the carrying out by them of the arrangements entered into by me as above stated.

Northcroft's annual report of April 1890 shows that he knew of Mackay's role in negotiating leases with the miners, but he indicated the Maori landowners 'had since expressed a wish to enter into an agreement similar to that made by the other Natives in the peninsula.'[71] An agreement had been forwarded to the Maori landowners for them to consider and sign if they wished. Northcroft believed 'both the Maoris and miners seem to consider it would be far more satisfactory if the land were held by the Crown' who could provide a more secure title to claims.

Later that month, Mackay wired Mitchelson asking the government to indemnify him 'from loss and actions which may be brought for breach of arrangement made with the Natives through my agency.'[72] Mitchelson however, had no sympathy for Mackay's position.[73] He informed Mackay that the Crown had decided to acquire the land and that if successful it would be subject to mining legislation and regulations. As a result it was not 'possible to satisfy any agreements that have been entered into between the natives and the present holders of areas but the government will take care to protect as far as possible all the claims that have been taken up subject of course to the areas being in accordance with and subject to the Mining Act.'

Two days later Michelson received advice from Lewis that the Surveyor-General had recommended that land be purchased at £2 per acre.[74] However, Lewis also recognised some problems with the proposed purchase after he had received the title information. The titles showed several interests owned by minors, and their trustees could only sell with the approval of the Supreme Court. Lewis was concerned this could be withheld. Furthermore, he doubted the Maori landowners would accept the £2 per acre to be offered. He suggested the Warden be left to determine whether the

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[71] 'Report on Goldfields, Roads, Water-races and other works in connection with Mining,' AJHR, 1890, C-3, p. 139.

[72] Mackay to Mitchelson, 21 April 1890, MA-MLP 1, 90/144, NA, Wellington.

[73] Mitchelson to Mackay, 21 April 1890, ibid.

[74] Lewis to Mitchelson, 23 April 1890, ibid.

interests of owners could be acquired to give the Crown title to any of the block. The Native Minister approved the proposal that day and it was forwarded to Northcroft.[75]

Lewis' covering letter advised Northcroft that the government had no objection to the employment of James Mackay as agent to negotiate with the Maori landowners, although the terms of his employment had to be approved by the Native Minister. Lewis concluded by stating that '[t]he interests of Europeans who may have already taken up claims will, should the Crown complete title, be protected to whatever extent they conform to the Mining Laws and Regulations.' A similar message was conveyed to Mackay by Mitchelson, who wrote again to inform him that if the Maori landowners sold they would not be breaching any agreement as they were not in a position to provide the holders of claims with legal title. The Crown intended to protect those with valid claims, so there would be no loss to them. Mitchelson advised Mackay that Northcroft had been instructed to undertake the purchase and employ him as agent. The Warden must have considered this highly unlikely as he continued his efforts to acquire the mining rights and did not pursue the purchase of the blocks. There is also no evidence to suggest he even attempted to employ James Mackay, and although Mackay did assist in acquiring one signature (that of Hohepa Mataitaua) on the deed of cession, he received instructions from Wellington, not the Warden.

Meanwhile, on 18 March 1890, the Minister of Mines received a telegram from A.J. Cadman, the Coromandel Member of the House of Representatives informing him that Kawhina had offered to cede Kuaotunu No. 2 for mining purposes.[76] Cadman believed the offer should be accepted noting that he had been told there were forty claims on the land and that they were illegal and causing litigation.[77] In a subsequent letter enclosing the offer, Cadman referred to aborted attempts to purchase the land. However, he again noted there were forty mining claims on the block, 'the arrangements for which must be irregular and being based on all sort of terms the whole may at any moment become a scene of discord and lawsuits.' He believed the Warden could settle the issue 'in a satisfactory manner' but urged haste as 'delays are dangerous in dealing with Natives.' The offer should be accepted, he wrote, and since, he was told, Kawhena held the power of attorney for other interests, he could deal with most of the block.

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[75] Lewis to Northcroft, 23 April 1890, ibid.

[76] Cadman to Minister of Mines, 18 March 1890, BACL A208/1, NA, Auckland.

[77] Cadman to Minister of Mines, 20 March 1890, ibid.

The Mines Department's inspecting engineer agreed and recommended in April 1890 that the offer should be accepted and instructions be sent to Northcroft.[78] He suggested a copy of the agreements reached with Maori at Thames and Ohinemuri be sent to assist in drafting a deed. Eliott approved the proposal and the Warden was instructed the following day.[79]

On 11 April 1890 Northcroft sent an agreement for the Maori owners to lease the Kuaotunu block to the Queen to William White, who was possibly a Justice of the Peace, at Kuaotunu.[80] He asked that White have the landowners sign the deed and also fill in the sections regarding the blocks of land. Northcroft had not done this because at that stage he did not know which blocks would be ceded.

In May 1890, the deed was sent to J.S. Clendon, the Warden at Whangarei for the first time asking him to obtain the signatures of the successors (or their trustees if minors) of Maraea Ripeka.[81] In July 1890, Northcroft reported to Eliott that he had completed the lease to some of the Kuaotunu blocks and intended going to Kuaotunu to adjust the titles on the blocks in preparation for bringing 'existing holdings' under the operation of the Mining Act.[82]

In September 1890, the deed was sent to Clendon a second time.[83] A problem had arisen because Hemi Waa had signed as trustee for Maraea Ripeka's six children. However, as her four eldest children had reached the necessary age they should have signed in their own right. Northcroft also informed Eliott that the agreement was 'not quite complete' and that it had been returned to Clendon to have the mistake rectified.[84] A month later he wrote to the Under Secretary of the Native Department complaining that he could not get the deed returned from Clendon.[85] The deed he had sent to Whangarei in early May had been returned, but it had not been completed. He had then drawn up a new deed so that he could continue collecting signatures in the Hauraki district. The new deed was sent to Whangarei in early September, but Northcroft was unable to get a response from the Magistrate's Court as to the situation with the deed. In November 1890, Northcroft sent a deed to Whangarei again for signatures and this time it was returned completed by the Clerk of Court.[86]

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[78] Gordon to Eliott, 8 April 1890, ibid.
[79] Eliott to Northcroft, 9 April 1890, ibid.
[80] Northcroft to White, 11 April 1890, ibid.
[81] Northcroft to Clendon, 3 May 1890, ibid.
[82] Northcroft to Eliott, 24 July 1890, ibid.
[83] Northcroft to Clendon, 2 September 1890, ibid.
[84] Northcroft to Eliott, 2 September 1890, ibid.
[85] Northcroft to Under Secretary, Native Department, 29 October 1890, ibid.
[86] Northcroft to Gordon, 10 November 1890, Gordon to Northcroft, undated, ibid.

However, problems with successors and minors were still plaguing the Warden. In early 1891, Northcroft reported to Eliott that all the signatures of the owners of Kuaotunu No. 2A had been obtained, the last acquired on 10 January.[87] Kuaotunu No. 1C required one signature, but the owner was deceased and no successor had been appointed. Two signatures were needed for Kuaotunu No. 1D and he hoped to complete those on his next trip to Coromandel. Northcroft later wrote to Edger at the Native Land Court in Auckland asking if Hemi Waa had applied for a succession order in Kuaotunu No. 1C and 1D and whether the application could be heard before Judge Scannell.[88] He was also becoming frustrated with the errors of the Resident Magistrate's court staff in Whangarei. He wrote twice in March 1891 demanding the signatures requested be obtained and the deed returned 'without delay.'[89] He was very terse, replying to a telegram that 'it is imperative that native signatures should at once be obtained and deed returned,' that 'this mistake should never have occurred,' and threatening 'to write to Wellington explaining cause of delay.'[90]

Eliott was obviously concerned at the length of time taken to collect the signatures, and in March 1891, Northcroft forwarded the deeds to him with an explanation for the delay. By this time there were two deeds. Northcroft indicated that he had prepared one deed and after collecting the first six signature sent it to the Clerk of Court at Whangarei on 9 May so that the Maori landowners there could sign. Apparently the deed was returned incomplete two months later. A second deed was then drawn up and returned to Whangarei so that Northcroft could continue collecting signatures on the other copy. The second deed also returned from Whangarei some time later but two of the owners had signed under a different name. The deed was then returned to Whangarei to rectify the problem and Northcroft had only recently received it. Three signatures remained outstanding and these related to deceased owners for whom no successors had been appointed. Northcroft asked that Eliott return the deeds so that the other signatures could be obtained after succession orders had been made. Northcroft concluded his letter:

> In future when the Government wish to lease land similarly situated I would respectfully suggest they get one of the native officers to do the work for where one is situated as I have been having to depend on officers in other District to get some of the signatures it entails a great deal of worry, work and responsibility and it is not completed as speedily or satisfactorily as one would wish.[91]

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[87] Northcroft to Eliott, undated, ibid.

[88] Northcroft to Edger, 17 June 1891, BACL A208/633, NA, Auckland.

[89] Northcroft to Receiver of Gold Revenue, 13 March 1891, Whangarei, ibid.

[90] Northcroft to Receiver of Gold Revenue, 13 March 1891, Whangarei, ibid.

[91] Northcroft to Eliott, 28 March 1891, ibid.

There were further problems with the need to appoint successors to several deceased owners through September and October 1891.[92] Even the Resident Magistrate who was to hear the succession applications was instructed by Cadman to obtain signatures after he had made the necessary orders.[93] James Mackay was also drafted in to get Hohepa Mataitaua's signature on the deed.[94] Several months earlier, Mackay had written to Cadman to advise him that Hohepa was willing to sign the agreement, but would not sign for the Warden.[95] According to Mackay, Hohepa was 'very bitter against him.' When Mackay tried to find out why, Hohepa would not tell him replying 'kei au e mohio ana [That's for me to know].' He offered to negotiate with Hohepa to bring the matter to a conclusion.

Cadman also wrote to Hohepa in Maori asking him to sign the deed as the revenue accrued on the block could not be released to him until he had done so.[96] It would appear however, that the government's agents had some difficulty locating Hohepa and then when they did Mackay reported that Hohepa would only sign if allotments 12 and 13 of the township, on which Kawhena's house was located, were reserved for him.[97] Neither Cadman or Northcroft considered this concession advisable.[98] Northcroft, in fact, considered the proposal suspect, as sites had been reserved for those who had buildings on the land and Hohepa had not lived there since the field was opened. He believed Hohepa's intention was 'to get an acknowledgment of right for subdivision before Land Court' and he did not think 'he should be assisted.' Furthermore, Northcroft reported that Hohepa had agreed to come to Thames to sign the deed, and he was concerned about Mackay's involvement. Nevertheless, Hohepa's signature, the last outstanding signature for Kuaotunu No. 1D, was obtained on 31 October.[99] Northcroft informed Eliott that the Kuaotunu deed was complete on 6 November 1891.[100]

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[92] Coromandel Native Land Court minute book 4, 28 October 1889, fols 285-89; Coromandel Native Land Court minute book 5, 28 September 1891, fols 63-5.

[93] Lewis to Bishop, 4 September 1891, 4 September 1891; Bishop to Lewis, 30 September 1891, MA-MLP 1, 90/144, NA, Wellington.

[94] Mackay to Cadman, 3 October 1891; Cadman to Mackay, 3 October 1891; Mackay to Cadman, 6 October 1891; Lewis to Bishop, 7 October 1891; Cadman to Mackay, 7 October 1891; Mackay to Cadman, 22 October 1891, ibid.

[95] Mackay to Cadman, 13 August 1891, ibid.

[96] Cadman to Hohepa Mataitaua, 8 October 1891, ibid.

[97] Mackay to Cadman, 27 October 1891, ibid.

[98] Cadman to Northcroft, 27 October 1891; Northcroft to Cadman, 29 October 1891, ibid.

[99] Northcroft to Eliott, 3 December 1891, BACL A208/633, NA, Auckland.

[100] Northcroft to Eliott, 6 November 1891, ibid.

The deeds were finally received by the Mines Department in Wellington in early December 1891. However, Eliott did not know what to do with them. He asked Sheridan what had to be done to register the deeds.[101] Sheridan replied that an application would be made to the Native Land Court to have the titles made subject to the Deed, and the deed itself had to be lodged at the Crown Lands Office.[102] Some time later, Eliott also wrote to the Crown Law Office for an opinion as to whether the land ought to be proclaimed open for mining purposes under the provision of the Mining Act 1891.[103] Reid, an Assistant Law Officer, thought 'it would be better to proclaim the land open for mining purposes at the outset.'[104] There was, however, the possibility this was unnecessary because the land was already within the boundaries of the Hauraki Mining District. As discussed above, the cession of mining rights was proclaimed and the deed presented to the Native Land Court for registration. The Warden was obviously pleased with the outcome, noting in his annual report that the cession of mining rights 'is much appreciated by the miners and the public generally, as security of title and freedom from irksome conditions have encouraged the occupation of the land and the consequent development of its resources.'[105] Northcroft does not comment on the impact on the Maori landowners, but he did indicate the new township was of benefit to them since 'ample reserves' had been 'laid off for Native use and cultivation.'[106]

The Warden's position and James Mackay's role in the process of negotiating the cession of mining rights are both instructive. The Warden was given an extremely difficult task, in addition to his other duties in the administration of the Mining District. He appears to have received very little assistance from other government officers and was totally frustrated by the lack of co-operation of the staff of the Magistrate's Court at Whangarei. Given the number of owners, their dispersed locations and the number of successions, the Warden was placed in a highly problematic position. That it took so long to complete the deed is hardly surprising. And the Warden himself complained very strongly that he was in no position to effectively do the work.

James Mackay's role is also important because it appears he was advising ministers to purchase the land, some time before the Government had decided to negotiate for the cession of mining rights. The Warden was instructed by the Mines Department to

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[101] Eliott to Sheridan, 9 December 1891, MD 1, 94/401, NA, Wellington.

[102] Sheridan to Eliott, 11 December 1891, ibid.

[103] Eliott to Reid, 12 January 1892, ibid.

[104] Reid to Eliott, 13 January 1892, ibid.

[105] 'Report on Goldfields, Roads, Water-Races and other works in connection with Mining,' AJHR, 1891, Sess. II, C-4, p. 146.

[106] ibid.

acquire the mining right a short time before the Native Department asked him to purchase the land. But the purchase proposal had been under investigation for a least two months prior to the actual instruction. The Government's first intention then, and acting on Mackay's recommendation, was to purchase the land. The suggestion from Cadman to acquire the mining rights came some time later when Kawhena Rangitu made his offer. Furthermore, this relates to the second major issue arising out of Mackay's role – his suggestion that the Maori landowners had told the Warden they did not want to cede their land to the Crown. In fact, Kawhena had offered to do so some time before. This is significant in relation to the Lanigan dispute, discussed below.

Although there is no clear statement, the Warden must have decided not to pursue the attempts to purchase the land. This is probably to be expected given its probable value at this time and the comparatively low price offered. Again, Mackay's role in the cession of mining rights is important, mainly because he played a very limited role. Despite his supposed close relationship with the Maori landowners, Mackay does not seem to have provided much assistance, instead trying to interfere from the margins. It is not clear if he finally obtained Hohepa Mataitaua's signatures, or if Hohepa signed for the Warden at Coromandel. It appears the Warden believed Hohepa's agreement had been gained and this raises questions about the objections raised by Mackay. Mackay's involvement in the process of negotiation is highly dubious as a result, because he appears as a marginal participant who interferes rather than assists. These doubts are further emphasised when considered in relation to the Lanigan dispute. It becomes clear that he was Lanigan's agent and as will be shown, Lanigan's interests were very different to those of the Maori landowners.

3.3 Laying out the Township.

Very little can be said about the actual survey of the township. The plan prepared by the surveyor is dated September 1890.[107] The plan also shows that the surveyor, Philips, received verbal instructions regarding the survey on 20 August 1890. Unfortunately, the preservation of the Warden's records has been patchy and the relevant Mines Department and Surveyor-General's files have been destroyed or are missing. However, there are some further fragments available which are of use.

[107] ML plan 5929, LINZ, Hamilton.

The Surveyor-General's inward correspondence register shows that the Under-Secretary for Crown Lands (who was also Under Secretary of the Mines Department) wrote to the Surveyor-General on 6 August 1890 referring to correspondence, presumably from the Warden, on the necessity for a survey of a township on native land at Kuaotunu.[108] Three days later the Surveyor-General wrote to the Chief Surveyor at Auckland asking the latter whether a staff surveyor was available to lay out a goldfield township at Kuaotunu. On 11 August the Chief Surveyor replied that Philips was available to undertake the work whenever the Warden was ready. The following day the Surveyor-General wired the Chief Surveyor to arrange the matter with the Warden.

As noted above, Philips received verbal instructions on 20 August. By 1 September the survey was well advanced. Phillips wrote to the Warden from Kuaotunu, sending a rough tracing and asking which of two locations for the township Northcroft preferred.[109] It would seem a house had already been built and this was causing problems with the survey. Philips offered two alternative sites for the township. Locating the township on one site would avoid having to shift the house already constructed. Apparently the site was 'almost as good' as the alternative, 'dry and mostly flat,' but 'not quite as pretty.' No reply from the Warden has been found. However, on 2 October 1890, Northcroft wrote to the Chief Surveyor at Auckland asking when he could expect the plan of the Kuaotunu township.[110]

It would appear therefore that the survey of the township occurred during August and September 1890 – just over one year prior to the completion of the deed of cession.

3.4 The Opening of the Township.

Although it had been surveyed, the township was not opened for marking out sites until late October. On 24 October, the *Coromandel County News* published a notice from the Warden's Office at Coromandel stating that 'at and after 10 o'clock am on Friday the 24th instant, allotments in the Township of Kuaotunu will be open for occupation under "The Mining Act 1886" to holders of Miners' Right and Business

[108] These registers are held at LINZ, Wellington.

[109] Philips to Northcroft, 1 September 1890, BACL A208/1, NA, Auckland.

[110] Northcroft to Chief Surveyor, Auckland, 2 October 1890, BACL A208/633, NA, Auckland.

Licenses.'[111] The notice also indicated a large number of allotments were 'reserved from occupation at present.'

Four days later, the paper carried a lengthy article on the opening of the township: 'On Friday last the Government township at Kuaotunu was thrown open for selection, excepting sections on which building had been erected or a title obtained prior to the land being taken over by the Warden, on behalf of the Government.'[112] The paper reported that 'from early morning all was bustle and excitement,' as 'all conditions of men' rushed about hoping to secure the best sites and mark them. George Wilson, the mining inspector, was present to receive applications, and by 10 o'clock 'the excitement had almost reached fever heat.' After the gun was fired, pegs were hammered and a 'general stampede' was caused as applications were lodged with Wilson. According to the paper's correspondent, 'the whole of the business sites available were taken up and as before stated in some instances there were several applicants for the same lot; most of the residence sites were also applied for, and for some of them there are three or more applicants.' It was reported that the formal allotment of the sections was to be made by the Warden at Coromandel on 18 November. However, it would appear the Warden's consideration of these applications was delayed.

The following year, in June 1891, the *Coromandel County News* reported on a recent hearing of the Warden's Court at Coromandel.[113] According to the paper, Northcroft 'adjudicated on all applications for business and residence sites in the surveyed township at Kuaotunu excepting those in Block No. 1D.' The paper carried the list of the successful applicants. Kuaotunu No. 1D was excluded from the allocation and the 'Warden intimated that the signature of one more Native has to be obtained before he can allot the sections.'

As was shown in Part 2, the Warden did have jurisdiction over large areas of Crown land in the Kuaotunu district, and so was able to grant licenses in some areas. The newspaper reports indicate that the Warden took some care to ensure that he only granted rights and licenses to claims located on land over which he had jurisdiction. Certainly the township was laid out prior to the cession of mining rights, and the township was also opened for selection before all the signatures to the blocks were obtained. Nevertheless, it does seem that the Warden did not adjudicate on claims on the Maori-owned land for some eight or nine months. In the meantime the owners of the No. 1C and No. 2A blocks had completed the deed. The report also indicates that

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[111] *Coromandel County News*, 24 October 1890.

[112] *Coromandel County News*, 28 October 1890.

[113] *Coromandel County News*, 5 June 1891.

the allocation of sections on the No. 1D block was held over by the Warden as there was an owner who had not signed. So although the township was surveyed and opened prior to the cession of mining rights, the Warden did not adjudicate on the blocks until he had received consent from all the owners. Given the number of times he reported all the signatures had been obtained, it appears he did not expect the major problems he faced in completing the deeds. This may explain why he laid off the township so early, but then did not allocate the sections until some time later.

Two final issues require comment. The first relates to the occupation of the block by miners and merchants. The evidence shows the land was occupied prior to the grants made by the Warden. The Warden's actions gave the successful applicants, who may have already occupied sites, legal rights. However, there is no evidence to indicate the circumstances in which the land was occupied in the period following the official opening of the township and prior to the Warden's decisions.

The second issue is more technical. Even when the cession deeds had been completed to all the blocks, there is the question of whether the land had to be proclaimed by the Governor before the Warden gained jurisdiction. This is not entirely clear, because although the Crown Law Office considered the move advisable, the blocks may already have been declared part of the Hauraki Mining District. If the land did need to be gazetted then the Warden did not have jurisdiction over the land at the time he allotted the sections.

3.5 The Lanigan Dispute.

The dispute between the Crown and Pierce Lanigan did not involve the Maori landowners in any significant way, but it is important in terms of James Mackay's role in the Kuaotunu goldfield and his relationship to the Maori landowners.

Lanigan first wrote to Northcroft in October 1890 claiming to have leased part of Kuaotunu No. 1D.[114] He was obviously becoming concerned at the Warden's actions in laying out the township and issuing residence and business licenses. He outlined his interests at Kuaotunu and suggested a method of dealing with those interests when the government had acquired mining rights to the land. Lanigan had instructed his agent James Mackay to act on his behalf regarding his lease at Kuaotunu. He supported the Warden's attempts to acquire the mining rights 'as nothing tends more

[114] Lanigan to Northcroft, 21 October 1890, BACL A208/1, NA, Auckland.

to the development of a gold field, than having the whole placed under one management.' He proposed to terminate his lease in favour of the government. In return he would be reserved the allotments on both side of the Torea Road (4, 5, 6, 7, 8, 9, 10, 11, 32, 33, 34, 35, 36 and 37) for a term of 21 years on the same terms as it had been leased from the Maori landowners. These terms originally required payment of a rental of £15, subsequently increased to £20, for the whole block. Realising the value of the land was increasing as the gold field developed, Lanigan was willing to offer £2 for each of the allotments asked, a total of £28. He also indicated that he had gone to some expense to acquire his lease, as Mackay had to travel to Whangarei and Thames. Further expense had been incurred in 'digging up and re-interring skeletons of deceased Natives.'

The dispute was stepped up a few days later when Mackay wrote to Northcroft to report 'that some persons have without his permission pegged out allotments thereon and intend applying to you for leases or licenses of the same.'[115] He objected to the award of the allotments to anyone other than Lanigan 'as he has a lease of the land forming the same, which was negotiated with the Natives before the Government had acquired, or attempted to acquire any rights over Block No. 1D.' A few days later Lanigan also wrote to the Warden asking that the allotments be granted to him 'in lieu of the lease from the Natives.'[116] He complained that those who pegged out the areas must have known he had a lease on the land. He added that he had himself leased seven of the allotments. At this stage, the Government also became involved as Lanigan and Mackay had spoken with Mitchelson on the issue. Mitchelson supported Lanigan's request for the allotments and advised the Warden accordingly.[117]

No action on Lanigan's claim seems to have been taken. At the end of December Lanigan wrote to the Warden again asking the matter be submitted to the government for consideration, and his letter was forwarded to the Native Minister.[118] Lanigan set out the circumstances of his claim again in greater detail. He had instructed James Mackay to acquire a lease (in Mackay's name) at the end of July 1889. It was agreed that an annual rent of £15 would be paid and the remains of deceased Maori would be removed and re-interred. A formal lease was made in the name of his brother James Lanigan, for £20, not the earlier agreed £15. This 'was executed by the whole of the Native owners then residing at Kuaotunu.' Other owners lived elsewhere and 'Mr Mackay procured their signatures from time to time' at considerable expense.

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[115] Mackay to Northcroft, 29 October 1890, ibid.

[116] Lanigan to Northcroft, 10 November 1890, ibid.

[117] Mitchelson to Northcroft, 10 November 1890, MD 1, 94/401, NA, Wellington.

[118] Lanigan to Northcroft, 30 December 1890; Lanigan to Mitchelson, 5 January 1891, ibid.

Lanigan had subsequently leased sites on which buildings were constructed. According to Lanigan, the Warden had negotiated for mining rights to the land and:

> After some time had elapsed, you declared the No. 1C and 2B [presumably 2A] Blocks to be open for gold mining operations, but you declined to grant any mining or occupation rights on the No. 1D Block as a Native named Hohepa Mataitaua was disputing the title to it under "The Native Land Equitable Owners Act, 1886." The case was heard in the Native Land Court, when Mr Mackay, acting as agent for the other certificated owner of the block defeated Hohepa Mataitaua. Subsequently the Crown took advantage of this, and added the block to the gold field.

Apparently Northcroft had seen the document leasing the land to Lanigan and had asked for permission to re-survey the No. 1D block when arrangements for the survey of the township were being made. When the township was first opened the area leased to Lanigan was not excluded and the area was occupied. Lanigan asked that the allotments be withdrawn from the operation of the Mining Act or that he be able to take them up in the usual way. He noted that the latter option would be to the financial advantage of the Maori landowners who would receive £70 per annum instead of £20. Furthermore, he assured the Government 'that my dealings with the Natives were perfectly legal, as the title to the land had for many year been completed by "The Native Land Court."' Lanigan had a lot to lose in the Kuaotunu township: 'I shall be liable to actions at law, by the persons I have placed in possession of them, besides losing all the money which has been expended by me in acquiring them.'

However, Sheridan advised against interfering in the matter preferring to leave it to the Warden.[119] He believed Lanigan had no legal status. Cadman disagreed and thought Lanigan did have some claim.[120] He wanted to wait for the Warden to report. Again no action was taken and in consequence Lanigan wrote to the Native Minister a second time. It would seem the Warden was unwilling to entertain Lanigan's proposal, refused to report to the government on the matter and was threatening to hear applications for licenses on the block.[121]

Mackay was then drafted in to deal with the issue. He wired Mitchelson on 20 January asking him how the Warden could grant either mining or occupational rights, or interfere with Lanigan's interests without the Governor proclaiming the Kuaotunu goldfields within the Hauraki Mining District.[122] In reply, Gordon stated that the land was within the goldfields.[123] Mackay wired Mitchelson again on 22 January stating

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[119] Sheridan to Cadman, 15 January 1891, ibid.

[120] Cadman to Sheridan, 15 January 1891, ibid.

[121] Lanigan to Mitchelson, 19 January 1891, ibid.

[122] Mackay to Mitchelson, 20 January 1891, ibid.

[123] Gordon to Mackay, 21 January 1891, ibid.

that although the blocks were within the boundaries of the mining district the Governor had not acquired mining rights over them, and so they did not form part of the goldfield and were Native land. Mackay added that '[o]therwise what necessity for the present agreement with the Natives.'[124]

Gordon did not reply, but he had wired the Warden for an explanation of the matter, and whether he believed Lanigan had any claim.[125] Northcroft replied that the dispute was between Lanigan and the Maori landowners, and that the lease was incomplete. He did not believe the Government should interfere.[126] A few days later, the Mines Department Inspecting Engineer, Henry Gordon, wrote to the Minister of Mines to warn him that 'trouble may crop up about the Warden in the Hauraki District granting rights to miners and residence holders at Kuaotunu.'[127] Gordon noted that Lanigan claimed to hold a lease for land on which part of the township was located. Northcroft had yet to forward the agreements made with the Maori landowners and

> consequently the land has not yet been proclaimed as being within the Goldfields. At the time the Kuaotunu Field was first opened the whole of the area comprising both Crown and Native land was proclaimed a Gold Field but the Crown Law Officers hold that each block as ceded by the Natives for mining purposes requires to be proclaimed.

The same day, Mackay wrote to Mitchelson threatening to sue the Warden if he did not recognise Lanigan's claim.[128]

Mackay believed Northcroft had no authority to grant mining rights or occupation licenses of the three blocks of Maori land at Kuaotunu. He gave six grounds for his claim. These claims related to the proclamation of the Kuaotunu blocks as a goldfield. Mackay asserted that the blocks had never been annexed to the Hauraki Mining District as required by law; that the Mining District proclaimed on the 24 January 1889 illegally included within its external boundaries certain blocks of private and Maori lands (among the latter being the three Kuaotunu blocks) which had not been ceded to the Crown for mining, or any other purposes; that the Governor could only proclaim Crown Lands as a Mining District; that in January 1889, the Governor had not obtained mining rights on any of the three Kuaotunu blocks, and since the deed signed by the Maori landowners ceding mining rights was dated subsequent to that proclamation, it was not affected by that proclamation; that up to the present, when lands had been acquired from Maori for mining purposes either by

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[124] Mackay to Mitchelson, 22 January 1891, ibid.

[125] Gordon to Northcroft, 21 January 1891, ibid.

[126] Northcroft to Eliott, 24 January 1891, ibid.

[127] Gordon to Seddon, 2 February 1891, ibid.

[128] Mackay to Native Minister, 2 February 1891, ibid.

agreement, or purchase they were gazetted as an extension of the Mining District; and that it was necessary for the Governor to proclaim by name, lands acquired from Maori, for mining purposes. Mackay informed the minister that he only raised these points in defence of his client's interests, and if the Warden was instructed not to interfere with Lanigan's property, 'none of the above questions will be raised, and will not be publicly known.' Mackay was convinced that he could 'expose the illegal granting of claims and other holdings' but was concerned that this would paralyse the mining industry at Kuaotunu.

The matter was urgently referred to Seddon for his attention and instructions were forwarded to the Warden. At this stage, Cadman was of the view that the Warden should not deal with the matter until the Native Department had determined the substance of Lanigan's claim as he believed Lanigan had 'some equitable claim.'[129]

Northcroft finally reported to Eliott at the Mines Department on 7 February.[130] The Warden's report shows he was instructed by the Mines Department in April 1890 to acquire a lease of the land for mining purposes, and later the same month was instructed by the Native Department to negotiate the purchase of the block. According to Northcroft the Maori landowners 'would not entertain the [purchase] proposal at the price offered,' and so he 'completed the lease as far as possible with much difficulty owing to the native being so scattered and to the unexpected delay which occurred in procuring the signatures of the Maoris living near Whangarei.' At this time, Northcroft indicated, he was informed by some of the landowners that Lanigan was negotiating a lease for land for a battery site, and that 'contrary to his original understanding' was re-leasing it to Europeans for business sites. However, he also discovered that 'only a portion of the owners had signed this lease – or agreement to lease – and that some who had not signed were determined not to do so.' Northcroft went about completing his lease (and at this point believed he had acquired the signatures for No. 1D) and noted that Lanigan could have completed his title but had not done so – he believed there were four or five signatures outstanding. The Warden had met Lanigan and Mackay several times, and told them he could not recognise their claim until they had registered their lease. Northcroft believed 'that it would be manifestly unjust as well as illegal' for the Government to accept Lanigan's claim or withdraw part of the township from the goldfield 'without first having received a request from the whole of the native owners to do so.'

There does not seem to have been a major response to Northcroft's report, except instructions from Eliott asking the Warden not to deal with the part of the block

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[129] Cadman to Seddon, 4 February 1891, ibid.

[130] Northcroft to Eliott, 7 February 1891, ibid.

affected by Lanigan's claim 'until settled so as not to further complicate matters.'[131] The moratorium on the dealing with the land was probably also due to the error in Northcroft's report: two signatures were still outstanding on the No. 1D block.[132]

On 13 March, Cadman wrote to Seddon to advise him of the situation.[133] Based on discussions with the Warden and Lanigan, Cadman recommended that the land claimed by Lanigan be granted to him subject to paying the usual rental fee for each allotment. Cadman also recommended that Lanigan be refunded £50 from the Gold Revenue for land duty and expenses incurred in removing the remains buried in the urupa. He also noted that this proposal could not be implemented until the deed ceding Kuaotunu No. 1D was completed. Seddon approved this proposal. As the matter had been dealt with for the present time, the focus returned to obtaining the outstanding signatures.

A month later, a second person entered the dispute.[134] On 8 April, a solicitor, W.J. Napier, wrote to Cadman on behalf of James Lanigan with regard to the arrangement reached by the Government. He objected to this proposal stating that his client held an 'unimpeachable' lease over the land and that 'he could enforce a partition of the land so as to cut off the portion of the Natives who has not signed the lease.' Napier informed Cadman that the lease was made to James Lanigan, not Pierce, and the latter had no claim to any special consideration. The letter concluded by asking the Government to consider how the matter could be dealt with and stated that James Lanigan was 'entitled to have a fair and just settlement made if the Government desire to retain control of the land in question under the existing mining law.' The letter was acknowledged, but no recorded action was taken. The following month James Lanigan himself wrote to Seddon to withdraw his claim.[135]

The signatures on the deed of cession had run into the problem of successors. Mackay became involved as noted above, and in a letter to Cadman revealed that Lanigan was now in favour of completing the lease. According to Mackay, '[a]s the non-completion of the title is very disadvantageous to Mr Pierce Lanigan as he can make no use of the allotments and cannot get any rent for those which he has leased, and are in the occupation of Europeans. He is prepared to pay to Hohepa Mataitaua a sum not exceeding £25 to induce him to sign.'[136]

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[131] Eliott to Northcroft, 7 February 1891, ibid.

[132] Lewis to Eliott, 14 February 1891, ibid.

[133] Cadman to Seddon, 13 March 1891, ibid.

[134] Napier to Cadman, 8 April 1891, ibid.

[135] Lanigan to Seddon, 30 May 1891, ibid.

[136] Mackay to Cadman, 13 August 1891, MA-MLP 1, 90/144, NA, Wellington.

When finally the signatures were obtained, Pierce Lanigan wrote to Cadman asking that the Warden be instructed to carry out the agreement reached earlier in the year.[137] In December, the Warden was instructed to give effect to the settlement negotiated by Cadman.[138] The grant was made, but in August 1893, the matter came before Cadman a second time. Lanigan wrote complaining that his licenses to the land were about to be forfeited due to unpaid rent and because he did not occupy all the sites. This was because the Warden had insisted he pay one year's rent in advance and take out a separate license for each site. He believed this contravened the terms of his original agreement. There was also a problem with constructing a tramway from the proposed site of his battery to the mines. According to Lanigan he had 'on three occasions been provided with the capital for the work, but could not do so for the want of a proper title.' He continued to insist that he and James Mackay were responsible for giving the Government access the blocks at Kuaotunu, that they 'were the means of the Government obtaining a foothold on the three Native blocks at Kuaotunu.' They had moved the remains of Maori buried in the urupa and he claimed they had 'assisted' in acquiring the signature of Hohepa Mataitaua on the deed 'when the Government had failed in procuring it.' On this basis, Lanigan believed he was 'deserving of favourable consideration.'

Eliott asked Northcroft to comment on the issues raised by Lanigan.[139] Northcroft reported that the grants had been made to Mary Lanigan on 9 February 1892, but that there was significant outstanding rent on the sites – Lanigan had not paid any rent on the sites since they were granted to him.[140] Northcroft was concerned that if the Native revenue was stopped to repay Lanigan's expenses, this would impact unfairly on some of the Maori landowners as several did not sign Lanigan's lease. However, he agreed to take no action until instructed by the Mines Department and would adjourn the hearing if necessary. Eliott replied that the matter should be adjourned for the Government to consider appropriate action as it was 'desired to act fairly to all parties.'[141] It is not clear if further action was taken.

The Lanigan dispute gives a clearer indication of the situation of mining on the Kuaotunu goldfield and also of James Mackay's position. It is fairly clear that although Lanigan had attempted to obtain a lease to the land he had not been successful. Northcroft understood a number of owners had refused to sign and it appears no lease agreement was presented to the Native Land Court for registration

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[137] Lanigan to Cadman, 11 November 1891, MD 1, 94/401, NA, Wellington.

[138] Eliott to Northcroft, 7 December 1891, BACL, A208/1, NA, Auckland.

[139] Eliott to Northcroft, 25 August 1893, MD 1, 94/401, NA, Wellington.

[140] Northcroft to Eliott, 24 August 1893, ibid.

[141] Eliott to Northcroft, 25 August 1893, ibid.

against the title. It seems therefore he had no substantive claim, as Sheridan and Northcroft believed. But he did have a lot to lose, especially as he had sub-let some of the land and, as has been shown, some substantial buildings were constructed. This may explain why Lanigan was so keen for the Crown to purchase the land, as it could have provided a much simpler means of legalising his claim. It may also indicate why he eventually supported the Warden's attempt to negotiate the cession of mining rights.

It is interesting that it is the politicians – Mitchelson and Cadman – who supported Lanigan's claim. As has been seen, there was gold at Kuaotunu but a major problem was that it was dispersed through the quartz. Stamper batteries were needed to extract the gold. Lanigan wanted to build a battery on the land he claimed to lease, and Cadman and Mitchelson may possibly have considered his claim favourably because of the benefits they believed it could bring to mining in the area.

James Mackay's position in relation to the Kuaotunu blocks is also clarified by the Lanigan dispute. He describes himself as Lanigan's agent, who negotiated with the Maori landowners for a lease. This seems quite clear, suggesting that the interests of the Maori landowners were not his central focus. It appears his actions, including acting on behalf of some of the owners (against others) in the Native Land Court rehearing, to be discussed below, need to be considered in this light. Finally, although Mackay's threat to sue the Warden and the grounds stated may have had some substance, it is doubtful if he could have established his client's own claim.

Part 4:The Township and the Kuaotunu Blocks.

4.1 The Partition of Kuaotunu No. 1D.

Kuaotunu No. 1D was a relatively small block but as has been seen it caused major difficulties for the Warden. The Warden was not, however, the only Crown official to have problems with the block. Some time after title had been awarded staff at the Native Land Court and the Native Land Purchase Department could not agree as to who owned the block and this issue was not resolved by the time disputes among the Maori landowners reached the Native Land Court. Between 1890 and 1894 the Court heard three applications regarding Kuaotunu No. 1D. The first was for an enquiry into the original title investigation, the second was for a partition hearing and the third was for a rehearing of the partition application. The evidence presented in these cases was lengthy and confusing. It is outlined in detail in this section, not so much for the purpose of assessing the specific circumstances of the case, but because of what it suggests in terms of the system of land tenure administered by the Native Land Court and the way in which the Court operated that system. Kuaotunu No. 1D may have been a small block but the value of the land due to the discovery of gold and the nature of its ownership structure gave it some unique characteristics which indicate the limitations of the system of land tenure applied to Maori customary rights and the role of the Court.

The problem of Kuaotunu No. 1D arose as early as 1882. Sheridan, at the Land Purchase Office, queried the orders made by the Court in relation to the Kuaotunu blocks.[142] He asked Wilkinson to clarify the situation, as the original memorial of ownership referred to two separate blocks. He understood one of 1361 acres was awarded to the Crown, and another 210 acres of that block was awarded to two non-sellers. The other 197 acre block was awarded to all the original owners.

Wilkinson replied that Sheridan had made a mistake.[143] As far as he could remember, the 197 acre block 'was not a subdivision of the Kuaotunu No.1 Block, but of the Kuaotunu No. 2, which, if you refer to the map will be found to be bounded by the Otama block, whilst the Kuaotunu No. 1 block is not.' According to Wilkinson the

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[142] Sheridan to Wilkinson, 24 January 1882, MA-MLP 1, 1903/102, NA, Wellington.

[143] Wilkinson to Sheridan, 2 February 1882, ibid.

conveyance to the Crown affected the Kuaotunu No. 1 block only. That block was subdivided by the Court into Kuaotunu No. 1B, 1157 acres to the Crown and Kuaotunu No. 1C, 210 acres, to the two non-sellers. At his request, the Court created boundaries so that the Crown's interest would adjoin other Crown land (Kuaotunu No. 1A) and the Kuaotunu No. 1C would adjoin other Maori land – Kuaotunu No. 2.

In response, Sheridan sent Wilkinson the memorial of ownership.[144] However, Wilkinson believed the memorial supported his view, and he repeated that the 197 acre block was a separate block and not part of Kuaotunu No. 1, but was a subdivision of Kuaotunu No. 2. He also noted that the land 'contains a tapu' and would therefore not be sold. He forwarded a tracing showing the position of the Kuaotunu blocks between the Matarangi, Pitoone and Otama blocks which he had received from Kensington at the Survey Office in Auckland.[145] He had requested a plan which showed the location of 'Kuaotunu No. 1 of 197 acres and its proximity to another block also called Kuaotunu No. 1 containing 1361 acres.' Significantly early sketch plans of the blocks do show Kuaotunu No. 1D labelled as Kuaotunu No. 1.[146]

Sheridan did not dispute that the blocks did not adjoin, but did believe the two blocks belonged to the same people.[147] They were included in the same memorial of ownership which had been cancelled by the orders of the Court subdividing the block. However, Sheridan did not want to 'bother further about the matter' as the 'Court will probably notice and rectify the omission.' Some time later he wrote to the Native Land Court Registrar asking him to look over the Court minutes regarding the partition hearing.[148] Apparently the Court should have made three orders, one for the 1151 acres to the Crown, a second for the 210 acre to the non-sellers and a third for the 197 acres to the whole of the original owners. The last order was not made. Sheridan assured the Registrar that his understanding of the situation was correct and that the orders were in error. He suggested that the situation be rectified by 'partially cancelling the original memorial of ownership or by again calling on the claim of the Governor with the view of making a further order (ie for the 197 acres) in favour of the Natives.'

Hammond replied that Sheridan's understanding was 'quite correct' and he went on to 'explain how the mistake (or rather oversight) on the part of the Court' occurred.[149] According to Hammond, the Court, at a hearing at Shortland in September 1878, had

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[144] Sheridan to Wilkinson, 15 February 1882, ibid.

[145] Wilkinson to Kensington, 18 February 1882, ibid.

[146] See plans in MA-MLP 1, 90/144, NA, Wellington.

[147] Sheridan to Wilkinson, 10 March 1882, MA-MLP 1, 1903/102, NA, Wellington.

[148] Sheridan to Hammond, 23 February 1883, ibid.

[149] Hammond to Sheridan, 1 March 1883, ibid.

awarded 1555 acres to a group of Maori which contained two separate pieces of land, one of 1344 acres and the other 211. When the survey was completed the areas were found to be 1361 acres and 197 acres respectively. After an application to determine the Crown's interest in the block, the Court awarded 1151 acres to the Crown and 210 acres to the two non-sellers. However, Hammond had found that the Court 'appears to have overlooked the fact altogether that there was another piece of land containing 197 acres included the same Memorial.' He was to bring the matter before Judge Brookfield when he returned to Auckland. This was apparently done although a title was not issued.[150]

In what appears to be an unrelated development, the following month Judge Scannell wrote to the Registrar of the Native Land Court in Auckland telling him that Hohepa Mataitaua was to visit the Court's office regarding Kuaotunu No. 1D.[151] According to Scannell, Hohepa was 'convinced that a parcel of land called Kuaotunu No. 1D has never passed the Court,' despite the Court holding a certificate for the land. He added that Hohepa had applied for a hearing 'as a new claim' for a portion of the block. This application had been advertised in the Gazette, but it would appear no copy has survived.

Again, no further action was taken, until in January 1890, the Court received an application to have the relative interests in the block determined.[152] This application, submitted by Harata Taiporutu, Wiremu Rawiti and Katerina Hauruia, and witnessed by James Mackay, stated that:

> As the land has now become valuable in consequence of the discovery of gold, on the above block [Kuaotunu No. 1D], and others in the same neighbourhood, and a part of the Township has been surveyed within No. one D, we are therefore anxious to know what proportion of the rent is payable to each owner, especially as the shares are not equal.

This application was not dealt with until September 1891, when it was adjourned sine die.[153] At the hearing, before H.W. Bishop at Auckland, James Mackay appeared on behalf of the applicants, but the Recorder was extremely reluctant to consider the application at all. He had received instructions from the Chief Judge (which are not detailed in the minute book) and was also concerned that many of the owners interested in the application were not present. Apparently the Assessor objected even more strenuously. As a result the case was adjourned.

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[150] Sheridan to Hammond, 14 October 1889; Edgar to Sheridan, 17 October 1889, ibid.

[151] Scannell to Registrar, 7 November 1889, BACS A622/262a, NA, Auckland.

[152] Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

[153] Coromandel Native Land Court minute book 5, 30 September 1891, fol. 78.

In April 1890, Hohepa Mataitaua's concern with the block increased. He wrote to the Native Minister on behalf of Kuao Tunui Te Kooti.[154] He had heard that the land had been acquired by the Crown. However, he could not understand how this could have occurred 'especially as the land has never been through the Court, or in other words as the land is, to us, still a "papatupu" (land not dealt with).' The basis of his confusion appears to be the inclusion of Kuaotunu No. 1D in the certificate of title for Kuaotunu No. 1 'which is really the portion to which the Crown is entitled – these two blocks are entirely distinct (?there) being a large block between.' According to Hohepa, at the hearing of the Court at Shortland in 1878, the owners applied 'to have this particular portion cut off so as to let it remain as a papatupu there being on it a burial place belonging to us.'

Hohepa indicated that the Court had agreed, but then the owners heard that the block had been included in the certificate for Kuaotunu No. 1 and awarded to the Crown. The owners objected to this and asked that the matter be inquired into, and the land returned. He added that 'we are very much grieved about it because the remains of our "matuas" (fathers) on that block have been exhumed by the Europeans without being told to do it.' A further note expressing concern and signed by Hohepa Mataitaua, Wiremu Taiporutu and Harata Taiporutu was included with the letter along with minute book references to the hearings regarding the block. The notes concluded that 'the portion know as Kuaotunu No. 1D is a portion of Kuaotunu No. 2, and contains our burial ground that was why I applied to the Court to have it excluded from the order for No. 2.' The Native Land Purchase Department investigated the matter and found that the block belonged to 13 Maori listed as owners of Kuaotunu No. 1, and Hohepa was informed accordingly.[155]

The same month, Hammond wrote to Northcroft to advise him that Hohepa Mataitaua had visited the Native Land Court at Auckland and pointed out that Kuaotunu No. 1D was awarded to the wrong people and intended to apply under section 13 of the 1889 Act to have the problem rectified.[156] He added that 'the evidence contained in our Minute Books seems to bear out his contention' – an opinion directly contradicting his correspondence with Sheridan seven years earlier.

On 1 May Hohepa applied to the Chief Judge of the Native Land Court under section 13 of the Native Land Court Act 1889 for an enquiry into the circumstances in which Kuaotunu No. 1D was included in the order for Kuaotunu No. 1 and awarded to

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[154] Hohepa Mataitaua to Mitchelson, 24 April 1890, MA-MLP 1, 1903/102, NA, Wellington.

[155] Sheridan to Lewis, 2 May 1890, ibid.

[156] Hammond to Northcroft, 30 April 1890, BACL, A208/1, NA, Auckland.

Ruihana Kawhero and others.[157] Hohepa outlined the details regarding the block and concluded by again stating that Kuaotunu No. 1D was a partition of No. 2:

> Some time afterwards when the Kuaotunu Block divided between Ruihana Kawhero's section and ours [the hearing in 1878] I had cut out of the block the portion of No. 2 now known as No. 1D it was to be left out of the order for No. 2 that had been awarded by the Court to myself and others, and my reason for doing so was that it was a Burial ground of ours.

This application was forwarded to the Chief Judge at Gisborne, and H.G. Seth-Smith decided to refer the matter to Judge Scannell for investigation.[158] Hammond also wrote to Scannell stating that an application had been forwarded to the Chief Judge for consideration.[159] He added that 'I think there is very little doubt from examination of the minutes, that a serious error has been made, probably by the Clerk of the Court, in the names of the person in whose favour the order has been made.'

However, an application for partition of the block was due to be heard by Scannell. This was possibly the application for definition of interests in the block submitted by Harata Taiporutu, Wiremu Rawiti and Katerina Hauruia in January 1890. It was heard by Scannell at Auckland and immediately adjourned to Shortland on 2 July 1890, but was not called at that sitting of the Court.[160] No reason is recorded in the minutes, but it is probable that given that the application for rehearing had been received, the partition application was adjourned until questions regarding the title had been settled.

The hearing before Judge Scannell and Assessor Paraki Te Waru opened at Shortland on 8 July 1890. At this point, two minute books record the proceedings. The Hauraki minute book provides the usual summary of each witness's evidence.[161] Scannell's own minute book provides what appears a verbatim record of the evidence in a question and answer format.[162] This outline of the case is drawn from Scannell's minute book as it is more detailed, supplemented by the Court's minute book where additional or different information is recorded.

The minutes show that Hohepa Mataitaua represented the claimants in the case. He argued that an error was made in entering the names of the owners in the block and

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[157] Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

[158] Hammond to Seth-Smith, 17 May 1890, BACL, A208/1, NA, Auckland; Seth-Smith, 27 May 1890, Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

[159] Hammond to Scannell, 17 May 1890, BACL, A208/1, NA, Auckland.

[160] Coromandel Native Land Court minute book 5, 20 May 1890, fol. 49.

[161] Hauraki Native Land Court minute book 24, 8 July 1890, fol. 86.

[162] Scannell minute book 17, 8 July 1890, fol. 64.

this had to be rectified. The owners of the block at that time were Ruihana Kawhero, Ripeka Rangitokona, Karaitiana Kihau, Hohepa Paraone, Rawinia Taiporutu, Te Reiti Maihi, Peete Patene, Wi Patene, Katerina Hauruia, Taumaha Kaui, Wikitoria Rangipiki and Harata Taiporutu. Hohepa Mataitaua told the Court that there should be four owners only: Hohepa Mataitaua, Harata Taiporutu (or Haraka Ngoki), Wiremu Taiporutu, and Peneamine Kawhena. Hohepa Mataitaua appeared for himself and the other three. James Mackay was also present and stated he was first engaged to appear for all the owners. Apparently Hohepa Mataitaua asked Mackay to assist him in the matter of subdividing the block 'as he considers some of the grantees are entitled to less interest in it than others.'[163] However, he now appeared before the Court for Katerina Hauruia, Karaitiana Kihau and Wikitoria Rangipiki, and Te Reiti Maihi.

Hohepa Mataitaua was sworn and gave his evidence-in-chief. His evidence set out what had happened to the block since it was investigated by the Court. According to Hohepa, the Kuaotunu block first came before the Court in 1878. Mackay appeared for the Government who held a debt from Rawiri Taiporutu. It was agreed the block should be divided in three. One portion was to go to the Crown to pay for Rawiri's debt and the cost of the survey. A payment of £300 was also made by the Crown for this part. A second part was to go to Ruihana and his people. Hohepa was appointed by his elders to represent them and the other part went to him and his people. Ruihana was awarded No. 1 and Hohepa No. 2. The minutes state that:

> We divided the No. 2 and cut off that piece now in question as a 'wahi tapu' containing 197 acres. There was a burial place in it. Then we gave a list of names for the piece outside containing 1367 acres. Ruihana gave in a list for his portion. I thought it best at the time there should be a single name in that 197 acres and I was in doubt whether it should be my fathers, or Rawiri Taiporutu or both. So I gave no list.[164]

According to Hohepa, Ruihana owned the No. 1 block, but he included a number of other people, one of whom was Hohepa's wife. Eleven of the thirteen owners sold their interest, and in 1881, the Crown applied to have its interest in the block defined. Hohepa told the Court that only he and the Government's agent, Wilkinson, were present at the Court. He had no idea the thirteen names had been placed in the 197 acres, believing a Crown Grant had been made. Hohepa concluded by stating that:

> The whole of this block No. 2 of which the 197 acres formed a part belonged to my ancestors. This land was never a portion of No. 1. It belonged to the part called No.

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[163] Mackay to Cadman, 13 August 1891, MA-MLP 90/144, NA, Wellington.

[164] Scannell minute book 17, 8 July 1890, fol. 65.

> 2 from former times up to the present. That was the place of their settlements and of their dead.[165]

Hohepa was then cross-examined by James Mackay.

Mackay's opening questions related to the original survey. Hohepa knew little of the actual survey but insisted that the block was subdivided into the Crown's portion, No. 1, No. 2 and the 197 acres. He told the Court that there was no list of names given for that part, and in response to Mackay's question added that it was cut off because of the burial site. Mackay moved on to examine Hohepa's relationship to the land. Mackay's focus was on Hohepa's failure to reside on the land. However, Hohepa strongly resisted Mackay's line of questioning, giving evidence that his brother and mother had a house there, as did his father's sister. And it was through his father that he claimed the land.

Mackay challenged Hohepa on two further points. The first was Hohepa's sale to Comer of his interest in the No. 2 block. Mackay asked whether his claim to No. 1D had been made since he had sold his share, but Hohepa replied he had sent an application before and another after. Mackay's second point was Hohepa's relationship to Harata Ngoki. Mackay told the Court she had acquired two and half shares in the block and the result of Hohepa's action would cause her to lose those shares and let Hohepa gain an interest. Hohepa admitted he had discussed the hearing with her. Asked if he had told her 'that if she agreed to put the others out you would put her in,' Hohepa responded that he did not accept the thirteen owners had a right, but that he and Harata had a right. The Court then adjourned and did not reconvene for several days.

The Court minute book shows that when the Court re-opened the following day, James Mackay did not appear and the case was adjourned for a further three days. When the hearing continued, Mackay produced an authority from Karaitiana Kihau, and now appeared for Harata Noki who was present at Court and assented on behalf of Wiremu Taiporutu, Katerina Hauruia, Wikitoria Rangitiki, Rawinia Taiporutu, Taumahakara, and the successors of Te Reiti Maihi. Hohepa Mataitaua then only represented himself and Peneamine Kawhena.

Mackay continued to cross-examine Hohepa. They again discussed the partition of the block, Hohepa telling the Court that he objected to all the names in No. 1D except Harata and Wiremu Taiporutu. Mackay asked whether he would gain interests in the block through succession and Hohepa agreed that he had gained interests in other

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[165] ibid., fol. 67.

blocks through succession which meant he could gain an interest in No. 1D. However, Hohepa refused to accept this course of action as the land had not passed the Court, and he objected to the inclusion of the names in No. 1D. At this point, the judge asked whether the Court had ordered a line dividing No. 1D and No. 2 without taking a list of names and this was confirmed by Hohepa.

Mackay also questioned Hohepa about the tapu site on the land. Hohepa accepted that relatives of Harata, Katerina and himself were buried on the block. However, he told the Court Katerina had no right to the land. When Mackay asked why, if the block was part of No. 2, it was now called No. 1D, Hohepa replied:

> I consider it came out of the trouble at the time. The proper name should be No. 3 and it will appear so in the records. If the records are examined it will be found that this is No. 3 and that no list was given. And it will be found the list of names put in were given in 1881 and that no list was given in in 1878.[166]

Mackay's cross-examination ended, and the judge followed, asking where references to the No. 3 block could be found. Hohepa gave several references to the minute books in response. Mackay was also able to ask where the land belonging to Ruihana Kawhero was if they did not get into No. 1D, and Hohepa replied their land was alienated.

The case was adjourned for several days again, and when it resumed, Hohepa called Henare Whakarongahau. Henare was from Ngati Hei and he had remembered the original title investigation. He recalled Hohepa acted on behalf of Ruihana, Rawiri, Anaru and Ripeka Titiparu, and opposed the portion of land marked No. 3. The line was later corrected by Anaru Pahapaha, after Puckey and Wilkinson had discussed it with Henare's hapu. He further remembered that Hohepa had marked out the lines on the plans in the Court. Hohepa questioned Henare about those present at the Court hearing to determine the Crown's interest in the No. 1 block, and also asked if he saw an application for Pakiuma (Kuaotunu No. 1D) at about that time. Henare replied that he did, but could not recall who the applicant was. Henare was then cross-examined by Mackay who asked about the people who lived at Kuaotunu. He gave evidence that neither Hohepa nor his father Anaru lived on the block. Henare knew that Ruihana Kawhero lived at Tahuna Torea (a stream on the block) and that he himself had lived there 'formerly when the people were living together.' Henare had moved to Whitianga where Rawiri Taiporutu and Harata Noki later joined him. He was related to both Anaru Pahapaha and Rawiri Taiporutu.

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[166] ibid., 12 July 1890, fol. 118.

At this point, Hohepa asked for evidence from earlier cases to be read to the Court, but the judge could not see how they were relevant. The Court minute book also shows that the judge suggested Hammond be subpoenaed as a witness as he knew about the block, and Hohepa supported the suggestion indicating he was willing to pay his expenses. The judge later received a wire from Hammond stating that he knew nothing of the land other than what the minute books showed and the subpoena was withdrawn.

James Mackay then called Kereama Matai of Ngati Porou, the husband of Katerina Hauruia. Mackay spent some time examining his witness. Kereama told the Court that during the original title investigation in 1878, Mackay had conducted the case for the claimants, not Hohepa Mataitaua. He knew the block and gave evidence that it was called Pakiuma. It was adjacent to the No. 2 block. The No. 2 block was adjacent to the No. 1 block. Kereama also knew of the lists submitted to the Court in 1878, telling the Court he was asked by Ruihana and Karaitiana to write the lists. He wrote the thirteen names on the list submitted for Kuaotunu No. 1, while Mackay wrote the list submitted for the No. 2 block. According to Kereama, the list for the No. 1 block included both the No. 1 and No. 1D block and no-one objected to the names. In response to Mackay's questions, the witness indicated that Hohepa's objections had first been raised during the session of the present Court which had sat at Auckland and adjourned the case to Shortland. This objection was raised subsequent to the discovery of gold on the land, and Kereama was emphatic on this point.

After further questioning from Mackay regarding the value of the land, Kereama indicated some of the land had 'been leased for batteries, for residence sites and one for a Public House,' and that the land was far more valuable as a result of the discovery of gold.[167] He also told the Court that Hohepa Mataitaua had sold his interest in Kuaotunu No. 2 and would hold no other interests in the Kuaotunu blocks unless he could establish his claim to No. 1D. This evidence is not totally accurate as Hohepa eventually gained an interest in the block through succession, based on the will of his wife Peeti Patene. He added that if the thirteen owners of No. 1D were removed from the title, only two would still have an interest in the Kuaotunu blocks – Katerina Hauruia and Wikitoria Rangipiki. Kereama did not mention that the reason for this was that the other nine owners (Harata Taiporutu, Wiremu Taiporutu, Karaitiana Kihau, Hohepa Paraone, Rawinia Taiporutu, Te Reiti Maihi, Peeti Patene and Wi Patene) had sold their interest in the No. 1 block.

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[167] ibid., 16 July 1890, fol. 158.

Mackay moved on to examine the boundary between the No. 2 block and No. 1D. According to Kereama, Ruihana separated the 197 acres off, but when asked why by Mackay, could only tell him that it was done by the surveyor. He knew nothing of Hohepa's claim to have separated the land off. Apparently Ruihana and Rawiri both lived on the block and their relatives were buried in the urupa there, although in answer to a question from the judge, Kereama told the Court Rawiri held an interest in the No. 2 block, not No. 1D. On further questioning from Mackay, he also gave evidence that the houses on the block belonged to Rawiri. Kereama went on to discuss the quality of the land, which apparently, was very poor. Only the area about the stream could be cultivated as the rest was fairly bad land – No. 2 was much better land. He added the block was called Pakiuma because of the mountain.

Mackay then questioned Kereama on the urupa. The dead had been taken away so the town could be built on the land. According to Kereama they were moved because the land was leased to James Lanigan, and this removal was directed by Harata Noki and Katerina. He assured the Court there were no objections to their removal.

Kereama also gave evidence regarding the relationship of Hohepa Mataitaua to the land. He told the Court that he had lived on the block since 1877 and had never seen Hohepa reside there. Mackay asked if Hohepa's statement that his father's sister was buried there was correct, and Kereama replied that he did not know that Maikaka was Anaru's sister. On further questioning regarding her relationship to Karauia, he added that he had heard she was the daughter of Maruraki and related to Katerina, Harata and Wiremu and their fathers. Kereama also knew Anaru Pahapaha, but never saw him live at Pakiuma – he lived at Tikouma. Kawhena, Hohepa's brother, was living at Pakiuma at the present time, but according to Kereama only after gold was discovered. He had built a house near the boundary to which Harata and others had objected. Mackay and Kereama discussed this objection and another quarrel between Harata and Kawhena regarding the boundary of the block, but he knew very little about them.

The following day, Mackay continued to examine his witness, focusing on the circumstances of the second survey of the block. Kereama told the Court that Ruihana instructed him to assist Dean in cutting the lines, and that he was accompanied by Enoka, Akuhata and Hone. He contradicted Henare's evidence that Anaru also participated in the survey and also that Henare visited them while they were undertaking the survey. Apparently, he had sent Enoka to represent him. According to Kereama, Ruihana directed that the line between No. 1D and No. 2 be made. When Mackay asked him what that line was a division of, he replied 'it was a division for the dead and partly for a residence for living people. People were living

there and it was cut off for them.'[168] Kereama closed his evidence by asserting again that the 197 acres was part of Kuaotunu No. 1.

The rest of the hearing was taken up with Hohepa's cross-examination of Kereama. He began by challenging Kereama's evidence that Mackay conducted the case for the Maori landowners. Although Kereama accepted Mackay represented the government, he also believed he acted for the Maori landowners too. He would not accept that Hohepa was instructed by Rawiri, Ruihana, Anaru and Ripeka Titiparu. After intense questioning he continued to deny Hohepa represented them, as the land belonged to Ruihana, not Hohepa. He accepted Hohepa collected the £300 from the Government, but believed Hohepa had interfered since Rawiri should have received the money. He also told the Court that Hohepa had not indicated any claim to the 197 acres in the Court, even though he was present.

Hohepa moved on to examine the survey of the block. Kereama did not know that Hohepa had asked for the division of the No. 1 and No. 2 blocks, but this was contradicted by the Court minutes. With regard to the 197 acres, he told the Court he did not know that Hohepa had divided it off, but that the surveyor had previously separated it. He added that the survey lines were laid down afterwards according to the lines on the plan, but that these lines were marked in the plan in the previous survey. After examining the plan, the Court accepted this evidence. The judge also asked if the survey of No. 1D was made before the land passed the Court and this was confirmed by the witness. When the judge asked again if the line dividing No. 1D from No. 2 was on the plan when the block was considered by the Court, Kereama replied that all the lines were there: 'that between No. 1D and No. 1, that between No. 1 and No. 2 and that between No. 2 and No. 1D.'[169] When the surveyor went to correct the lines, Kereama did not know that Anaru and Enoko were sent to point them out.

Hohepa then examined the lists of names given to the Court at the original investigation. According to Kereama, he wrote the list for Ruihana and it was for both the No. 1 and No. 1D blocks. He was certain there was only one list for both blocks, although when asked by the judge the name of the No. 1D block at that time, he replied that he 'didn't know anything about the numbers at that time.'[170] Hohepa then asked:

> Q. How then did he tell you the same list was to be for those blocks.

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[168] ibid., 17 July 1890, fol. 167.
[169] ibid., fol. 170.
[170] ibid., fol. 172.

A. He said there was to be the same list for Pitoone (No. 1) and for Pakiuma (No. 1D).
Q. When you were making the list did you say they were for Pitoone and Pakiuma.
A. I did not.[171]

However, Hohepa pointed out that the names submitted were recorded in the minute book as the list for No. 1.

The case was adjourned for two days and when the Court reconvened, Hohepa continued his cross-examination of Kereama. Several questions regarding the survey were put to the witness. He indicated that the boundary between the No. 2 block and No. 1D was cut in 1877, but it would seem a number of errors were made in the original survey, including, according to Kereama, the location of this boundary. Hohepa then proceeded to challenge his occupation of the block. He suggested that Kereama was wrong in stating he resided on the block from 1877. The witness replied that although his house was outside the boundary, he occupied the land with his stock, his house was close to the boundary and he had other houses and buildings in the block including a stockyard, milking shed and cookhouse. Hohepa then asked if his house was at Pikopikoiwhiti, in the centre of Kuaotunu No. 2 where he lived. Kereama would not accept this saying he had cultivations there. Hohepa persisted and Kereama admitted his permanent house was at Pikopikoiwhiti, but that he had shifted between the two blocks.

Hohepa moved on to discuss his wife's claim to the land. Kereama told the Court she had a claim to Pakiuma and the No. 2 block where she lived. On further questioning he indicated Katerina had an ancestral right to the block through Ponui. Hohepa suggested Ahikaroa was the ancestor given by Ruihana for No. 1, but Kereama replied that he was the ancestor for other land Ruihana claimed in Hauraki. Ponui was the correct ancestor for the Kuaotunu blocks. The Court minutes were referred to and showed both Ponui and Ahikaroa were ancestors given by Ruihana. The Court also noted that the list of names given for the Kuaotunu block was for 1555 acres – the area claimed by Hohepa noted as 211 acres, and the other portion was shown in the plan to contain 1344 acres, which added together made the 1555 acres listed.

After this was read out Hohepa asked Kereama one further question before the Court minute book shows James Mackay interrupted and asked if, in light of the minutes referred to by the judge above, it was worth continuing. The Court was adjourned until Monday to allow Hohepa to examine the documents. When the Court resumed, Hohepa stated that he was continuing with his case, and Scannell warned him that if he did not show the plan and certificate to be in error, he would be liable for the costs

[171] ibid.

of the opposing parties. Hohepa indicated he still wanted to continue, but the case was adjourned again. When the Court resumed several days later, Hohepa had reconsidered his position and withdrew his case. Judge Scannell told Hohepa that he had no authority to give judgment on the case, but that he had to report to the Chief Judge who would give judgment. The minutes show Hohepa had decided to withdraw the case so that he could take it to the Supreme Court. In any case, Scannell had to make a report to the Chief Judge.

James Mackay then told the Court he wanted to add further comments about the circumstances of the case. He believed the map was correct and that the discrepancy in the areas showed that there 'was not anything left out,' and that the Chief Surveyor had carefully considered the matter, so that the 211 acres was part of the 1555 acres. Mackay's second point was that when the block was re-surveyed, the Chief Surveyor added the 197 acres as part of Kuaotunu No. 1, and a certificate for the two blocks was issued. When No. 1B was partitioned for the Crown, the earlier certificate was cancelled and 210 acres was cut off called No. 1C. A further order was made for 197 acres and called No. 1D, as indicated in the minutes. Mackay believed Henare Whakarongahau had given incorrect evidence when he stated certain lists of names were submitted to the Court when they were not.

Judge Scannell was required to report to the Chief Judge the result of the enquiry, and the decision as to what action was necessary was left to the Chief Judge. In fact, Scannell made two reports to the Chief Judge. In the first he referred to a conversation he had recently had with Hohepa Mataitaua's solicitor, Frederick Earl.[172] Earl had asked the Judge to delay his decision until he had an opportunity to examine the records as Hohepa had instructed him to look at having the case heard at the Supreme Court.

The second report related to the hearing under section 13 of the Native Land Court Act Amendment Act 1889 'into an alleged error made in recording the names of the Native owners' of Kuaotunu No 1D.[173] Scannell provided the Chief Judge with a detailed account of the land up to the time of the enquiry. The evidence presented to the enquiry showed that a block called Kuaotunu, 4886 acres, came before the Court for investigation in July 1878, but due to problems with the plan it was adjourned. In September the case was called again, although there was no indication that the problems with the plan had been rectified. Scannell believed the whole Kuaotunu block was to be heard, but at this point Hohepa Mataitaua applied to have the share

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[172] Scannell to Seth-Smith, 1 September 1890, Kuaotunu miscellaneous file, Waikato-Maniapoto Maori Land Court, Hamilton.

[173] Scannell to Seth-Smith, 1 September 1890, ibid.

belonging to him and his party partitioned out. This was approved by Ruihana Kawhero and the Court divided the block into two parts, No. 1, 3111 acres, for thirteen persons and No. 2, 1367 acres, for ten persons. Lists were handed in the following day and memorials of ownership issued. Four days later, W.H. Grace, the Government Agent asked to have the previous order for Kuaotunu No. 1 altered so that 1556 acres could be awarded to the Crown and the remaining 1555 acres (the balance of the 3111 acres) awarded to the thirteen owners. This did not affect the No. 2 block.

A further plan was made after this Court hearing and it was found during the survey that the areas calculated in the first survey were incorrect. One part contained 1361 acres instead of 1344 and the other 197 acres instead of 211, make the total area 1558 acres instead of 1555 acres. In December 1881, the Crown having purchased eleven of the thirteen shares in the No. 1 block, the block was partitioned. According to Scannell, 'it would appear by this time that part containing 197 acres was temporarily lost sight of.' At this hearing, the 197 acres was not included in the proportion awarded to the Crown. As a result the 1151 acres awarded to the Crown was eleven shares of 1361 acres, not 1558 acres. The problem was then noticed and after correspondence with the Native Land Purchase Department, the balance of the 1361 acres was awarded to the two non-sellers and the 197 acres was awarded to the original thirteen owners of the block. At this stage it seems the new appellations were given to the blocks: No. 1B to the Crown, No. 1C to the two non-sellers and No. 1D to the thirteen original owners.

Scannell concluded that if Hohepa was correct in asserting No. 1D was part of No. 2, then the memorials of ownership which showed No. 1 contained 3111 acres and No. 2 1397 acres (Scannell's report is in error) would be 'meaningless.' The correct area for the No. 1 block after the Crown's interest had been awarded ought to have been 1344 acres if this was the case. Scannell also rejected Hohepa's claim that the No. 1D block was separated off from the No. 2 block. Hohepa asserted that the minutes referred to No. 1D when they showed he and his party appeared and claimed part of the block for which they wanted a separate title issued. Scannell believed this was totally contrary to the meaning of the minutes which state the block was to be divided in two and the names taken the following day. The names were recorded the following day and Scannell considered it 'not at all probable' that the Court having approved removing No. 1D from the rest of the block, should, the following day, include it in the No. 1 block, especially if it went unchallenged when all the owners must have been present. The judge believed the reference in the minute books was to No. 2, not No. 1D. For the orders to make sense, No. 1D must have been included in the No. 1 block.

Scannell went on the explain the circumstances in which the case was withdrawn. Hohepa's evidence was heard, but the Court could not accept his interpretation of the minutes and 'advised him to carefully study the documents' before deciding whether to continue. The judge did not think he had so far used the available evidence to substantiate his claims. He concluded that '[h]aving considered the evidence given at this Court, the minutes of former Courts as well as the plans and other documents relating to the case, the Court is of opinion that Hohepa Mataitaua has failed to substantiate the statements made in his application that an error was committed in recording the names of the owners in Kuaotunu No. 1D.'

Although Bishop had adjourned the partition application for Kuaotunu No. 1D sine die, after Hohepa's application for enquiry had been dealt with, a partition hearing was held in December 1891. The Court opened at Mercury Bay before Judge Scannell to consider the application of Harata Noki, Wiremu Taiporutu, Taumaha Kara, Eru Maihi and Katerina Hauruia.[174] They were all represented by Hamiora Mangakahia. Hohepa Mataitaua was also present and appeared as successor to Peeti Patene and on behalf of successors to Wi Patene.

Hamiora Mangakahia immediately applied for an adjournment as the papers relating to the hearing were with their solicitors. He also told the Court that he had received a telegram from his wife telling him one of his children was ill and he was required there as soon as possible. In addition, a number of the owners were absent. Hohepa did not agree to an adjournment and the Court decided that the case had to proceed.

Hamiora opened his case by stating that some of the owners in the block held interests by 'aroha' only and did not have a valid claim. He could not remember who they were but all those he appeared on behalf of did have a legitimate claim and applied for the whole block of land. They were Ruihana Kawhero, Ripeka Rangitokona, Rawinia Taiporutu, Katerina Hauruia, Taumaha Kara and Harata Taiporutu. Hamiora suggested that the other seven owners be awarded two acres each as they were only included in the block through 'aroha.'

Not surprisingly Hohepa Mataitaua objected on the basis that the ancestor for the land was not Ponui, as named by Hamiora, but Ahikaroa, through whom he claimed the land for Ruihana Kawhero, Ripeka Rangitokona, Rawinia Taiporutu, Peeti Patene and Wi Patene.

With the cases stated, Hamiora called Harata Noki. She knew the land and claimed it through Ponui, giving her whakapapa. She also discussed the urupa and some of the

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[174] Coromandel Native Land Court minute book 5, 11 December 1891, fol. 89.

people buried there. She knew of an ancestor called Ahikaroa and was related to him, but he had no claim on the land in question. He had not lived on Kuaotunu, but she had heard he lived at Whangamata and Hikutaia. According to Harata, Patene and Rehara Titi, the parents of Wi Patene and Peeti Patene had never lived at Kuaotunu and were buried at Waiau. They were descended from Ahikaroa and had no interest in the block.

Harata was then cross-examined by Hohepa. His questions focused on Harata's claim that the ancestor for the block was Ponui and not Ahikaroa. She had not been present at the original title hearing, but Ruihana Kawhero had told her the ancestor was Ponui and the hapu was Ngati Koherua. She told the Court that the entire Kuaotunu block belonged to Ponui and that the names handed into the Court were the descendants of Ponui and Ahikaroa. Harata maintained that Ponui was the correct ancestor, although she admitted that there were no objections to the inclusion of descendants of Ahikaroa.

Hohepa then asked her why, if that was the case, particular people were put into the No. 2 block. She did not know how Anaru came to be an owner in the block, she believed Ripeka Titiparu was included as a descendant of Ahikaroa, she did not know why Hawea was included, nor why Mohutu was included as he was not descended from either Ponui or Ahikaroa. She told the Court Rawiri Taiporutu had no claim to No. 2, but that he was included because he conducted the case for Harata's mother. However, Harata's mother and Ruihana were excluded from the block by Hohepa. A number of Ahikaroa's descendants were awarded interests in the No. 2 part of the block, including Wiremu Taiporutu, Ripeka Titiparu and Hemi Waa. Harata did not know through whom the other seven claimed. Wiremu Taiporutu was included in the block through his mother and Ruihana, but according to Harata, he was excluded originally by Hohepa even though he had a valid claim. Harata's mother was also excluded by Hohepa, even though Ruihana and her mother had equal claim to the land. Hohepa asked if Wiremu Taiporutu gained his interest through Rawiri Taiporutu, but Harata was certain it was through his mother. In response to a question from the judge, Harata indicated the interest came though Ahikaroa and Ponui. Hemi Waa and Ripeka Titiparu claimed through Ahikaroa.

Hohepa then asked why Ruihana 'set up' Ahikaroa as the ancestor if Ponui was the correct ancestor. Harata replied that Hohepa had asked him to do, and when the judge clarified her answers, she told the Court 'Ruihana spoke of Ahikaroa so that Hohepa's party might get into the land. It was the descendants of Ahikaroa who asked that Ahikaroa might be set up for this land so that they might get into the land.' But she still maintained that he was not the descendent for this land. Hohepa proceeded to ask her whether any of Peeti Patene's relations lived on the land but she had not seen any of them residing there. In response to a question from the judge, Harata admitted that

her family would have no claim on the block if it belonged to Ahikaroa. In answer to further questions she told the Court that Ruihana belonged to Ngati Karaua and Ngati Koheru. One was not a branch of the other, but they were related by intermarriage. She did not accept the judge's suggestion that if one hapu owned the land, the other would have some claim on it.

Hamiora Mangakahia was able to re-examine his witness and he focused on her conflicting evidence regarding Ahikaroa's claim to the land. She accepted that she had given evidence that Ahikaroa had no claim to the block, and that Ahikaroa was an owner. Hamiora asked her which was correct, and she stated 'that Ahikaroa's descendants and not himself had a claim on the land.' However, in her next answer she told the Court 'Ahikaroa's descendants have no claim.'

The judge and the assessor then tried to clarify the situation. The assessor asked why there were so many people in the block to whom she objected, but she did not know why they were put in. She knew Karaitiana Kihau, but did not know through which ancestor he claimed, nor did she know why he was included. The judge also tried to solve the problem of the ancestor for the land. Harata was certain that Ponui was the ancestor given by Ruihana for the block, and that Ahikaroa was not given as an ancestor for the land. However, she could not say that Ahikaroa was not mentioned in the Court as she had found Ruihana 'set him up' in the September hearing.

The minutes show the judge was hopeful that the parties would come to some arrangement and the Court was adjourned. When they returned Hamiora announced they had reached an agreement. Eight owners were to receive a share, and five were to receive a set area:

1.	Ripeka Rangitokona	one share	7.	Hohepa Paraone	four acres
2.	Ruihana Kawhero	one share	8.	Maraea Ripeka	four acres
3.	Rawinia Taiporutu	one share	9.	Karaitiana Kihau	three acres
4.	Harata Noki	one half share	10.	Wikitoria Rangipiki	three acres
5.	Taumaha Kara	one share	11.	Te Reti Maihi	three acres
6.	Katerina Hauruia	one and a half share			
7.	Peeti Patene	one share			
8.	Wi Patene	one share			

Hohepa Mataitaua explained the agreement to the judge. He was not descended from either Ponui or Ahikaroa, but he was related to Ruihana's aunt. Those awarded a defined area had no link to Ponui or Ahikaroa – Hohepa Paraone, Wikitoria Rangipiki and Reiti Maihi. The latter two lived with the other owners at various times and were included for this reason. Maraea Ripeka was descended from Ahikaroa, but would not receive the same share as the other descendants as she already had a significant interest in the other Kuaotunu blocks. Her family lived with Ngapuhi where she was

born, and although she had lived on the land for two years, she had returned to Ngapuhi. The Court decided that as she had returned to the land she had 'revived' her claim. After some discussion they agreed to give her one share.

They asked that the block be divided into four parts. One division of thirteen acres for those allocated an area, another for Peeti Patene and Wi Patene of 41 acres, a third for Maraea Ripeka, 20 1/2 acres, and the rest for Harata's party. The Court then partitioned Kuaotunu No. 1D into four parts awarded to the following:

Kuaotunu No. 1D No. 1, 122 acres, 2 roods, 27 perches.

1.	Ruihana Kawhero	2/12 share
2.	Ripeka Rangitokona	2/12 share
3.	Rawinia Taiporutu	2/12 share
4.	Harata Noki	1/12 share
5.	Taumaha Kara	2/12 share
6.	Katerina Hauruia	3/12 share

Kuaotunu No. 1D No. 2, 40 acres, 3 roods, 22 perches.

1.	Peti Patene	1/2 share
2.	Wi Patene	1/2 share

Kuaotunu No. 1D No. 3, 20 acres, 1 rood, 31 perches.

Maraea Ripeka

Kuaotunu No. 1D No. 4, 13 acres.

Hohepa Paraone	4 acres.
Karaitiana Kihau	3 acres.
Wikitoria Rangipiki	3 acres.
Te Reti Maihi	3 acres.

After taking successions into account, orders were made in favour of the following owners:

Kuaotunu No. 1D No. 1, 122 acres, 2 roods, 27 perches.

1.	Harata Taiporutu alias Harata Noki – f,a		
	original interest	2/24	
	as successor to Ruihana Kawhero	2/24	8/24
	as successor to Ripeka Rangitokona	4/24	
2.	Rawinia Taiporutu (dead) – f,a.		4/24
3.	Taumaha Kara – m,a.		4/24
4.	Katerina Hauruia – f,a.		6/24

5.	Wiremu Taiporutu as successor to Ruihana Kawhero	2/24

Kuaotunu No. 1D No. 2, 40 acres, 3 roods, 22 perches.

1.	Hohepa Mataitaua – m,a. successor to Peti Patene	1/2 share
2.	Te Tiki Patene – f,11 years as one of two successors to Wi Patene	1/4 share
3.	Mata Patene – f,10 years as one of two successors to Wi Patene	1/4 share

Kuaotunu No. 1D No. 3, 20 acres, 1 rood, 31 perches.

			A	R	P
1.	Wiri Raniera – m, 7 years. as one of two successors to Raniera Matini, a successor to Maraea Ripeka.		1	2	32
2.	Toeke Raniera – m,5 years. as one of two successors to Raniera Matini, a successor to Maraea Ripeka		1	2	32
3.	Matini Kopehu – m,a.	Successors	3	2	25
4.	Hamiora Matini – m,a.	to Maraea	3	1	25
5.	Hiria Matini – f,a.	Ripeka	3	1	25
6.	Ripeka Matini – m,a.	Successors to Maraea Ripeka	3	2	25
7.	Ruihi Matini – m,a.		3	1	26

Kuaotunu No. 1D No. 4, 13 acres.

		A	R	P
1.	Hohepa Hikairo – m,a. as successor to Hohepa Paraone	4	0	0
2.	Karaitiana Kihau – m,a.	3	0	0
3.	Wikitoria Rangipiki – f,a.	3	0	0
4.	Pare Hura – f,10 years. as successors to Te Reiti Maihi.	3	0	0
		13	0	0

This, however, was not the end of the matter. On 12 February 1892, Frederick Earl applied to the Chief Judge under section 13 of the Native Land Court Act Amendment

Act 1889 for an enquiry into the circumstances of the partition of Kuaotunu No. 1D.[175] This application was submitted on behalf of Harata Taiporutu, Rawinia Taiporutu, Taumaha Kara, Katerina Hauruia and Wiremu Taiporutu. It set out the circumstances of the partition hearing and the decision reached. According to Earl, when the judge went to mark the partitions on the plan, 'some confusion arose, which is attributed by my clients to the fact that their agent, Hamiora Mangakahia, was at the time suffering from great bodily pain, and unable therefore to exercise all his faculties, and my clients allege, and their agent corroborates their statement, that the effect of the lines marked out by the presiding Judge was not pointed out, or understood by, them or him.'

Furthermore, Earl's clients believed 'that, had such effect been explained to or noticed by them, they would not have consented to a subdivision based upon these lines, and that if these lines are permitted to stand a great injustice will be inflicted upon them, practically the successful parties in the proceedings, inasmuch as the whole or nearly the whole, of the valuable (township) portion of the block is embraced by the lines forming the boundaries of the subdivisional block now called Kuaotunu 1D No. 2, awarded to Hohepa Mataitaua (1/2 share), Te Tiki Patene (1/4 share), and Matini Patene (1/4 share), and that the block Kuaotunu 1D No. 1, awarded to my clients, is, comparatively speaking, of little or now value.' They believed an 'error or omission' was committed and asked for an enquiry into the matter. Both Katerina Hauruia and Hamiora Mangakahia provided declarations in support of the application.[176]

The Chief Judge did not think he would be able to make a decision on the application as the proper course was to apply for a rehearing.[177] Apparently an application for a rehearing had been submitted but was to be withdrawn if the application for an enquiry was approved.[178] However, in the meantime, Seth-Smith asked Scannell to report.

Scannell fully supported the claim and accepted an error had been made.[179] The judge indicated that after he had heard Harata on behalf of the claimants, he 'advised them to go outside, talk the matter over amicably and try to come to an arrangement, as they were all really members of the same family and they agreed to do so.' Scannell

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[175] Earl to Seth-Smith, 12 February 1892, Kuaotunu miscellaneous file, Waikato-Maniapoto Maori Land Court, Hamilton.

[176] Katerina Hauruia, 19 February 1892, ibid; Hamiora Mangakahia, 12 February 1892, BACS A622/262a, NA, Auckland.

[177] Seth-Smith to Edgar, 29 February 1892, ibid.

[178] Earl to Seth-Smith, 22 February 1892, Kuaotunu miscellaneous file, Waikato-Maniapoto Maori Land Court, Hamilton.

[179] Scannell to Seth-Smith, 20 February 1892, ibid.

reported that an agreement was reached, read out in Court and accepted by those present. The block was to be divided into four parts, and Hamiora Mangakahia pointed out on the plan where the boundaries should be inserted, and these were also agreed to by those present. According to Scannell, '[i]t was only the day after the Court closed when I was returning to Auckland, on my remarking to Hamiora Mangakahia who was also on his way to Auckland, that after all they gave Hohepa Mataitaua the best of the land, that he seemed to realise what he had done.' This was because the part of the Kuaotunu township his clients had claimed had been awarded to Hohepa. Hamiora told Scannell 'that the agreement come to outside was that Hohepa Mataitaua and his co-owner in No. 2 parcel were to have a certain part of the Kuaotunu Township lying in Kuaotunu No. 1D and his clients the remainder.' However, when it came to adjusting the boundaries, Hamiora 'was ill and confused suffering from a severe bout of Rheumatism and did not really know what was done.' Scannell concluded that the owners in the No. 1 part were 'materially prejudiced by the error of their agent' and their own failure to realise, after examining the plan, that they were agreeing to part with 'the only really valuable part of the block ... to which they were justly entitled.' He did not think Hohepa Mataitaua would object to amending the boundaries and recommended action be taken to remedy the mistake.

On 5 March, Katerina Hauruia, Harata Taiporutu and Wiremu Taiporutu applied for a rehearing of the partition of the block. The application was based on the 'misunderstanding between the applicants and the Court' which caused 'an improper and unfairly large proportion of the valuable land comprised in the said block' to be 'included in the portion (Kuaotunu No. 1D No. 2) awarded to Hohepa Mataitaua, Te Tiki Patene and Matene Patene.' The result was that the part awarded to the applicants (Kuaotunu No. 1D No. 1) did not include 'a fair and sufficient proportion of the valuable land comprised in the said block.' They asked for an alteration to the boundary. This application was dismissed by the Chief Judge over two years later, on 22 June 1894, after a hearing which did change the boundaries of the blocks by amending the original decision.

Held before Chief Judge G.B. Davy at Coromandel, the Court opened on 21 June 1894.[180] The application was read along with a letter from Harata Noki and Wiremu Karaka asking that the application be withdrawn. Katerina Hauruia also appeared asking that the application be heard and informed the Court that Hamiora Mangakahia would represent her. A Mr Luintal was also present and told the Court he appeared for Hohepa Mataitaua, Te Tiki Patene and Mata Patene to oppose the application.

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[180] Native Land Court Chief Judge's minute book 12, 21 June 1894, MLC 3, 12, NA, Wellington, fol 128.

Harata Noki and Wiremu Karaka then told the Court that they wished to be included in the application and that they too would be represented by Hamiora.

Hamiora Mangakahia gave his evidence-in-chief. He told the Court he was the agent for the present applicants at the partition hearing by Judge Scannell at Mercury Bay in 1891. He was also present at the meeting suggested by the Court to resolve the dispute. It was agreed that the north boundary of Hohepa's part would be the river, so that it would adjoin land owned by Kawhena on the south boundary of the block. It was also decided that if it did not contain 40 acres, the boundary would be formed by a swinging line from the mouth of the river. This was accepted by all the parties and presented to the Court. However, the judge did not lay out the lines on the plan according to the agreement, and the error was not noticed for some time after the hearing.

Hamiora then told the Court what he knew of the land. He had been born there and knew of the occupation of the blocks. The parents of Katerina and Harata lived on the block, and Katerina herself lived there with her husband and their children. Katerina's grandmother also lived on the block. They lived on the north side of the stream and their cultivations were on the other side of the stream. Rawinia, Harata's mother, had a house on the north side of the stream, and there were a number of people buried there in an urupa. Hamiora told the Court Peti Patene and Wi Patene did not occupy the land, they lived at Waiau and their parents had lived there too. They visited the land, but did not live there constantly, having settlements elsewhere. The only person who lived on the south side of the stream was Ruihana Kawhero. He added that the land in the No. 1 part was only a cliff – the only good land in the block was that awarded to Hohepa Mataitaua.

Hamiora was cross-examined by Luintal regarding the agreement reached and the allocation of the shares. Hamiora maintained that Ahikaroa was the ancestor through whom Wi Patene and Peti Patene had a right and that they had no claim through Ponui. On further questioning from the judge, he told the Court that neither had rights to the block, they had only gained an interest in the land south of the stream through good will.

The applicants' case was closed and Hohepa Mataitaua was sworn. He gave evidence that he had discussed the partition application with Harata and Wiremu prior to the Court hearing. They suggested that a single case be presented to exclude Katerina from the block as she had no claim through Ahikaroa. Hohepa accepted this suggestion as that was the ancestor through which his family claimed an interest in the block. However, when Hohepa discussed their case with Hamiora he found they were going to contest his claim. At the partition hearing, Harata gave evidence that her hapu for the land was Ngati Koheru, and that Koheru was the ancestor. Hohepa also

thought she mentioned Ponui. However, when he questioned her, she said Koheru was the hapu given at the original title investigation, that Ngati Karaua were not the owners and that Ahikaroa was not the ancestor. According to Hohepa, at this point Scannell became 'very angry and told Hamiora he would pay no attention to the evidence of this witness and suggested that Hamiora and I should go outside and make arrangement.'[181]

The parties agreed to do so and went to Hamiora's house to discuss the matter. Hohepa told the Court, he, Harata, Katerina, Wiremu and Hamiora were present. Hamiora suggested the land should be divided equally from east to west, the north portion to go to Hohepa. Hohepa did not agree asking that his portion adjoin his brother's land on the southern boundary. This was accepted and it was agreed that all but four of the owners would receive 20 acres. They returned to the Court and asked that the lines be drawn on the map. This was done by Scannell who calculated the area of each block. In later evidence, and under cross-examination by Hamiora, he told the Court he knew nothing of the suggestion the stream should be the boundary and had not heard of it before the morning's evidence from Hamiora.

Hohepa also discussed his claim to the land. He admitted Peeti Patene never lived on the land, although her elder sister Reiha did. He did not accept Katerina had a claim to the land because she was not part of Ngati Karaua – he agreed Te Matawha did live on the land, but believed Katerina was not related to him. He also admitted that the settlement belonged to Ruihana Kawhero, the brother of Harata. Hohepa concluded his evidence by stating that 'the only way in which our getting the settlement could be justified is that they had been abandoned at the time the land passed the Court.'[182] He estimated the area of flat land on the whole No. 1D block to be no more than 1 1/4 acres.

The Court adjourned for the day and returned the following morning where it was informed the parties had come to an agreement. Luintal submitted a description of the boundaries agreed which was signed by Hohepa Mataitaua and Hamiora Mangakahia. The Chief Judge ordered that the original decision be amended in accordance with the new boundaries and dismissed the application for a rehearing. The boundary agreed was not the Tahunatorea stream, but crossed the stream to include some of the township allotments on the north side. However, both parties now received a portion of the township.

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[181] ibid., fol. 132.

[182] ibid., fols 133-4.

Clearly, all this litigation was a result of the increasing value of the land on which the township was located. The applications and the evidence presented to the Court show that the two groups of litigants, led by Hohepa Mataitaua and Harata Taiporutu, wanted their claims to the land validated by the Court because they considered it valuable. But it was not just in terms of the financial value of the land. This is because one outcome of the increasing financial value of the land was that the status of the land in terms of mana also increased. The Maori landowners had become landlords, and landlords of land which, for a short period, was eagerly sort by Pakeha miners and merchants.

The conflict between the two main groups of owners is particularly significant in these terms because the system of land tenure and ownership over which the Native Land Court presided was unable to deal with the change in status of the land. The litigation itself was a product of the system because when the land became valuable the landowners were unable to act collectively to take advantage of the opportunities. Given at least three families and numerous owners had an interest in the land, and given they lived all over the Coromandel peninsula and in Northland, this is hardly surprising. The ownership structure itself was the major problem as it could not adapt to the changing circumstances of the land and the owners and ensure the land was worked in their interests.

The Native Land Court judges attempted to impose order on complex rights and in doing so undermined the ability of Maori landowners to work their land to their advantage. The judges and Crown officials operated a massively flawed system. This does not refer to the competence or otherwise of individual judges or the way the Court operated. Neither should Maori landowners be portrayed only as victims in the way the Court operated. The Kuaotunu blocks show the Maori participants actively engaging in the process and using it to support their interests. The issue itself is much bigger than these: the overall system of land tenure and ownership which was imposed on Maori rights by statute and which the Native Land Court administered. The judges were required to look for simple answers to very complex questions by a system totally unsuited to the management of land for the economic benefit of the owners.[183] They were in effect imposing a new order on existing rights but it was an order unable to adapt to new and changing situations.

In the case of the Kuaotunu blocks, occupation, the measure usually applied to a claim to ownership was useless because the majority of the owners lived elsewhere. From

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[183] See also Angela Ballara, *Iwi. The Dynamics of Maori Tribal Organisation from c.1769 to c.1945*, Victoria University Press, Wellington, 1998, p. 89; Alan Ward, *An Unsettled History. Treaty Claims in New Zealand Today*, Bridget Williams Books, Wellington, 1999, p. 125.

the evidence given in the Court it appears that a substantial community had lived on the land. It was also a community which included people who had no ancestral link to the land, but who were included in the ownership because they were part of the community. However, by 1890, this community had fragmented and moved elsewhere and it appears only one owner, who had no ancestral right to the land, occupied part of the original block. As has been suggested, the system of tenure applied by the Court was unable to deal with the fact that many claims, whether legitimate or not, were made by people who did not live on the land.

And it was impossible for the Court to determine their claim. In the partition hearing and the subsequent rehearing, the judge did not decide how the land should be divided and the issue resolved. In both cases the parties were told to come to an agreement. This was also the situation at the partition of Kuaotunu No. 2A.[184] So the system even defeated itself. After determining the owners at the original title investigation, it was unable to resolve a dispute among successors to which it contributed and simply provided a forum for the owners to come to an agreement. Scannell himself was placed in an extremely difficult position and took probably the only action available to him to resolve the situation.

As to the details of the Court hearings, it is difficult to make any substantive comments. Further evidence beyond the Court minute books would be required. At face value, Hohepa Mataitaua's claim that Kuaotunu No. 1D was part of the adjacent No. 2 block may have had some substance given the layout of the land. The Court registrar also appeared convinced an error was made in taking down the list of names of the owners. Furthermore, this concern seems to have substance given the very confusing nature of the original ownership of the Kuaotunu No. 1 and No. 2 blocks as names from each family were included in both blocks. There is no systematic division in the ownership of the two blocks. Equally however, it should be noted that Hohepa did not pursue his claim any further, even at the subsequent partition hearings.

Three further points can be added. The first is that is has been very difficult to determine the relationships between the owners. Unfortunately, it has not been possible to locate a whakapapa. It appears there are at least three families (Hohepa Mataitaua, Harata Taiporutu and Hemi Waa) and a number of other individuals who gained an interest in the block through occupation (or 'aroha') as members of the community at Kuaotunu. How these three families are linked has remained impossible to establish. From the evidence given at the hearings, it would seem Hohepa and Harata were half-brother and sister, having the same mother, Ripeka

[184] Coromandel minute book 5, 28 September 1891, fols 73-4.

Rangitokona. Hohepa's father was Anaru Pahapaha and Harata's father was Rawiri Taiporutu. It is interesting to note that these families came from hapu on different sides of the Coromandel peninsula, Hohepa living at Te Kouma and Harata living at Whitianga. It is possible these blocks may have been the point where these families' rights overlapped.

The second point is James Mackay's role in the first hearing held in July 1890. When the case first opened, Hohepa Mataitaua represented two families: his and Harata Taiporutu's. Mackay represented (or claimed to represent) those owners who had no ancestral right to the block but were owners through occupation. When the Court resumed sitting for the second day he presented the Court with an authority to represent Harata's family. The minutes give no indication of the reason for this sudden change. Furthermore, Mackay's cross-examination of Hohepa focused on his occupation of the block.[185] Mackay's questions to his only witness, Kereama Matai, also examined the issue of occupation. It is interesting that Kereama was Mackay's key witness as he was married to Katerina Hauruia, and had no rights to the land himself. And it would seem that Katerina had only occupational rights, as both Hohepa and Harata agreed she had no ancestral rights.

Mackay's role in this case is significant because at the same time the Warden was attempting to gain signatures to the deed of cession for mining rights. But it seems Mackay's principal concern was to protect Pierce Lanigan's interest in the block. As has been seen, Lanigan did not have a completed lease and Mackay may have intervened to ensure the owners who had approved the lease – the evidence indicates Harata and Katerina had – retained an interest in the land. In addition, as has been suggested, in the process of collecting signatures Mackay was a marginal figure who interfered rather than assisted, and this appears the situation again with regard to his role in this hearing, especially as Hohepa appeared to represent the Harata's family as well as his own. It should be noted nevertheless that there is no clear evidence that Mackay was involved in this hearing for this reason.

The third issue relates to the urupa located on Kuaotunu No. 1D. The evidence regarding its removal and re-interment is contradictory. Pierce Lanigan claimed to have the consent of the owners to move the urupa. But as has been seen, in early correspondence regarding the block, Hohepa Mataitaua, writing on behalf of himself, Wiremu Taiporutu and Harata Taiporutu, complained that the urupa had been moved 'by the Europeans' without permission. However, Kereama Matai, James Mackay's

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[185] Angela Ballara refers to a 'decided preference' among judges for witnesses who could show they occupied and cultivated the land they claimed and the impact this had on the evidence presented by witnesses. See Ballara, p. 91.

witness at the first Court hearing and Katerina Hauruia's husband, gave evidence that Harata and Katerina had supervised the removal of the dead and that no-one objected at the time. Hohepa was present at the Court but it appears he did not challenge Kereama's statements. No further information relating to the urupa has been located and it did not arise as an issue at the time the land was alienated.

In general the evidence presented in all three cases shows the limitations of the adversarial nature of the Court. Again, Scannell was placed in a difficult position because the evidence was so contradictory. Not only was the evidence of different witnesses confusing, but individual witnesses themselves often provided conflicting accounts. Furthermore, the minute books indicate the judges had no standards by which to determine the respective interest of each owner. This was a major problem in these cases given there was so much contradictory evidence in an environment where economic fluctuations were significant. Overall, it was not the individuals who were at fault in the case of the Kuaotunu blocks, but the system they were required to administer.

4.2 The Alienation of the Land.

4.2.1 Kuaotunu No. 1C.

In August 1898, Hemi Waa wrote to the Native Land Purchase Department offering to sell several interests in Kuaotunu No. 1C.[186] A subsequent title search showed that the block was 210 acres in area, and that there were two original owners on the certificate of title issued on 12 December 1881. They were Katerina Hauruia and Maraea Ripeka, also known as Maraea Titiparu. Maraea had died and six successors had been appointed. These were the people Hemi Waa represented. In his letter he wrote that they held a half interest in the block and asked for 35/- per acre.

The title search by Native Land Court staff noted in fact, that the shares in the block were not defined, and that there were Court charges and a survey lien outstanding.[187] Maraea Ripeka's successors were Raniera Matini, Matini Kopehu, Hamiora Matini, Hura Matini, Ripeka Matini and Ruihi Matini. Raniera Matini had also died and two successors had been appointed: Wiri Raniera and Toeke Raniera. Both were minors

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[186] Hemi Waa to Sheridan, 17 August 1898, MA-MLP 1, 1903/1, NA, Wellington.

[187] Browne to Sheridan, 7 September 1898, ibid.

and Hemi Waa had been appointed their trustees. It also appears that this group of owners lived at Mangakahia near Whangarei.

There were two major problems with the proposed sale. The first was that the interests of each of the owners had not been determined, and the second was the sale of the interests of the minors, for whom Trust Commissioner approval was required. Sheridan wrote to a Native Land Purchase Officer and asked that he 'ascertain what shares are under offer and suggest that definition of relative interests or partition should be applied for as at present the shares are unknown quantities.'[188] Maxwell replied that he had sent the forms for applying for partition of the block and definition of the relative interests to Hemi Waa and noted that it was 'not possible to say what shares they are entitled to until the individual interests are defined.'[189] It is not clear if an application was made and in any case, the Land Purchase Department does not appear to have taken the matter any further until 1901.

In March 1901, Katerina Hauruia, the other original owner in the block, wrote to Gilbert Mair, the Land Purchase Officer at Thames, offering to sell Kuaotunu No. 1C.[190] She asked for £5 per acre noting it was good land, useful for farming. She also indicated mining was undertaken on the land.

Sheridan asked the Mining Warden at Thames, R.S. Bush, for a report on the proposed purchase, writing that while Katerina had asked for £5 per acre, the other owners had offered the land for 35/- per acre in 1898.[191] Bush outlined the mining claims on the block telling Sheridan there were only two working, with three adjoining the block and the rest given up. He also noted that the land joined the township.[192] He supported the acquisition of the land but considered the price of £5 per acre excessive, recommending instead an offer of £3.

The delay in the purchase must have caused Katerina Hauruia some concern because a Charles McNeish wrote to James Carroll on her behalf in November 1901.[193] McNeish referred to an earlier letter he had sent the minister, but this was not contained in the file, and may not have been received. He wrote that her interest in the block was 110 acres and that she wanted to retain fifty acres as a homestead and

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[188] Sheridan to Maxwell, 10 September 1898, ibid.

[189] Maxwell to Sheridan, 14 September 1898, ibid.

[190] Katerina Hauruia to Mair, 27 March 1901, ibid.

[191] Sheridan to Eliott, 9 April 1901, ibid.

[192] Bush to Eliott, 30 April 1901, ibid.

[193] McNeish to Carroll, 27 March 1901, ibid. McNeish wrote to the Native Land Purchase Department regarding Katerina's interests in other blocks of land. Sheridan was concerned about his role and asked Bush to clarify the situation – Bush understood McNeish lived with her.

residence. McNeish added that the land was subject to a variety of uses, including mining, the school, churches, the cemetery, and other buildings. He emphasised the extent of mining activities on the land. His letter does not seem to have been acknowledged, nor a reply sent. McNeish's account of the land contrasts significantly with that submitted by Bush.

After a considerable delay (although prior to the letter sent by McNeish), the matter was submitted to the Minister of Lands requesting approval for the purchase of the block for £500.[194] The purchase was approved on the 25 October 1901, but Bush was not instructed to purchase the shares until April 1902.[195] He returned two completed deeds in July.[196] These deeds must have related to Katerina Hauruia's interest only as she signed on 17 July 1902, and the other non-resident owners did not sign until 19 September 1902. The Native Land Purchase Department file does not include any correspondence regarding the circumstances in which these signatures were gained.

Sheridan then submitted the deeds to Judge Alexander Mackay for certification. A Native Land Court judge was required to approve the terms of the sale of the interests of the two minors, Wiri Raniera and Toeke Raniera.[197] Sheridan noted that price paid was over £2.7.6 per acre, a far higher price than the 2/6 per acre recommended by the Surveyor-General, Percy Smith, for any land other than that used for mining purposes. However, Mackay was very reluctant to give his consent on the basis of the information provided to him and raised a number of objections.[198] First, since he knew little about land in the district, he wrote he 'should much prefer' a judge with some experience of the area to give approval. Second, he noted that the provisions of the Maori Real Estate Management Act 1893 required a valuation of the land as a guide for the judge who would confirm the sale. Third, he found the very divergent purchase price asked for in each of the offers to sell the block a problem. Related to this was a fourth concern regarding the price paid and the allocation of the purchase money among the owners. Mackay's major problem was assessing the value of the land and after examining the Department's file on the block felt he did not have enough information to allow him to 'form an opinion as to its probable value.' He wanted the requisite information to do so and asked Sheridan 'whether Katerina Hauruia was paid above the average price for her interest and also the area owned by the late Raniera Matini, as well as the price payable for that interest.'

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[194] Sheridan to Minister of Lands, 8 October 1901, ibid.

[195] Sheridan to Bush, 22 April 1902, ibid.

[196] Bush to Sheridan, 17 July 1902, ibid.

[197] Sheridan to Mackay, 26 September 1902, ibid.

[198] Mackay to Sheridan, 29 September 1902, ibid.

Sheridan did not provide Mackay with a valuation of the land, but he did submit a list of the payments made to each owner, noting that Katerina Hauruia owned half the block, the two minors each one twelfth, and all the other owners each one sixth.[199] He must also have considered the price generous as he noted (his own 'impression') that mining on the land had declined and that the Crown has acquired 'something of a white elephant.' The payment schedule shows a survey lien of £11.1.4, and Native Land Court fees of 40/-. Two shares in the block were purchased for £250 each. The table below sets out the payments made:

1.		Maraea Ripeka	1.	Dead, successors No. 3 to 8				
2.		Katerina Hauruia	1.		£250			17.7.02
		Successors						
3.	1.	Raniera Matini	1/6.	Dead, successors No. 9 to 10				
4.	1.	Matini Kopehu	1/6.		£41	13	4	19.9.02
5.	1.	Hamiora Matini	1/6.		£41	13	4	19.9.02
6.	1.	Hiria Matini	1/6.		£41	13	4	19.9.02
7.	1.	Ripeka Matini	1/6.		£41	13	4	19.9.02
8.	1.	Ruihi Matini	1/6.		£41	13	4	19.9.02
9.	3.	Wiri Raniera	1/3.	m, 28.9.16	£20	16	8	19.9.02
10.	3.	Toeke Raniera	1/3.	m, 28.9.18	£20	16	8	19.9.02

Despite the lack of a valuation, Mackay approved the sale of the interests of the Wiri Raniera and Toeke Raniera on 30 September 1902.[200] The copy of the deed retained by the Native Land Court shows that the interests of the other owners were not considered. The situation at this time regarding the confirmation of alienations was complex. As two other Kuaotunu blocks were alienated in similar circumstances, this issue should at this stage be noted and it will be examined further in the conclusion.

As to the matter of the definition of relative interests, raised when the land was first offered in 1898, when Sheridan assessed the subsequent offer it did not arise as a problem. It appears it was assumed the original owners each held an equal share.

4.2.2 Kuaotunu No. 1D1.

The whole of the Kuaotunu No. 1D block was first offered to the Crown in October 1893. The dispute over the partition of the block had not been resolved, but E.T. Tizard, an agent writing to A.J. Cadman, had apparently received authority from

[199] Sheridan to Mackay, 30 September 1902, ibid.

[200] Crown Purchase Deed 3518, BACS A806/44 C508/5, NA, Auckland.

(Harata) Noki Taiporutu and Hohepa Mataitaua to offer the land to the Government for the price of £1000, including the goldfield revenue accumulated on the block.[201] Tizard added '[a]s you are probably aware the subdivision of this Block is awaiting a rehearing; but the Natives abovementioned the principals of the two parties have agreed that if the Government will purchase the application for rehearing shall be withdrawn and the Deed of conveyance of the whole block signed by the Natives interested.' This letter does not seem to have been received by the Native Land Purchase Department for several months and no action was taken until late January 1894.

Sheridan immediately wrote to Dearle, the registrar of the Resident Magistrate' Court at Thames, asking for details of the revenue accumulated on the block and whether he knew of the circumstances of the partition.[202] Dearle replied that he held just under £90 in revenue for the block, and had no information regarding the partitioning of the land, but raised several doubts about the offer.[203] He considered the price asked 'absurd' and suggested it was because Harata owed Tizard over £100. Dearle also believed that it was 'impossible' for Harata and Hohepa to guarantee all the owners would sign because they were scattered in many areas – some at Kuaotunu, others at Mercury Bay and others at Whangarei. He advised Sheridan that the Under Secretary of the Land Purchase Department had recommended in April 1890 that the purchase price should be £2 per acre and Dearle considered this was what the land was worth. Sheridan submitted the proposed purchase to the Minister of Lands recommending that the interests be purchased for 40/- per acre, and this was approved.[204]

Shortly after Sheridan had written to Dearle, Tizard wrote to Cadman again.[205] The letter mostly addressed the question of signing the agreement. Apparently Harata Noki had told Tizard all the owners of No. 1 which included Katerina were willing to sell the land to the Crown. Furthermore, Hohepa Mataitaua had assured Tizard both his family and the owners resident in Northland were willing to sell. Katerina Hauruia's interest was of great concern. Tizard reported that Hohepa had told him 'that when he and Noki have signed no rehearing can affect the township part of the land whilst if it went to rehearing Katerina's share of the outside land would be reduced to about 20 acres the other half share having been presented to her as a gift by Noki.' He concluded, somewhat threateningly, that 'neither Mataitaua and Noki expect any difficulties whatever with her.'

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[201] Tizard to Cadman, 31 October 1893, MA-MLP 1, 1903/102, NA, Wellington.

[202] Sheridan to Dearle, 29 January 1894, ibid.

[203] Dearle to Sheridan, 14 February 1894, ibid.

[204] Sheridan to Minister of Lands, 21 February 1894, ibid.

[205] Tizard to Cadman, 8 February 1894, ibid.

However, the Government was not permitted to deal with Tizard in the matter. Sheridan, in reply to Tizard's original letter conveying the offer, stated that the provisions of the Native Land Purchase Act 1882 prevented the Government 'from carrying on negotiations through any private agent.' He asked Tizard to suggest the Maori landowners contact a Land Purchase Officer. He added that the Crown was willing to purchase the land at a price of 40/- per acre and that the land could not be dealt with until the Chief Judge had heard the application for a rehearing of the partition.

Tizard's response to this information was slightly bizarre. He wrote directly to Sheridan telling him that he did 'not propose to act as agent to the Government as I am acting on behalf of the principal natives concerned.'[206] He went on to explain that Cadman had told him to forward the offer to him (Cadman) and he would explain why an increased price was justified. Tizard wrote that the 'land comprises a considerable portion of the occupied part of the Kuaotunu Township so that the price you mention which it is presumed applies to ordinary land is quite inadequate.' Furthermore, he understood that considerable sums of money had accumulated on the land. Since the owners had suggested the government retain these funds, the difference in price was about £300. And the sale would avoid the trouble and expense of the rehearing allowing the owners to 'realise at once without waiting for the Land Court.' Tizard also suggested that the owners could get a better price after the rehearing is concluded and the title settled 'by selling in detail to the present occupants of the land and others.' Sheridan does not seem to have replied, the problem of Tizard's involvement being dealt with by ignoring him.

Sheridan's focus instead shifted to the rehearing. He had enquired of the Native Land Court at Auckland the situation with regard to the rehearing some time previously, and had been told the application was awaiting hearing.[207] He also asked the Chief Judge to indicate when the application for rehearing would be dealt with, but Seth-Smith replied that '[i]t is impossible for me to say at present.'[208] In May 1894, Sheridan tried again and received a more useful reply.[209] The Chief Judge informed him the hearing was notified for enquiry at Coromandel on 19 June.[210]

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[206] Tizard to Sheridan, 10 March 1894, ibid.

[207] Sheridan to Morpesh, 29 January 1894; Morpesh to Sheridan, 1 February 1894, ibid.

[208] Seth-Smith to Sheridan, 3 March 1894, ibid.

[209] Sheridan to the Chief Judge, 18 May 1894, ibid.

[210] Davy to Sheridan, 23 May 1894; published in Panuitanga, 23 May 1894, ibid.

In November 1894, Wiremu Taiporutu offered to sell his interest in the Kuaotunu No. 1D block.[211] No action was taken on receiving this offer until Cadman wired Sheridan in January 1895 asking the position of the purchase. The following day, Sheridan instructed Mair to purchase the block for the price of 40/- per acre if the problems regarding the title were resolved.[212] In March Mair returned a deed for Kuaotunu No. 1D1, 122 acres, 2 roods, 38 perches, signed by Wiremu Taiporutu, Te Ataiti and Taumaha Kara.[213] Since there were five owners in the block, further signatures must have been obtained, but further correspondence regarding this matter is not contained in the Native Land Purchase Department file. The payment schedule for this part of the block is set out below:

			£	s	d	
1.	Harata Taiporutu alias Harata Noki as successor to Ruihana Kawhero as successor to Ripeka Rangitokona	2/24 2/24 8/24 4/24	81	15	0	17.6.95
2.	Te Ataitai Taiporutu as successor to Rawinia Taiporutu	4/24	40	15	0	5.3.95
3.	Taumaha Kara	4/24	40	17	6	14.3.95
4.	Katerina Hauruia	6/24	61	2	6	10.4.96
5.	Wiremu Taiporutu as successor to Ruihana Kawhero	2/24	20	9	0	16.2.95
TOTAL (122 acres, 2 roods, 27 perches).			244	19	0	

The deed was presented to the Native Land Court at Shortland for registration. The application was heard before H.F. Edger on 23 April 1896.[214] Mair appeared in support telling the Court all five original owners had signed the deed. The Court ordered the whole block in favour of the Crown. The Court minutes show the deed was returned to Mair the same day, and not retained. Sheridan must have received the deed because in June he sent it and the order of the Court vesting the land in the Crown to the Native Land Court registrar at Auckland for registration.[215] Even at this stage, the matter of the partition of the block had not been finalised. When Browne sent the order to Thames for Judge Edger to sign, he also sent the plan and partition orders for Kuaotunu No. 1D to Judge Scannell for his signature.[216] Browne added that the matter was urgent and asked that the orders be returned as soon as possible.

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[211] Wiremu Taiporutu to Cadman, 3 November 1894, ibid. The letter is written on Kuaotunu Hotel notepaper.

[212] Sheridan to Mair, 16 January 1895, ibid.

[213] Mair to Sheridan, 14 March 1895, ibid.

[214] Hauraki Native Land Court minute book 39, 23 April 1896, fol. 121.

[215] Sheridan to Browne, 11 June 1896, MA-MLP 1, 1903/102, NA, Wellington.

[216] Browne to Scannell, undated; Scannell to Browne, 22 July 1896, BACS A622/262a, NA, Auckland.

The location of Crown Purchase Deed 1931 has not been found. It is not held with other Crown Purchase Deeds at LINZ, nor is it held in the Trust Commissioner's records.[217] It does appear though that a copy was submitted to the Land Transfer Office for registration against the title and retained there.[218]

4.2.3 Kuaotunu No. 1D2.

Hohepa Mataitaua had offered his interest in Kuaotunu No. 1D to the Crown in 1893. With the settlement of the partition issue, he had received a half share in Kuaotunu No. 1D2, the total area of which was 44 acres, 3 roods, 22 perches. The other two owners, Te Tiki Patene and Mata Patene, both minors, each held a one quarter share. However, while Kuaotunu No. 1D1 was being purchased, Hohepa and his family did not sell their interests.

In September 1902, the Native Land Purchase Department was informed Mere Kaimanu, as trustee, wanted to sell the interests of Maata Wi Patene in Kuaotunu No. 1D.[219] Sheridan favoured acquiring the land, unless the Maori landowners occupied the land. He asked Bush to look into the matter of occupation and if the land was not occupied, a possible price. Sheridan also noted that Maata Wi Patene was of adult age and so her trustee had no control over her interest. He was not quite correct: according the Department's own papers, her minority was to end on 11 December 1902, two months later. Bush reported that Maori were not occupying the land, 'they say they are not good enough for the purpose.'[220] He suggested the price paid for Kuaotunu No. 1D1 was adequate and indicated the owners wanted to sell.

However, no subsequent action was taken. Several months later, Hohepa Mataitaua wrote to Bush again offering the block, now owned by himself and Mata Patene (who had succeeded to the share of Te Tiki Patene).[221] The land in question was forty acres and Hohepa told Bush part of the township of Kuaotunu was located on the land including nine houses. The purchase price suggested was £25. Bush forwarded the offer to Sheridan, and later wired that the offer was £250 not £25, adding that Hohepa

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[217] Alexander was unable to locate this deed, see David Alexander, *The Hauraki Tribal Lands*, Part One, Paeroa, 1997, p. 253.

[218] Transfer agreement No. 18271, LINZ, Hamilton.

[219] Native Land Purchase Department minute, 11 September 1902, MA-MLP 1, 1903/102, NA, Wellington.

[220] Bush to Sheridan, 3 February 1903, ibid.

[221] Hohepa Mataitaua to Bush, 30 September 1903, ibid.

would 'no doubt take something less.'[222] Sheridan would not entertain this price, instead instructing Bush to offer £2 per acre, which amounted to a total purchase price of £82.[223] He also advised that Mata Patene was no longer a minor and could deal with her own interests.[224] Sheridan also forwarded the deeds and vouchers to facilitate the purchase.

It seems though this price was not adequate. Hohepa Mataitaua wired offering to sell the whole block for £120, but Sheridan refused.[225] Hohepa tried again several months later, telling Mair he and his daughter would sell their shares in the block for £100 and were 'prepared to go to Auckland and sign the transfer at any time necessary.'[226] Sheridan's very formal instruction to Mair was to 'inform' Hohepa 'that the Government has discontinued the purchase of Native lands and that we cannot now enter into the proposed negotiations.'[227] It is very difficult to believe this was the case. The land was not sold until 1913 when it was bought by a private purchaser for £50 – a price significantly below the £80 offered by the Crown. Since this transaction occurred outside the period of greatest mining activity, it is outlined in detail in Appendix One.

4.2.4 Kuaotunu No. 2A1.

Katerina Hauruia, sole owner of the 50 acre Kuaotunu No. 2A1 block, sold the land to the Crown on 17 July 1902 for £145.[228] No further information regarding this purchase is available. However, as with the alienation of Kuaotunu No. 1C, the copy of the deed retained by the Native Land Court does not appear to have been certified. This issue will be examined further in the conclusion.

Shortly after the sale, Charles McNeish wrote to the Commissioner of Crown Lands at Auckland on her behalf.[229] He applied for a grant of about ten acres on which her

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[222] Bush to Sheridan, 2 October 1903; Bush to Sheridan, 13 October 1903, ibid.

[223] Sheridan to Bush, 13 October 1903, ibid.

[224] He was obviously not aware of the succession of Mata Patene to the interest of Te Tiki Patene as he still thought he was an owner of the land.

[225] Hohepa Mataitaua to Sheridan, 2 November 1903; Sheridan to Hohepa Mataitaua, 2 November 1903, ibid.

[226] Hohepa Mataitaua to Mair, 30 June 1904, ibid.

[227] Sheridan to Mair, 5 July 1904, ibid.

[228] Crown Purchase Deed 3477, BACS A806/42 C508/4, NA, Auckland.

[229] McNeish to the Commissioner of Crown Lands, Auckland, 15 August 1902, MA-MLP 1, 1902/54, NA, Wellington.

home was located and where she had lived for some time. He indicated Bush had 'reserved her the first liberty' to the land. He enclosed an application for a grant of the ten acres under the Crown Lands Act. An Assistant Surveyor-General at Auckland wrote to Sheridan asking whether any promise had been made.[230] Sheridan forwarded the matter to Bush.[231] He asked if the land should be reserved to Katerina under the Land Act or if Bush, as Warden, could reserve it for occupation during her lifetime or as long as she wanted to occupy it. He added that 'I would also like to be certain that Mr McNeish is moved by pure patriotism and has not his eye upon the land.' Bush replied that at the time of the purchase Katerina had come to Coromandel, accompanied by McNeish.[232] When the issue of her residence had arisen Bush told her she could apply for a lease under the Mining Districts Land Occupation Act 1894. He believed the best solution to the problem was to reserve the part of the land on which the house was located for her lifetime. He added that 'McNeish is entitled to no consideration in the matter,' although he might have been living with Katerina. The matter was left for Bush to deal with and Sheridan advised the Department of Lands not to interfere.[233]

4.2.5 Kuaotunu No. 2A2.

Kawhena Rangitu, the sole owner of Kuaotunu No. 2A2, with an area of 132 acres, 3 roods, 4 perches, sold the block to the Crown on 19 May 1902 for £400.[234]

Kawhena first offered this block to the Crown in April 1896. Writing to H.E. Kenny, the Warden at Thames, Kawhena indicated he did not want to alienate the land, but instead 'surrender' the block for a lump sum under a new lease.[235] He was also willing to forego the revenue in favour of an annual rental for the land. In his letter, he set out two reasons for this offer. First, he understood he was the remaining owner under the mining lease and that all the other Maori landowners had sold their land to the Crown. This was certainly not the case. His second reason related to the 'great responsibility and also worry' which arose from 'guarding the timber upon the property.' Kenny forwarded the offer to the Under Secretary of the Mines Department recommending that the application be rejected.[236] However, he

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[230] Assistant Surveyor-General, Auckland to Sheridan, 26 September 1902, ibid.

[231] Sheridan to Bush, 11 September 1902, ibid.

[232] Bush to Sheridan, 22 September 1902, ibid.

[233] Sheridan to Assistant Surveyor-General, Auckland, 26 September 1902, ibid.

[234] Crown Purchase Deed 3478, BACS A806/40 C508/1, NA, Auckland.

[235] Kawhena Rangitu to Kenny, 17 April 1896, MA-MLP 1, 1902/20, NA, Wellington.

[236] Kenny to Eliott, 22 April 1896, ibid.

considered 'a sale outright would be a different matter.' Eliott sent the application on to Sheridan who asked the Native Land Court at Auckland for the title details.[237] After receiving this information, Sheridan instructed Mair to inform 'the Native' that he 'can only sell right out.'[238] Kawhena's attempt to lease the land to the Crown was quickly rejected and the Crown would only consider absolute alienation.

In March 1901, Gilbert Mair wrote to Sheridan to convey an offer from Kawhena Rangitu to sell an unspecified block of land at Kuaotunu.[239] According to Mair, Kawhena was unhappy 'with the manner in which the Gold Revenue is distributed: that for many years proper steps have not been taken to compel miners and other holders to pay what they ought; that the subsequent loss falls upon him.' Mair also indicated that Kawhena had another 'valuable block of land' at Tikouma where he lived that he wanted to develop. Apparently Kawhena had told Mair that Cadman had offered him 10/- per acre but because he received more from the gold revenue he preferred to lease. He believed there was a revival in mining at Kuaotunu and that the Government would want to purchase the land. He asked for £1500 for the whole block. Again Sheridan asked for the title information for the block.[240]

The settlers at Kuaotunu also favoured the purchase of the block at this time. James McGowan, the Minister of Justice, advised James Carroll that he had met a deputation at Kuaotunu.[241] They expressed concern at 'the inequality in rents as between Govt. and Native owned sections.' The deputation pointed out 'that the present would be a favourable time to purchase the land in question as, owing to the depression in mining, the Natives would be prepared to sell at a reasonable price.' Carroll forwarded the letter to Sheridan who replied that Bush had been asked to provide the information required.[242]

Sheridan wrote to the Warden at Thames for advice as to the purchase price, as he considered the price asked 'very high.'[243] Bush replied that the price asked was over £11.10 per acre and he also considered it excessive.[244] He noted there were no claims located on the block and did not think any gold had been mined on it. However, a 'small portion of the township' was 'apparently on it.' He considered £400 a good

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[237] Eliott to Sheridan, 25 April 1896; Sheridan to Browne, 27 April 1896; Browne to Sheridan, 7 May 1896, ibid.

[238] Sheridan to Mair, 13 May 1896, ibid.

[239] Mair to Sheridan, 4 March 1901.

[240] Sheridan to Browne, 8 March 1901; Browne to Sheridan, 13 March 1901, ibid.

[241] McGowan to Carroll, 14 March 1901, ibid.

[242] Sheridan to Carroll, 2 April 1901, ibid.

[243] Sheridan to Bush, 21 March 1901, ibid.

[244] Bush to Sheridan, 20 April 1901, ibid.

value for the land. He concluded by indicating that Kawhena did not receive any gold revenue because none was accruing. The claims had all been abandoned and he assumed 'they were only taken up during the boom of speculation.' In May 1901, Sheridan submitted the proposed purchase to the Minister of Lands, recommending a price of £400. The purchase was approved, albeit in October, over five months later.[245]

In the meantime, Kawhena wrote to George Wilkinson offering the land for sale to the Crown for £10 per acre in June 1901, noting that the land was part of the township of Kuaotunu.[246] Wilkinson does not appear to have been aware of other negotiations, and restarted the purchase process by writing to the Chief Surveyor at Auckland for information regarding the area of the block and whether or not it was part of the township.[247] Kensington confirmed that it was, but before returning the offer, it was 'referred upstairs' to the registrar of the Native Land Court for title details.[248] Wilkinson forwarded this information in early July to the Native Land Purchase Department, but no action appears to have been taken. Kawhena wrote to Wilkinson a second time on 2 August 1901 asking what had happened to his offer.[249] He was keen to sell the block 'for the purpose of improving my land here, at Tikouma' where he lived.

The government had approved the purchase of the block for £400. However, Kawhena was concerned that this price was too low.[250] He asked James Carroll to support his offer of the land for £10 per acre. Kawhena emphasised the importance of the township located on the block, noting that 'there are many buildings on it, over thirty hotels, stores, shoemaker, business premises belonging to the Pakehas and connected with gold mining also recreation ground.' He also told Carroll that his 'great reason for wishing to sell it is to improve the land belonging to myself and my elder brother which is as much as one thousand six hundred acres, that is to improve it and buy sheep, cattle and put fences.' Although the letter was sent to the Department of Lands and Survey and the Mines Department, no reply is contained in the Native Land Purchase Department file. In any case, the deed of transfer shows the price paid for the block was the £400 original approved by the Crown. In June 1902, Sheridan sent the deed to the Native Land Court at Auckland for registration.[251] However, the copy of the deed held by the Native Land Court does not appear to have been signed

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[245] Sheridan to the Minister of Lands, 1 May 1901, Approved 23 October 1901.

[246] Kawhena Rangitu to Wilkinson, 1 June 1901, ibid.

[247] Wilkinson to the Chief Surveyor, Auckland, 18 June 1901, ibid.

[248] Kensington to Wilkinson, 22 June 1901; Browne to Wilkinson, 3 July 1901, ibid.

[249] Kawhena Rangitu to Wilkinson, 2 August 1901, ibid.

[250] Kawhena Rangitu to Carroll, 21 August 1901, ibid.

[251] Sheridan to Native Land Court Registrar, Auckland, 6 June 1902, ibid.

by a judge. As indicated above the situation regarding the confirmation of alienations will be discussed, with reference to this block, Kuaotunu No. 1C and Kuaotunu No. 2A1, in the conclusion.

4.2.6 Kuaotunu No. 2A3.

Kuaotunu No. 2A3, 340 acres, 2 roods, 23 perches, was sold to the Crown on 2 October 1902 for a total price of £1363.11.6.[252] By the time of its sale to the Crown, it was held in two half shares by four European owners. The circumstances in which they acquired this block require some explanation.

At the partition of Kuaotunu No. 2A, the No. 3 part of the block was awarded to Hemi Waa and Ripeka Titiparu. In August 1894, the Native Land Court sitting at Auckland before a recorder, R.S. Bush, heard an application by Hemi to succeed to Ripeka's interest in the block.[253] The applicant was present, but was also represented by a solicitor, Dufaur. Hemi told the Court that Ripeka Titiparu was his mother and she had died intestate in May 1893. He gave further evidence that he was the deceased's only child. The Court ordered Hemi Waa of Ngati Mangakahia, Bay of Islands, to succeed to the interest of Ripeka Titiparu.

The same day, and before R.S. Bush sitting as Trust Commissioner in Auckland, an enquiry was also made into the deed of sale for Kuaotunu No. 2A3: Hemi Waa to Te Aira Rangiarua.[254] This application was also made by Dufaur, and the deed was accepted by the Court.

The applications for the hearing are problematic. It appears that two applications were made and the application relating to the hearing above has been mislaid. This is because another application regarding this transfer was made some time after the hearing – on 14 November 1894, regarding a deed dated 19 October 1894. The application, made under the Native Land Court Act 1894, and dated the 14 November 1894, shows a transfer of the freehold of Kuaotunu No. 2A3, 342 acres, from Hemi Waa to Te Aira Rangiarua for a consideration of £26.[255] The deed executing the transfer was dated 19 October 1894. A further application made under the Native Land Frauds Prevention Act 1881, entitled 'Form A,' and dated 25 October 1894,

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[252] Crown Purchase Deed 3519, BACS A806/48 C508/10, NA, Auckland.

[253] Auckland Native Land Court minute book 6, 15 August 1894, fol. 34.

[254] ibid., fol. 35.

[255] Kuaotunu block order file, Waikato-Maniapoto Maori Land Court, Hamilton.

shows the same details but included a note which states 'that a similar transfer (excepting area) has already been certified to by a Trust Commissioner. This land is being purchased by the Crown.' Attached to this application is 'Form E: Declaration to be made by a Native alienating Land.' This declaration was signed by Hemi Waa of Kaikou and states that he was paid two sums of money, £26 and £205, by Te Aira Rangiarua for his interest in the land. He also stated he had other land at Kaikou, Mangakahia, Te Kouma and Te Aroha. It is worth noting at this stage that William Joseph Young, who would later hold a half share in the block, was the licensed translator who certified the documents. This application was considered by Judge W.G. Mair at Paeroa on 16 December 1894 and an order for confirmation issued.[256]

In February 1899, application was made under the Native Land Court Act 1894 to confirm the transfer of the whole block from Te Aira Rangiarua to E.T. Dufaur. The application was signed by P. Dufaur. No consideration was listed on the application, but a declaration was forwarded explaining the nature of the transfer. The declaration was sworn and signed by Te Aira Rangiarua on 19 January 1899. The declaration states that Te Aira was the wife of Edmund Thomas Dufaur. Four sections of the declaration are significant:

> 2. That the said land was purchased by the said Edmund Thomas Dufaur in my name because he considered it advisable and that it would facilitate the acquisition of the Block from the former Native owner.
> 3. I have no interest in the Block and I never held any either through or on account of my people.
> 4. The purchase money for the said Block was paid by the said Edmund Thomas Dufaur out of his own money and I am voluntarily making the transfer to carry out his request made to me.
> 5. That no consideration money has been paid to me as the transaction that has taken place is not a sale but merely a transaction for the transfer of the Block from my name to that of my said husband.

Te Aira also swore that the land was not held in trust for a Native community.

This application was considered by Judge J.M. Batham sitting at Coromandel on 8 July 1899.[257] Dufaur was represented by C.E. MacCormick. Hohepa Mataitaua objected to the transfer and the case was adjourned while MacCormick looked into the objection. Hohepa's objection related to reserves on the block and is discussed in the following section. The Court, after hearing the evidence, decided to confirm the transfer subject to a particular undertaking to be examined below. The significant point at this stage is that the transfer was confirmed.

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[256] Hauraki Native Land Court minute book 36A, 16 December 1894, fol. 18.

[257] Coromandel Native Land Court minute book 8, 14 July 1899, fol. 349.

According to Alexander, by October 1902 Dufaur had died and his interest in the block had been divided into two equal shares.[258] Half the block was owned by Percy Parker Espie Dufaur, Charles Edward MacCormick and William Beamish Austin Morrison who were the trustees of Dufaur's estate. The other half was held by William Joseph Young. He had gained this interest in the land in 1900. Based on land transfer documents, Alexander suggests the land had been held in trust by Dufaur for Young.[259] As noted above, both parties transferred their interests to the Crown on 2 October 1902 for £1363.11.6. This sum was far greater than the £231 paid by Dufaur to Hemi Waa for the land less than a decade before.

In light of Te Aira Rangiarua's declaration in support of the transfer of her interest in the block to her husband, the original alienation of the block by Hemi Waa is highly problematic. It suggests the land was transferred to her to avoid the protective mechanisms of the Native Land Court. Trust commissioners were first appointed under the Native Land Frauds Prevention Act 1870, although this legislation was subsequently amended several times. Originally they were Crown officials who had many other duties but in 1885 the work was given to the judges of the Native Land Court.[260] The application in this alienation was made according to the provisions of the Native Lands Frauds Prevention Act 1881 and its amendments. The legislation required the trust commissioners 'to ensure that alienations of land by Maori were not "contrary to equity and good conscience," were not in contravention of any trusts, and were not paid for in part by the sale of liquor or arms.'[261] Furthermore, they had to investigate whether the Maori vendors had sufficient other land for their support.

Although the application shows Hemi Waa owned other land, there are questions regarding 'good conscience.' Te Aira's declaration clearly indicates Dufaur was the purchaser, and that she was named as the owner simply to facilitate the alienation. Just as problematic is W.J. Young's certification of the application for confirmation when, if Alexander is correct, the land was purchased and held in trust for him. Finally, the price paid for the land by the Crown was far larger than that paid by Dufaur to Hemi Waa, even though mining activity would have been greater in 1894 than 1902. Moreover, there was only an eight year interval between the transactions – improvements in the value of the land in such a short time would hardly account for the difference in the price paid, especially as mining was declining over that time.

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[258] Alexander, p. 262.

[259] ibid.

[260] Alan Ward, *National Overview*, Vol. 2, Waitangi Tribunal Rangahaua Whanui Series, Wellington, 1997, p. 264.

[261] David Williams, *'Te Kooti Tango Whenua.' The Native Land Court, 1864-1909*, Huia, Wellington, p. 213.

4.2.7 Kuaotunu No. 2B.

Kuaotunu No. 2B is not strictly relevant to this report as the township was not directly located on the block. However, the circumstances of its alienation are problematic and require some explanation.

On 10 May 1889, the Native Land Court at Shortland heard an application for partition of Kuaotunu No. 2, 1367 acres.[262] The case was adjourned for a week when Hohepa Mataitaua asked Judge Scannell to hear the case at Coromandel because a number of owners were absent. The minutes record that after consultation with James Mackay, appearing on behalf of Robert Comer – who is described as an owner – the case would be left open for a week to enable the absent owners to attend.

Later that day, however, the case was recalled and Mackay told the Court he had reached agreement with the interested parties and they now wanted the case to proceed. James Mackay was sworn. He appeared on behalf of Robert Comer who had purchased five and a half shares from the original owners. He set out the boundary agreed with the four non-sellers which was to be awarded as follows:

Riripeti Titiparu	1 1/2	211a	2r	34p	1/2 share as successor to Hawea Te Aha
Katerina Hauruia	–	50	0	0	
Kawhena Rangitu	1	141	0	23	
Hemi Wa	1	141	0	23	

Katerina Hauruia was awarded 50 acres and the residue of the 550 acre portion, to be known as No. 2A, was awarded to the other three non-sellers in equal shares. The rest of the block was awarded to the five sellers representing five and a half shares. Those owners were:

Rawiri Taiporutu	1	
Anaru Taipa	1 1/2	1/2 share as successor to Hawea Te Aha
Hohepa Mataitaua	1	
Mohutu	1	
Wiremu Haraka	1	

This part of the block was to contain 817 shares and be known as No. 2B. It was also decided that No. 2A was to be subject to a right of road one chain wide from the beach to No. 2B in a place to be agreed between the Maori landowners and Comer.

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[262] Hauraki Native Land Court minute book 20, 10 May 1889, fol. 332.

A marginal note in the minute book indicates that when the block was surveyed, the area of the block was found to be 1355 acres, not 1367 acres as marked on the survey plan of the block. The proportions of the block were altered so that Katerina Hauruia still held 50 acres, No. 2A contained 544 acres and No. 2B, 811 acres.

The Native Office file for this block contained two deeds.[263] The first transferred the interests of Rawiri Taiporutu, Anaru Taipa (as original owner and as one of the successors to Hawea Te Ahu), Hohepa Mataitaua, Kawhena Ringihi (signed as Peneamene Rangitmotu, Rangiho, also known as Kawhena Rangitu), Mohuhe and Wiremu Karaka to Robert Comer and Hori Ngakapa Whanaunga on 13 November 1886. The deed also shows the amount paid was £70. The deed was approved by Trust Commissioner David Scannell on 19 June 1889. A second deed transferred the interest of Hori Ngakapa Whanaunga to Robert Comer on 29 July 1889 for which he was paid £50. This deed was approved by Trust Commissioner David Scannell on 22 November 1889.

Unfortunately for Comer, Cadman discovered what had happened before he was able to register the transfers against the title. At issue was whether the deed predated the partition of the block. Cadman believed the statutory provisions governing alienations prohibited the transfer of part of a block where it was held under a memorial of ownership. In effect, such a deed would be rendered invalid. Throughout the correspondence regarding this matter it is never entirely clear which legislation prevented the transaction. A further problem is that politicians and officials referred to a number of different provisions. They did, however, agree as to its effect in nullifying the alienation.

Cadman wired Sheridan on 28 September 1889 asking him to forward the date of Comer's title as he felt 'certain this land will have to be resumed under section six Native Land Act.'[264] Sheridan then wrote to the Registrar at the Native Land Court in Auckland asking him to send the details of the title on to Cadman at Coromandel.[265] The next day, Cadman wired the Native Minister asking him to notify Scannell as regards the date of the deed.[266] Edger at the Native Land Court had told him that Comer's deed was dated 29 July 1886 and was before Scannell as Trust Commissioner. The meaning of the telegram is obscured by its fragmented nature, but Cadman indicated it was important that the deed should be dated subsequent to the

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[263] Memorandum of Transfer, ABWN 6095 W5021 244 7/618, NA, Wellington.

[264] Cadman to Sheridan, 28 September 1889, ibid.

[265] Sheridan to Hammond, 30 September 1889, ibid.

[266] Cadman to Native Minister, 1 October 1889, ibid.

Native Land Act 1888, and referred to section five. He also indicated that the Chairman Reviewer of the Assessment Court had informed him that Comer had only acquired a one third interest in the block. Cadman asked the minister to act quickly 'as date of deed of very great importance to this district.'

The matter was one of urgency because it was about to come before the Native Land Court sitting at Shortland.[267] After Wilkinson informed him that Kuaotunu No. 2 had been divided on 10 May, Sheridan wrote to Scannell asking him if the deed relating to Kuaotunu No. 2B was signed by all the owners.[268] He pointed out the Supreme Court had made decisions regarding deeds affecting land held under memorial of ownership and not signed by all the owners. Scannell replied that the deed had been signed by all the owners of the part of Kuaotunu partitioned to them at the hearing on 10 May.[269] Sheridan must have decided a less subtle approach was required. Writing to Scannell he noted Cadman's concern and suggested the Trust Commissioner look at the date of Comer's deed which appeared to predate the partition.[270] He also referred the judge to section 4 of the Native Land Court Act 1886.

The same day, Mitchelson wrote to Cadman advising him that Scannell's attention had been drawn to the date of Comer's deed noting that if the information in Wellington was correct, 'the deed is dated prior to partition and is therefore apparently invalid.'[271] However, it appears they were too late. Scannell no longer had the deed but he suspected it did predate the partition, and that he 'may have overlooked that as the other enquiries were satisfactory.'[272] When attempts were made to find both the deeds (one transferring the land from the original Maori landowners to Comer and Hori Ngakapa Whanaunga and another transferring the interests of Hori Ngakapa Whanaunga to Comer), they could not be located, and they were not presented to the District Land Registrar for registration.[273]

Comer eventually forwarded the deeds to the Native Minister in April 1890. Returning these to him, T.W. Lewis wrote 'Mr Mitchelson fears that your title is bad as your purchase appears to have been made before the division of the land and at the time of purchase you only acquired the interest of a portion of the whole of the owners of the Block included under memorial of ownership.'[274] The minister

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[267] Edger to Sheridan, 30 September 1889, ibid.
[268] Wilkinson to Sheridan, 1 October 1889; Sheridan to Scannell, 1 October 1889, ibid.
[269] Scannell to Sheridan, 2 October 1889, ibid.
[270] Sheridan to Scannell, 2 October 1889, ibid.
[271] Mitchelson to Cadman, 2 October 1889, ibid.
[272] Scannell to Sheridan, 3 October 1889, ibid.
[273] Hammond to Sheridan, 7 October 1889, ibid.
[274] Lewis to Comer, 26 April 1890, ibid.

suggested Comer apply to a commissioner appointed under section 20 of the Native Land Courts Act Amendment Act 1889 to review the case.[275] Attempts to have his purchase validated were not successful and he remained unable to register his title to the land.

His problems were not, however, over. A charging order for the survey of the line dividing Kuaotunu No. 1 and 2 was made by the Native Land Court in September 1891.[276] This order was eventually acquired by E.T. Dufaur. In the meantime the amount due was paid to the surveyor in whose favour the original charging order had been made. However, he does not appear to have passed this money on to the holders of the charging order. In 1894, Dufaur applied to the Supreme Court to sell the block by auction because the charging order had not been paid. The money realised would be used to pay the charging order and the balance would go to the owners – legally the original Maori landowners.

Sheridan was asked to advise the Minister of Mines on the matter and the major problem with the block was summarised. Sheridan wrote that Comer purchased several shares in Kuaotunu No. 2 block then held by Maori landowners under a memorial of ownership.[277] The Native Land Court then partitioned the land to correspond with the deed. The major issue was that '[a]s the purchase of the shares took place prior to the partition the transaction was invalid,' and Sheridan referred to sections 48 and 49 of the Native Land Act 1873 and the Supreme Court decision in *Paaka* v *Ward*. He believed as there 'was no want of equity about the purchase' he had little doubt it would be validated by the Validation Court.

The Crown eventually acquired the block, although there were many legal questions which had to be resolved.[278] None involved the original Maori owners. In fact, the original Maori owners were happy to support Comer's claim to the land, Hohepa Mataitaua wiring Cadman that 'Kuaotunu No. 2B Block was sold by my family to Robert Comer and belongs to him.'[279]

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[275] Alexander, p. 258.

[276] ibid., p. 262.

[277] Sheridan, 18 April 1894, ibid.

[278] Alexander, pp. 263-4.

[279] Hohepa Mataitaua to Cadman, 21 April 1894, ABWN 6095 W5021 244 7/618, NA, Wellington.

4.2.8 Summary of the alienation of the Kuaotunu blocks.

Block	Area			Date	Price		
	a	r	p		£	s	d
Kuaotunu No. 1C	210			19 September 1902	500		
Kuaotunu No. 1D1	122	2	27	10 April 1896	244	19	
Kuaotunu No. 1D2	40	3	22	5 June 1912	50		
Kuaotunu No. 2A1	50			17 July 1902	145		
Kuaotunu No. 2A2	138	1		19 May 1902	400		
Kuaotunu No. 2A3	340	2	23	19 October 1894	231		

4.3 The Reserves Laid out by the Warden.

The plan of the township prepared by Philips in September 1890 show two 'Native Reserves.' The first, Allotment 58, was noted as a 'Wahi Tapu' and has an area of 1 acre, 1 rood, 17 perches. The second, Allotment 88, was much bigger and has an area of 43 acres. As noted earlier, the Warden commented on these 'ample reserves' in his annual report of 1891 stating that they were set aside 'for Native use and cultivation.'

The situation with regard to these two reserves was raised at the hearing which considered the transfer of Kuaotunu No. 2A3 from Te Aira Rangiarua to E.T. Dufaur.[280] As noted above, C.E. MacCormick represented Dufaur at the hearing and applied for confirmation. But Hohepa Mataitaua objected on behalf of Kawhena Rangitu. He told the Court that the land was a reserve of 43 acres. Judge Batham decided to adjourn the case while MacCormick made further enquiries.

When the hearing resumed MacCormick presented further evidence. After examining the records he could find nothing to support Hohepa Mataitaua's contention. There was no restrictions on the certificate of title issued in favour of Te Aria Rangiarua. The Native Land Court records also showed that the land was awarded to Ripeka Titiparu and Hemi Waa on 30 September 1891, without restrictions. MacCormick produced the plan of the township, a copy of which was on file, which showed an area of 43 acres marked as a 'Native Reserve.' He told the Court the Survey Department had explained the matter. This was not a reserve by the Native Land Court, but a reservation from subdivision of the township labelled as such by the Warden.

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[280] Coromandel Native Land Court minute book 8, 14 July 1899, fol. 313.

Apparently the Warden had no power to make a reserve. MacCormick concluded that the objectors were probably misled by the appellation 'reserve.'

Hohepa Mataitaua then responded, appearing on behalf of Kawhena Rangitu and Katerina Hauruia. He told the Court that the land was in favour of Kawhena and Katerina. He gave evidence that the reserve was made in 1878 and in 1890, the Warden Northcroft created a Native reserve under the Mining Act, and that Kawhena applied to have it reserved. The other reserve was allotment 58, an urupa.

The Judge decided that 'if it was intended to reserve any right for the owners of other parts over 2A3' that should have been taken care of at the partition of Kuaotunu No. 2A in 1891.[281] The minutes indicate he 'was satisfied that there was no such reservation as would prevent the sale of this land.' The matter of the reserve, he considered, 'was entirely a matter for the Government' in terms of the rights they had acquired to the land. However, the Judge did believe the claim in relation to the urupa was valid. He suggested some action might be taken to protect the area such as lodging a caveat recognising the existence of the urupa. The transfer could then be registered, but an agreement with the owners made to transfer the land to representatives of the original Maori landowners, one to be Hemi Waa and two to represent the owners. The minutes record that Hohepa Mataitaua accepted this proposal and Hemi Waa, Kawhena Rangitu and Harata Noki Taiporutu were submitted as owners.[282] The Court minutes also record that Noki Taiporutu was present at the Court and 'said she was living on the 43 acre reserve under agreement (verbal) apparently on sufferance.'

This transfer was drawn up and signed by Percy Parker Espie Dufaur, Charles Edward MacCormick and William Beamish Austin Morrison on 27 September 1902 and registered against the title the same day.[283] A certificate of title (CT 110/261) was then issued by the District Land Registrar and a caveat entered against the title preventing any dealing with the land. The reason given for the caveat was that the land was a Native Cemetery reserve.

This urupa was considered again by the Court in the late 1960s. In November 1968, the Coromandel County Clerk wrote to the Department of Maori Affairs Hamilton District Office regarding the block. The County was having problems with outstanding rates on the land. The letter noted that the plan of the township and the

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[281] ibid., fol. 348.

[282] ibid., fol. 349.

[283] The transfer was registered against PR 74/174. See MA-MLP 1, 1902/72, NA, Wellington.

actual landscape were significantly different, so that it was impossible to determine the exact location of the block.

In December, the County Clerk wrote to the Registrar of the Maori Land Court asking advice as to how to deal with the land because it was still liable for rates.[284] The County had asked the Department of Lands and Survey to acquire the land as a reserve. The Department was unwilling to do so because the land contained graves. The County Clerk asked the Court to 'consider recommending under Section 439 of the Maori Affairs Act 1953 that the land be declared a Maori reservation for a specified purpose vested in the Coromandel County Council.' The letter outlined the known background of the block. He understood the land was once Maori land and was sold. Later, the original Maori owners 'realised they had sold tapu land and they bought it back to preserve its sanctity.' Apparently the owners had 'disappeared' and unpaid rates were 'accruing at the alarming rate of $65 per year.' The Clerk indicated the possibility of acquiring the land under the Rating Act 1967 or the Public Works Act 1928. However, he was reluctant to do so as in both cases the land would have to be purchased at the current market value. He believed '[n]either method would suit the Council's financial resources in circumstances where the main purpose is not to acquire a piece of land but to preserve a piece of land, on which rates cannot be collected, for the purpose the owners acquired it in the first place.' The Registrar passed the enquiry to Judge Brook for instruction.

The Judge did not want to prejudge the matter and advised the County Clerk to lodge an application, but did note that the land could not be reserved for any purpose other than a burial ground.[285]

An application was made and heard before Judge M.A. Brook at Thames in December 1970.[286] Two solicitors were present to discuss the application, although it is not clear who they represented. The first, Walters, appeared to represent the Coromandel County Council. The second, Randall, represented an unnamed objector. Randall spoke first, telling the Court 'I was instructed only this morning by telephone to object to this reservation but she is not present and I can only listen to prosecution of application.' He conceded that the 'objection would be at a very late hour.' Walters read his submission as filed noting that if reserved, the rates would be written off and

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[284] de Boer to the Registrar, Maori Land Court, Hamilton, 10 December 1969, Closed Correspondence file, Waikato-Maniapoto Maori Land Court, Hamilton.

[285] Bell to the County Clerk, Coromandel County Council, 16 December 1969, ibid.

[286] Hauraki Maori Land Court minute book 81, 8 December 1970, fols 107-108.

the cemetery preserved in its current form.[287] Randall then told the Court 'I rely on the provision as to rehearing and have no objection to the making of a recommendation.' The Court recommended under section 439 that section 58 of the township of Kuaotunu be set apart as a Maori reservation for the purposes of a burial ground. The land was vested in the three original owners.

It is stated in the order that '[i]t is the wish of the owners that the land be set apart as a Maori reservation.' It is far from clear the basis on which the Court came to this conclusion as the registered owners would have been long dead and no successors appear to have been consulted by the Court or the County. However, on 9 September 1971 the Deputy Secretary of the Department of Maori Affairs accepted the recommendation to gazette the land and the notice was published on 16 September 1971.[288]

[287] The application by the Council has not been located, but a copy of the submissions of the Council was sent to the Department of Maori Affairs Head Office, along with a copy of the Court's order. MA 1, W2459 21/1/212, NA, Wellington.

[288] *New Zealand Gazette*, No. 69, 16 September 1971, p. 1931.

Part 5:The Native Revenue.

The deed of cession of mining rights for the Kuaotunu blocks contained a number of conditions outlined above. Several of those conditions related to payments to be made to the Maori landowners in return for permission for the land to come within the provisions of the Mining Act.

Clause Four made the land subject to the Mining Act 1886, its amendments, and regulations proclaimed under the act, or any subsequent mining legislation or regulations, in terms of mining and occupation licenses granted for land, machine, business and residence sites situated on the blocks. Clause Five provided for the reservation of township sites for the purposes of either business or residence. The license fee for a business site was set at five pounds, and the rent for a residence site was one pound. The deed also made provision for purchasing timber rights and Kauri trees. In addition, Clause Six referred to digging kauri gum, 'or doing any act of occupation not herein referred' for which a one pound miners right was required.[289] Finally, Clause Eight required the payment of all fees and rents to the Receiver of Gold Revenue which 'shall be deemed to be the property of the Native owners of the land comprised in the said Blocks and all such money shall be paid to the native owners of such Blocks quarterly.'[290]

As discussed earlier, such a deed was in no way novel. Neither was the payment of revenues. However, as Anderson has argued, the level and distribution of the revenues was deeply problematic and led to a number of petitions to Parliament in the 1890s. These petitions continued into the twentieth century and eventually led to the MacCormick Commission in 1939. The Chief Judge, C.E. MacCormick, was appointed to investigate the petitions. Two principal issues were raised: the payment of revenues as required by the goldfield agreements, and the transfer of the freehold of goldfield blocks to the Crown. Complaints about the revenue were thus persistent, and for some time ignored.

Although the petitions did not specifically relate to revenues accrued on the Kuaotunu blocks, the report of the Commission is relevant because of its general terms and MacCormick's overview of the administration of the revenue. It was found in preparing the evidence for the hearings that it was 'not practicable for a complete or

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[289] Deed of Cession of Mining Rights, Auckland, No. 1763.

[290] ibid.

satisfactory statement of account to be furnished.'[291] However, MacCormick did outline the system of paying Maori landowners the revenue generated on their land.

He found that until 1881, the Receiver of Gold Revenue paid the money due to the landowners into an account known as 'the Miners Rights Deposit Account.' This account had been opened by Daniel Pollen (the Deputy Superintendent for the Auckland province) and James Mackay. Puckey took over Mackay's role in October 1869. The funds available were paid to the landowners from time to time. MacCormick noted that there were no checks on the operation of this account and that Puckey stated his accounts were not examined until December 1878. The Native Committee considered several petitions received in 1876 and 1877 regarding the goldfield revenue, and concluded that there was no 'unreasonable' delay in the payment of money due. However, it did recommend 'that the Government should give full facilities for inspection of the accounts by some competent person to be appointed or approved of by the Maoris.'[292] A solicitor, H.E. Campbell, was appointed for a short period for this purpose.

In 1881, Treasury took over the receipt and payment of the revenue and introduced an imprest system. The total revenue received was paid into the public account. The proportion which was determined to be owing to the Maori landowners was imprested to the 'paying officer' at Thames. Any revenue due to local authorities was paid direct to them by the Treasury. This practice continued until 1917 when new arrangements were put in place. MacCormick found several individuals distributed the revenue to the Maori landowners, including C.J. Dearle:

> He was appointed at the request of the Natives themselves given in writing and giving authority to charge his salary to the mining revenue. He was paid a fairly substantial salary as charged as administration expenses. He appears to have acted from 1883 to 1895. Certain other payments amounting to over £100 were made in 1895-96 to E.W. Porritt, of Paeroa, at one time Clerk of the Magistrate's Court, Waihi, made the distributions. He received no salary, but travelling-expenses only.[293]

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[291] 'Report and recommendation on Petition No. 23 of 1931, of Rihitoto Mataia and others, relative to the goldfields revenue in respect of gold-mining rights over native lands within the district extending from Moehau (Cape Colville) to the Aroha mountain; Petition No. 347 of 1934-35, of Rihitoto Mataia and others, relative to the purchase or acquisition by the Crown of the Ohinemuri Block and other lands within the Ohinemuri and Hauraki Districts which were subject to certain agreements dated the 19th Day of December, 1868, and the 18th day of February, 1875, and to the purchase and payments referred to in the said petition; and petition No. 169 of 1935, of Hoani Te Anini and others, with regard to the mining rights in respect of Native Lands within the Coromandel and Hauraki Districts and the payment of Goldfields Revenue arising therefrom,' AJHR, 1940, G-6A, p.2.

[292] ibid., p. 3.

[293] ibid.

At this point however, MacCormick noted that there were major difficulties in providing a 'full account' because of the loss of key records. Ascertaining the amounts paid to Maori landowners was found to be impossible. He did comment though, with regard to the cost of administering the revenue, that the Crown was justified in passing that cost on to the Maori landowners, and 'that in proportion to the amount involved it does not seem exorbitant.' He added that some of the charges were approved by the Maori beneficiaries, particularly the amounts paid to Dearle.

MacCormick appears to have limited his comments to the information provided by the officers of various Departments – Treasury, the Lands and Survey Department and the Native Department. And although they give some indication of the administration of the Native revenue, there is much more that can be said using the very few fragments which have survived neglect and fire. In general, by the late 1880s, when gold was discovered on the Kuaotunu blocks, the revenue had been paid for nearly 40 years. Yet the system of its administration was in absolute chaos.

One reason for this, it appears, is that four different government departments were involved in the collection and allocation of the Native revenue. Certainly the Treasury was a key department, as was the Native Department, but the Mines Department and the Justice Department were equally important. Treasury received, monitored and paid out the revenue. The accounts were also scrutinised by the Audit Department. The Warden was responsible to the Mines Department for the collection and distribution of the revenue. The Receiver of Gold Revenue was employed by the Justice Department, and his role as Receiver was usually combined with others such as Mining Registrar and registrar of the Resident Magistrate's Court. The staff of the Court also distributed the revenue to the landowners and returned the receipts to Treasury. Given so many departments were involved in the administration of the Native revenue, lines of responsibility rapidly became confused – particularly as the Warden did not want responsibility for distributing the revenue as 'Native Trustee.' This confusion is a notable characteristic of the allocation of money to the Maori landowners in the last decades of the nineteenth century.

First however, it should be noted the work of distributing the revenue to Maori landowners was clearly a job that Northcroft did not want.[294] Writing to the Under Secretary for Mines in March 1888, he noted that the Warden of the District was also the Native Trustee. According to Northcroft:

> For many years the Native Department disbursed the native revenue and for a time the duties were preformed by the late Warden Kenrick and Mr G.T. Wilkinson but

[294] Warden to Eliott, 27 March 1888, BACL A208/633, NA, Auckland.

> when the latter gentleman left this district for Waikato the duties were forced on the Warden.

He did not think the Warden should be the Native Trustee as it could 'cause grave complications' in terms of his other responsibilities. The Warden's complaint does have substance. He recognised that his role as Native trustee was not compatible with his other work in administering the Mining District. Furthermore, this work would have kept him fully occupied. However, officials in Wellington were not particularly sympathetic to the Warden's concerns. In the following ten years, when complaints arose, all of the Government departments involved in the administration of the revenue attempted to disclaim any responsibility for the system by suggesting another department should deal with the issue. Records from all four departments concerned show this trend, which is discussed in detail below. The administration of the Native revenue, which seems to have been a substantial sum of money, was never organised in a systematic way, so that, as will be seen, it frequently and easily broke down.

The question of the Native revenue appears to have flared when the Ohinemuri block was declared open for mining in 1888. Complaints had been received from some of the owners of this block, and Charles Dearle (who was the Warden's Court registrar at Thames) wrote to the Warden to raise the matter with him.[295] As mentioned above, Dearle was responsible for the payment of the revenue to Maori landowners, and for this task he was paid a commission by the landowners. However, in the matter of Ohinemuri No. 20, there were a large number of owners each holding different interests. A further problem was that the owners lived in many different places. As a result the allocation of the revenue required a 'considerable amount of clerical work and local knowledge of owners to make allocation vouchers and returns.' Dearle had spoken to some of the owners who had agreed to pay him a 2 1/2 per cent commission to do the work, but he expected to have difficulties getting all the owners to agree because of their dispersed residences. He did not think Treasury would permit the arrangement without a formal agreement.

The owners must also have complained to the Native Office because Lewis wrote to Eliott to advise him that the Court had determined the interests in Ohinemuri No. 20, that it was the Warden's responsibility to distribute the revenue and that the matter should be left for Northcroft to deal with.[296] Eliott suggested to the Warden that he get a list of the owners from the Native Land Court and pay the money due, but Northcroft wanted to know who was to undertake the necessary clerical work referred to by Dearle.[297] He refused to do so: 'I certainly haven't time and it must be

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[295] Dearle to Northcroft, 27 April 1888, J 1, 96/1548, NA, Wellington.

[296] Lewis to Eliott, 4 May 1888, ibid.

[297] Eliott to Northcroft, 4 May 1888; Northcroft to Eliott, 7 June 1888, ibid.

remembered the Warden has all the responsibility of these Native Trust account thrust on him without any remuneration.' Eliott's solution was to inform Lewis that the Maori landowners should provide the ownership details themselves.[298]

The Native Office received further complaints from the Maori landowners regarding Ohinemuri No. 20, and Lewis wrote to Eliott again warning him that if the Maori landowners were not paid the money due to them promptly, it would 'tell against their consent to open other land for mining.'[299] He assured Eliott that the Native Department could not do the necessary work, and suggested it 'was intended to be a part of the duty of the Warden.' Eliott replied that Northcroft had indicated he could not possibly take on the job, and suggested Dearle be employed by the landowners for the task.[300] Lewis assured Eliott that as the land had passed the Land Court and was held in equal shares, 'the subdivision is a work of simple division of the amounts of revenue by the number of owners.'[301] Lewis believed the Warden was responsible for dealing with the issue and he should ensure that the owners were 'paid their shares when due.' The Warden had done so for other land and he did not think the involvement of the Native Department was either needed or desirable. His comments were forwarded to the Warden for 'any suggestions he may have to offer as to the best means for facilitating the payments to the Natives.'[302]

Northcroft did have suggestions and presented them in detail in a five page letter to Eliott. He strongly resisted any attempt to force the work on him. After reading Lewis' comments he felt 'satisfied that he does not fully understand the position of the allocation and distribution of the revenue accruing on the different blocks of Native land in the Gold Field under my jurisdiction.'[303] Northcroft did not believe his actions would discourage Maori from ceding their land for mining purposes because he had guaranteed they would get the money owed to them. He also noted that 'in previous years the Native Department kept an officer at the Thames who received a high salary to look after native matters and distribute the revenue ... as it accrued.' Maori landowners also employed an agent to look after their interests. According to Northcroft the Native Agent had been moved from the district and the responsibility for Native affairs was given to the Warden without any provision for remuneration. It was a job he certainly did not want, and 'even if I felt so displeased to act I have not the time at my disposal it necessitating my presence at the Thames for several weeks continuously.'

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[298] Eliott to Lewis, 11 June 1888, ibid.

[299] Lewis to Eliott, 13 November 1888, ibid.

[300] Eliott to Lewis, 15 November 1888, ibid.

[301] Lewis to Eliott, 16 November 1888, ibid.

[302] Eliott to Lewis, 16 November 1888, ibid.

[303] Northcroft to Eliott, 24 December 1888, ibid.

Northcroft went on to discuss the circumstances of the case raised by Lewis, indicating it was very much more complex than Lewis suggested. Two of the owners had asked that the full amount be paid to them so that they could distribute the money themselves to the sixteen owners in one block and fifty eight owners in the other. The Warden believed such a proposal very unjust, especially as a number of owners had asked that the money be paid directly to them. The other problem was that of calculating how much money should be paid to each owner. The holdings on the land were of different area and overlapped the boundaries of the land. Determining the money to be paid on each block was difficult and Northcroft recommended Dearle be employed by the Maori landowners on commission to undertake the work. He believed the majority of the owners were willing to pay Dearle and 'that Hara and Keremeueta have kept the natives back and are endeavouring to get the money into their own hands.' He did not want to pay these two the money as he was convinced it would cause further problems. He concluded:

> A proper system of allocating the Gold Field Revenue and keeping the accounts in this District has been in force for a number of year and given with entire satisfaction and I fail to see why I should be called upon to depart from it. I am saddled with the responsibility without remuneration and should be allowed to use my own discretion in these matters.

Eliott forwarded the letter to Lewis for his information, agreeing with Northcroft 'that the present system should not be altered and that the Natives should pay a person to look after their interests.'[304] It must have been passed on to Sheridan who added his comments in the margin. He did not think there was 'a senior officer in Wellingon who understands either the system or the state of the a/cs' but seemed to think Northcroft's complaints were unjustified, particularly with regard to the problem of determining each share of the revenue.

Sheridan asked Wilkinson for his views on the issues raised by Northcroft. Sheridan wanted his opinion 'as to the intricacy of the work of dividing these revenues and whether it could properly be performed by the Clerk of the R.M. Court or some other Government officer.'[305] He did not think the Maori landowners should be forced to pay a commission to Dearle if they did not want to. Wilkinson replied providing a detailed overview of the system of the Native revenue.[306] Apparently the Mining Inspector provided the Warden with a list of all claims that were located on Maori land and the Receiver of Gold Revenue supplied a summary of the money accrued

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[304] Eliott to Lewis, 24 January 1889, ibid.

[305] Sheridan to Wilkinson, 25 January 1889, ibid.

[306] Wilkinson to Sheridan, 8 February 1889, ibid.

from the miners. The Warden, as trustee, then requisitioned the amount required from Treasury and Dearle made the payments to each person individually. Wilkinson did not think this would be difficult because all the land in the Coromandel, Thames, Ohinemuri and Te Aroha goldfields had been considered by the Native Land Court and so the owners were known. The allocation of money was simply a matter 'of dividing so much money amongst so many people.' Wilkinson did admit there were more complex cases involving miners rights which required an adjustment to the revenue. He also indicated there was a considerable clerical workload in preparing the receipts in duplicate, making the payments, taking the receipts and preparing the imprest statement for Treasury. He was not willing to comment on who should undertake this work, but did repeat 'that the clerical work is considerable' because some blocks had so many owners. Wilkinson suggested the best solution was for the Crown to press ahead with the acquisition of the land.

In the course of considering Wilkinson's report, Treasury advised that the undistributed Native revenue was £360.1.0 – made up of Coromandel £4.5.0, Te Aroha £101.0.0 and Thames £254.16.0.[307] Lewis reported to the Native Minister that when Wilkinson was next at Thames he should distribute the revenue and set up a better distribution system.[308] He 'sympathised' with the position of the Warden who he believed had enough to do without dealing with the Native revenue. However, he did not think the Maori landowners should be forced to either pay an agent to distribute the money or not receive the money – which seemed the only choices. He continued to believe the amount of work required to determine the allocations was 'overestimated,' but was intending to visit Thames to examine the issue. He did not think the matter was one for the Native Department arguing the 'duty' lay with the Mines Department and Treasury. The Mines Department on the other hand were very keen for Lewis to investigate the matter on his visit to Thames and make whatever arrangements he considered necessary.[309] The Department did recognise the 'great deal of dissatisfaction as to the mode adopted re the payments to the natives' but hoped Lewis could deal with the problems.

Lewis did visit the Thames, and found that the problem was not a delay in distributing the revenue, but the significant decline in the amount paid.[310] This decline was a result of changes in the legislation and regulations governing mining and Wilkinson prepared a substantial and detailed report on the matter. Lewis requested this report while still at Thames. Wilkinson found, from information provided by Northcroft,

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[307] The Accountant to the Secretary to the Treasury, 5 March 1889, ibid.

[308] Lewis to the Under Secretary, 5 March 1889, ibid.

[309] Mitchelson to Richardson, 6 March 1889, ibid.

[310] Lewis to the Native Minister, 17 June 1889, ibid.

that most of the Native revenue had been distributed.[311] The real problem was 'the very serious diminution of revenue for them that has taken place during the last few years.' According to Wilkinson, this trend:

> has not been caused so much by the area of the ground worked being less than formerly, but because the Mining Laws and the Regulations framed under them by the Government have been so altered since the agreements to open the country for gold mining were entered into between the Natives and the Government as to make it impossible, under the existing circumstances, that they can get anything like so much revenue from their lands within the goldfield as formerly.

He was very concerned by these developments, particularly since the changes had come about without consultation with the landowners who had signed the agreements originally. Wilkinson believed they had 'a grievance against, or claim upon the Government for having brought about the present state of affairs,' and provided a detailed account of the legislative changes to indicate why the Government was 'responsible.'

Wilkinson referred to the agreements made with the landowners and suggested 'that all through the agreements the impression is conveyed that the Government was desirous at that time that the Natives should benefit as much as possible through having thrown open their lands for gold mining.' He believed that the changes in the legislation which had steadily reduced the money due to Maori landowners were 'disastrous' to the Maori landowners. This was because 'insomuch as it had the effect of reducing their revenue by altering and curtailing the sources from which they used to receive it, and thus, in a measure, broke faith with them.' Wilkinson accepted the changes were designed to benefit the miners and this was acceptable where Crown land was concerned. But where Maori had agreed to cede land under certain conditions which generated revenue to them, and that legislation progressively reduced the money earned, without consultation or consideration of those who were party to the agreements 'it seems to me that such Natives have not only a grievance against Government but a genuine claim for any bona fide loss that they may have sustained thereby.' He believed some enquiry was necessary, but advised in the meantime that the Crown rectify the matter by purchasing the land where possible. Wilkinson was particularly concerned about the Maori landowners of the Te Aroha goldfield who received almost no revenue because of the terms of the agreement they signed and the Mining Act. Given the comments contained in this report, it is hardly surprising that there appears to have been little response to it in Wellington.

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[311] George Wilkinson, 'Report on the question of miner's rights and other revenue payable to the Native owners of the Thames, Coromandel, Ohinemuri and Te Aroha Goldfields,' 30 May 1889, ibid.

In these circumstances, the system of allocating and paying the Native revenue appears to have continued for nearly five years without major complaint. In 1894, Meri Taipari wrote complaining that payments had not been made to her. There was a valid reason for this – the land was subject to a Native Land Court hearing – but the response of Wellington officials is telling. The complaint was received by the Justice Department (into which the Native Department had been incorporated in 1893) and passed on to the Mines Department.[312] It was immediately returned to the Justice Department, the Under Secretary asking 'in what way is it supposed the matter is one for me to deal with.'[313] The Under Secretary for Justice was still unwilling to touch the complaint, replying 'you have the dealing with payments of this revenue to the natives and should reply to them.'[314]

And then things really started to fall apart. In November 1894, the Warden wrote to advise that Dearle, who was still responsible for distributing the Native revenue was ill with 'consumption and anal fistula.'[315] The work had fallen behind, the imprest account was overdue and many Maori landowners had not been paid. According to Kenny, Dearle was in no physical condition to work, but would not take leave. In the meantime he was concerned that the problems with the Native revenue could lead to complaints. Kenny suggested Mair, at the time in the district as a Land Purchase Officer, could undertake the work.

Sheridan was asked to advise on what could be done. He told Eliott that if the money had already been imprested, payment, if not already made could be made, as the money was either in the bank, or there should be vouchers to show the expenditure.[316] He believed that 'any school boy who has passed the fourth standard could make up the imprest a/c.' However, he added 'I am not speaking of the distribution of the revenues that is a work of considerable difficulty and if that distribution has not been made there is nothing in consequence to delay the transmission of the imprest a/c.'

The following February, Kenny wired Eliott to advise that Dearle was still ill and not expected to recover.[317] The Native revenue was behind again and Kenny noted 'this work it has often been pointed out pressed hardly on the Warden even with adequate help without such help is it impossible to do at all especially now that mining work so much increased.' He could find no-one who understood accounts and Maori land to do the work and again suggested Mair for the job. Sheridan did not think this a good

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[312] Under Secretary, Justice to Under Secretary, Mines, 23 August 1894, ibid.

[313] Under Secretary, Mines to Under Secretary, Justice, 24 August 1894, ibid.

[314] Under Secretary, Justice to Under Secretary, Mines, 24 August 1894, ibid.

[315] Kenny to Eliott, 17 November 1894, ibid.

[316] Sheridan to Eliott, 23 November 1894, ibid.

[317] Kenny to Eliott, 11 February 1895, ibid.

solution reporting that 'Captain Mair can't keep his own accounts.'[318] Kenny must have continued looking for help as, several days later, he informed the Under Secretary for Justice that he had found two capable replacements to take over Dearle's duties.[319]

The response to Kenny's proposal again indicates the position of the Native revenue in Wellington. Haselden, the Under Secretary for Justice, wrote to Eliott as he expected Eliott to advise the staff recruited to disburse the Native revenue on their duties, and arrange for Wilkinson to deal with the outstanding work.[320] Eliott replied that 'the Mines Department takes no responsibility in respect to the rents claimed by the Natives arising from Gold Mining.'[321] Haselden then tried Treasury: 'it appears that the Treasury is responsible for the collection and allocation of the revenue from the Thames Gold Field payable to the Native owners and I therefore send you these papers for your information and action.' However, the Secretary for Treasury was not amenable to this suggestion.[322] He passed the matter on to the Colonial Treasurer:

> I do not think the Treasury is responsible in connection with the allocation and payment of these rents belonging to the Natives. The rents have been paid to accounts kept in the names of two trustees originally, and latterly in the name of only one trustee. These trustees have been appointed from time to time by the Mines Department and the Treasury has not expert knowledge to guide them. The moneys received and paid are recorded by the Treasury in accordance with the vouchers supplied by the Receiver and imprested who are supposed to have proper knowledge of the moneys they are dealing with.

Sir Patrick Buckley decided it should be sent to Cadman, the Minister of Mines. Cadman sent it to Seddon, the Native Minister, adding that 'this is an important matter and should be settled definitely one way or another, the papers will show that no Department has either control or responsibility while large sums of money are at stake.'[323] He concluded, 'it being a Native matter I think that Department should deal with it. Seddon decided the money should be paid through the Public Trustee 'who no doubt has an agent at the Thames.'[324]

Someone did instruct Wilkinson to go to Thames to sort the mess out – apparently a product of the 'unmethodical and unbusinesslike manner in which Dearle has kept

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[318] Sheridan, 12 February 1895, ibid.
[319] Kenny to Under Secretary, Justice, 23 February 1895, ibid.
[320] Hasleden to Eliott, 26 February 1895, ibid.
[321] Eliott to Hasleden, 26 February 1895, ibid.
[322] Secretary, Treasury to Buckley, 1 March 1895, ibid.
[323] Cadman to Seddon, 5 March 1895, ibid.
[324] Seddon to Hasleden, 26 March 1895, ibid.

Native gold revenue accounts' – and he reported in late March 1895.[325] He advised Eliott this was due to the lengthy illness of Dearle 'in whose hands they [the payment of the revenue] have been since I left the Thames in 1882.' Wilkinson expressed concern at the fees charged by those administering the revenue. He believed that given the massive decline in the revenue received, the charge, paid by the Maori landowners through a deduction from their revenue, was excessive. The example he cited related to the Thames goldfield where the revenue for one quarter was now £131.19.0 and a fee of £100 was charged per annum – a commission of about 20%.

Wilkinson suggested two possible alternatives. First, that a proportional commission depending on the amount of money due be determined. The other solution which he thought even better, would be to pay Maori landowners a certain rental in lieu of the actual revenue received. This could be based on the revenue received in past years and revised every so many years. He believed that if such a system were introduced, 'all the present trouble of allocating Miners Rights and other fees and rents from claims, leases, residence sites, business sites, battery sites, water races, Kauri trees, etc, etc, would be done away with,' since 'all that would be required would be to pay the rent at the specified time.'

No action appears to have been taken on Wilkinson's suggestions, although in early April the Native Minister received a letter from a Thames solicitor asking that the fees paid to Dearle be reconsidered as his clients believed them excessive.[326] No action appears to have been taken on this matter, although Eliott did report that Dearle was not paid a fixed sum but a commission of 2 1/2%.[327] He understood Porritt and Hays, who had taken over the work, were paid on the same basis.

The possibility of the Public Trustee administering the revenue was canvassed further, but it appears they intended to charge a 7 1/2% commission. Cadman examined the matter again and wrote to Seddon to advise him.[328] Cadman understood 'the Government are collectors of this revenue for the Native owners and are in duty bound to distribute it to them periodically in accordance with agreements entered into at various times.' His investigation had found some of the payments had now become very small because of successions spreading the money over a large number of people. He believed the Government had a duty to pay the revenue and informed Seddon that the commission charged by the Public Trustee should be paid by the Government and not the Maori landowners. He concluded: 'the real solution of the

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[325] Kenny to Eliott, 6 April 1895; Wilkinson to Eliott, 30 March 1895, ibid.

[326] Miller to the Native Minister, 4 April 1895, ibid.

[327] Eliott to the Minister of Mines, 8 April 1895, ibid.

[328] Cadman to Native Minister, 9 May 1895, ibid.

trouble seems to me to be in vigourously purchasing the interests of the Natives as fast as they can be acquired.' Waldegrave, the Under Secretary for Justice, considered the payment of a commission to public officers unsatisfactory, and suggested a small pay increase for the two public servants engaged in distributing the revenue.[329] He found this the best solution to the problem and added he could not 'see why the Natives should pay for the distribution of this money.' This proposal was approved by William Pember Reeves, the Minister of Justice.

In the meantime, a further report from the Warden showed the accounts for the Native revenue were in disarray.[330] When Wilkinson had visited he found that a month's work full time was required to bring the accounts to order. Some were six months out of date and in other balances had not been reached for several years. According to Kenny, Dearle's 'excellent memory enabled him to work things smoothly.' However, no-one else was able to take over the work and the accounts had to be totally re-organised to determine balances and what amounts were still due, in some cases going as far back as 1878. Furthermore, lists of owners and successors, their interests, and plans and subdivision of blocks had to be requested from the Native Land Court to determine the allocations. It was particularly difficult around Thames where claims occupied several small blocks or parts of them 'and the revenue has to be allocated pro rata, according to area, the various amount having again to be allocated among the Native owners in proportion to their share or interest.' Kenny considered the money received by Porritt well justified as a result, even suggesting the amounts were barely adequate. However, Haselden had decided that the commission would cease from the end of July 1895, and that Porritt would be granted a salary increase of £20 (far less than the nearly £60 he had received on commission) for the work. Other staff at the Thames Courthouse would assist him as part of their ordinary duties.

This decision caused further problems as Porritt decided he would not allocate the revenue under these conditions.[331] Apparently Porritt had been doing the work at home in his spare time with the assistance of his wife. Hay provided support as interpreter. He had also employed clerks at his own expense to assist with the work. A recent increase in mining applications had meant it was impossible for him or the Court's clerk to do the work during office hours, and he did not see why he should do the work in the evening if it was to be an extra duty. He concluded by pointing out that the existing arrangement of paying by commission was at no charge to the Government as it was paid by the Maori landowners. Kenny supported his comments and noted that had Porritt not agreed to do the work when Dearle became ill, there

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[329] Waldegrave to Reeves, 13 June 1895, ibid.

[330] Kenny to Haselden, 12 September 1895, ibid.

[331] Porritt to Kenny, 16 November 1895.

would have been major complaints from Maori landowners.[332] He believed that Porritt was far better at the work than Dearle as he had received no complaints regarding the revenue since he took over. Furthermore, whereas Dearle kept very poor accounts which made determining the amounts due to each owner difficult, Porritt had established far more systematic procedures. Kenny concluded:

> I would suggest that this office be relieved of the whole matter of account allocation and payment and that it be handed over to Captain Mair, N.P.O., who has signified to me his willingness to take it provided he gets the full commission paid to Dearle. Mr Stratford, Mr Northcroft and I have on many occasions pointed out the inconvenience and complications resulting from the present system, which makes the Warden responsible for a duty sometimes inconsistent and incompatible with his other duties.

The response from Wellington was less than satisfactory – Haselden believed the current staff could do the work.[333] Porritt replied on behalf of the Warden again insisting that he and the other Court staff were already fully occupied with other work and that it would take another full-time clerk to process the revenue.[334] As to the pressure on the staff he noted that several had taken extended sick leave during the year, and one had died.

Haselden was, nevertheless, trying to find someone else to do the work. He asked Sheridan whether Mair could do the work, but Sheridan replied Mair would not be staying at Thames, and also noted that 'he is not a man of figures and would in a very short time get the account again into confusion.'[335] Haselden then wrote to Seddon and it seems the possibility of the Public Trustee was raised again – this was rejected as their agent in Thames was not suitable.[336] It was calculated at this time that the revenue distributed was about £3000 per year. Haselden then suggested a temporary clerk be appointed to deal with the revenue and work under the supervision of Porritt, but he was instructed by Seddon to let the matter stand.[337]

Until the complaints began. They were received by the Warden's Office and the Government and Cadman was sent by Seddon to investigate.[338] Cadman reported that 'owing to the great pressure of mining work in all the offices on the Thames goldfield, the allocation of native monies has got greatly in arrears; and, as there is a

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[332] Kenny to Haselden, 18 November 1895, ibid.

[333] Haselden to Kenny, 7 January 1896, ibid.

[334] Porritt to Kenny, 9 January 1896, ibid.

[335] Sheridan to Haselden, 6 January 1896, ibid.

[336] Haselden to Native Minister, 13 January 1896, ibid.

[337] Haselden to Minister of Justice, 29 January 1896, ibid.

[338] Jane Edwards to Porritt, 12 February 1896; Haora Tareranui to Minister of Mines, 10 March 1896; Seddon, 13 February 1896, ibid.

considerable amount of work attached to the allocation, I expect it will be a considerable time before the officers are able to overtake it.'[339] He suggested a temporary appointment be made to bring the work up to date and deal with the complaints from the Maori landowners. This was approved by Seddon and the Warden was asked to recommend a suitable person. As a result, Kenny reported on 23 March that H.C. Haselden had arrived that day to assume 'his duties as Accountant in the Native Revenue Branch of the Warden's Office for the Hauraki Mining District.'[340] At the end of June Haselden was required elsewhere, but other arrangements were being made for a replacement.[341]

Another problem also arose which had meant the revenue for the Te Aroha, Coromandel and Ohinemuri goldfields could not be paid.[342] The Justice Department had instructed that the Receivers of Gold Revenue provide the necessary information to the Warden's Office at Thames with regard to the allocation of the revenue.[343] This included details such as the location of claims and sites and the revenue received on them. Due to the level of mining work the Receivers were unable to provide this information and so the revenue could not be distributed and paid and this was generating further complaints. Kenny believed that the person appointed to replace Haselden should be given total responsibility for administering the gold revenue, not just keeping the accounts and making payments. An additional allowance was therefore required to meet the costs of travel.

It would seem though that the arrangements for a replacement were not finalised and Kenny asked that Haselden be retained for a further month as payments had to be made in early July.[344] According to the Warden, 'Hasleden seems to have got a grasp of the work and to be doing it admirably Captain Mair LPO tells me natives better pleased with him than anyone for years.' Haselden was allowed to stay for a further month, and in late July Kenny again asked that he be retained.[345] At the end of August a replacement was found, but he lasted only a month, finding the work too

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[339] Cadman to Seddon, 21 February 1896, ibid.

[340] Kenny to Haselden, 23 March 1896, ibid.

[341] Waldegrave to Kenny, 4 June 1896, ibid.

[342] Moresby to Kenny, 6 June 1896; Kenny to Waldegrave, 15 June 1896; Kenny to Waldegrave, 20 July 1896, ibid.

[343] In the past, Dearle had paid the Receivers at Paeroa, Te Aroha and Coromandel to provide the information regarding mining claims so that the revenue could be accurately allocated. This had come out of the commission he was paid. See Kenny to Haselden, 18 May 1896, ibid.

[344] Kenny to Waldegrave, 27 June 1896, ibid.

[345] Kenny to Waldegrave, 20 July 1896, ibid.

difficult – Kenny understood he was previously the caretaker at the Auckland Magistrates Court.[346] In commenting on his departure the Warden noted:

> I and my predecessor have repeatedly pointed out the complicated nature of these accounts and allocations, which are quite beyond the capacity of an ordinary clerk. What is needed is a thoroughly expert accountant. Knowledge of Maori is not required, Mr Quick being an excellent interpreter, he could do all that part of it. Would it be possible to get Mr Haselden back? He had a thorough grasp of the business.

The problems with staffing were again leading to complaints from Maori landowners. W.H. Taipari and others wrote to the Minister of Mines asking that 'young Mr Haselden' be returned and he had obviously impressed:

> We have suffered greatly in the past through the action of the Government with regard to this matter and we therefore pay that you will send back Mr Haselden to us. We all like the young man: he is courteous, and through him we received out money promptly and justly. But owing to his having been sent away, out minds are very greatly troubled, the more so that in our opinion he was a very capable officer.[347]

The position was later offered to E.W. Cave who accepted.[348] Waldegrave believed he was a suitable appointment with his experience in the office of the Official Assignee in Auckland. Further complaints were received from Maori landowners, but Kenny explained Cave was working very hard to deal with the accounts and that he was not to blame.[349] The accounts were again a mess as the clerk appointed after Haselden had made significant errors. At this point, the file ends.

Other records regarding the Native revenue are patchy. It has been possible to locate one Treasury file regarding the payment of the gold revenue for the Coromandel goldfields for the period 1890 to 1895.[350] This file contains a number of statements. They provide some details regarding the amounts of revenue collected, although they do not indicate the payment of the money. The correspondence in the file does show that Treasury was extremely pedantic with the accounts and would only imprest requested amounts after they had examined the accounts and ensured they balanced. As a result, on numerous occasions when complaints were received from Maori landowners regarding the late payment of the revenue the delay was blamed on Treasury. It does show nevertheless, that Treasury took some care to ensure the

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[346] Kenny to Waldegrave, 25 August, 1896; Waldegrave to Kenny, 31 August 1896; Kenny to Waldegrave, 28 September 1896, ibid.

[347] W.H. Taipari and others to Minister of Mines, 9 October 1896, ibid.

[348] Waldegrave to Kenny, 21 October 1896, ibid.

[349] Kenny to Waldegrave, 17 November 1896, ibid.

[350] See T 1, 94/1797, NA, Wellington.

correct amounts were paid, although they were only concerned with the total amount of revenue requisitioned rather than the payments to individual Maori landowners.

The table below shows the period and amount of money requisitioned by the Warden from the Native revenue account for the Coromandel goldfield:

Period	Amount			Date of Requisition
Year ending 4 August 1890	79	13	4	14 August 1890
Period ended 30 June 1891	471	6	8	9 July 1891
Year ended 23 July 1891	80	16	8	21 August 1891
1 July 1891 to 30 April 1892	114	10	0	14 May 1892
Year ended 23 July 1892	88	10	0	5 August 1892
1 May 1892 to 23 July 1893	277	8	0	15 August 1893
Year ended 23 July 1894	148	14	6	25 August 1894

The following tables show the amount collected for each of the Kuaotunu blocks:

From 1 May 1891 to 30 April 1892
Revenue accrued on the Kuaotunu Goldfield

TOTALS	Kuaotunu 2A	53	0	0
	Kuaotunu 1D	12	0	0
	Kuaotunu 1C	9	0	0
	Collected at Kuaotunu and not allocated	40	10	0
	TOTAL	114	10	0

From 13 May 1892 to 23 July 1893
Collected by the Receiver of Gold Revenue, Coromandel.

TOTALS	Kuaotunu No. 1C	8	10	0
	Kuaotunu No. 1D	25	1	0
	Kuaotunu No. 2A2	16	0	0
	Kuaotunu No. 2A3	26	10	0
	TOTAL	76	1	0

From 1 May 1892 to 22 July 1893
Collected by the Postmaster at Kuaotunu

TOTALS	Kuaotunu No. 1C	6	0	0
	Kuaotunu No. 1D	28	10	0
	Kuaotunu No. 2A	22	0	0
	Kuaotunu No. 2A1	2	0	0
	Kuaotunu No. 2A2	40	10	0
	Kuaotunu No. 2A3	24	0	0
	TOTAL	123	0	0

From 1 May 1892 to 23 April 1893
Collected by the Postmaster at Whitianga

TOTALS	Unspecified	5	0	0
	TOTAL	5	0	0

From 24 July 1893 to 21 July 1894
Collected by the Receiver of Gold Revenue, Coromandel

TOTALS	Kuaotunu No. 1C	9	0	0
	Kuaotunu No. 1D	13	1	0
	Kuaotunu No. 2A2	13	10	0
	Kuaotunu No. 2A3	19	17	6
	TOTAL	55	8	6

From 24 July 1893 to 21 July 1894
Collected by the Postmaster at Kuaotunu

TOTALS	Kuaotunu No. 1C	3	0	0
	Kuaotunu No. 1D	10	0	0
	Kuaotunu No. 2A2	13	0	0
	Kuaotunu No. 2A3	14	0	0
	TOTAL	40	0	0

From 24 July 1893 to 21 April 1894
Collected by the Postmaster at Whitianga

TOTALS	Kuaotunu No. 2A2	1	0	0
	Kuaotunu No. 2A3	1	0	0
	TOTAL	2	0	0

From 22 July 1894 to 20 July 1895
Collected by the Receiver of Gold Revenue at Coromandel

TOTALS	Kuaotunu No. 1C	13	0	0
	Kuaotunu No. 1D	15	0	0
	Kuaotunu No. 2A2	34	5	0
	Kuaotunu No. 2A3	18	15	0
	TOTAL	81	0	0

From 22 July 1894 to 20 July 1895
Collected by the Postmaster at Kuaotunu

TOTALS	Kuaotunu No. 1C	9	0	0
	Kuaotunu No. 1D	31	0	0
	Kuaotunu No. 2A2	30	0	0
	Kuaotunu No. 2A3	4	0	0
	TOTAL	74	0	0

The Warden's letterbooks also provide some indication of the administration of the Native revenue. There are a number of letters regarding the payment of the revenue to the landowners, and these suggest the Warden took some care to ensure payments were made and signed receipts returned. As some of the owners of the Kuaotunu blocks lived in Northland he sent the cheques to the Resident Magistrate at Whangarei for payment.[351] A schedule attached to the letter shows the payments made to each owner:

Name of Person	Name of Block	Amount		
		£	s.	d.
Ruipeti Titiparu	Kuaotunu No. 2A	113	2	0
Hemi Wa	Kuaotunu No. 2A	70	13	9
Raniera Matini	Kuaotunu No. 1C	5	17	7
Matini Kopehu	Kuaotunu No. 1C	5	17	7
Hamiora Matini	Kuaotunu No. 1C	5	17	7
Huria Matini	Kuaotunu No. 1C	5	17	7
Hemi Wa as trustee	Kuaotunu No. 1C	11	15	0
Raniera Matini	Kuaotunu No. 1D	1	4	0
Matini Kopehu	Kuaotunu No. 1D	1	4	0
Hamiora Matini	Kuaotunu No. 1D	1	4	0
Hemi Wa as trustee	Kuaotunu No. 1D	2	8	0

The following year, these amounts had reduced quite significantly:[352]

Name of Person	Name of Block	Amount		
		£	s.	d.
Hemi Wa	Kuaotunu No. 2A	21	8	0
Ruipeti Titiparu	Kuaotunu No. 2A	28	11	9

[351] Northcroft to Resident Magistrate, Whangarei, 21 August 1891, BACL A208/730, NA, Auckland.
[352] Northcroft to Resident Magistrate, Whangarei, 21 October 1892, ibid.

Wiri Raniera				
Toeke Raniera	Kuaotunu No. 1C		19	6
Hemi Wa trustee				
Matini Kopehu	Kuaotunu No. 1C		19	6
Hamiora Matini	Kuaotunu No. 1C		19	6
Huria Matini	Kuaotunu No. 1C		19	6
Ripeka Matini				
Ruihi Matini	Kuaotunu No. 1C	1	19	0
Hemi Wa as trustee				

The payments to Katerina Hauruia and Kawhena Rangitu, who lived at Kuaotunu, were usually forwarded to the Postmaster for payment. In December 1893, Kawhena received £80.18.6 in revenue, while Katerina Hauruia received £10.0.3.[353]

It would appear that the revenue which accrued on Kuaotunu No. 1D while the cession of mining rights was being negotiated was paid to each owner as they signed. Northcroft reported to Gordon in October 1891 that the revenue received on the block to 30 September that year was £93.12.0, and that this had been paid to all the owners except Hohepa Mataitaua – who was yet to sign the deed.[354]

A number of points regarding the Native revenue can be made. First, Government ministers and their officials recognised the importance of paying the revenue, and several considered the Government bound to do so. They also recognised the possibility that Maori landowners could prevent land being used for mining if they wished to do so, and they wanted to avoid problems with the Native revenue for this reason. Second, however, action and ideal seldom coincided. Despite the desire to ensure the revenue was paid and Maori landowners were treated fairly, the chaotic administration of the system of receiving and paying the revenue and legislative change undermined the original intention (according to Wilkinson) to benefit Maori. As was shown earlier, legislation significantly reduced the revenue accrued, rapidly and to such an extent that even the Government's own agent felt the cession agreements had been breached, and that the Maori landowners had a legitimate grievance against the Crown.

And as the previous examination of the administration of the revenue has shown, although the calculation of the allocations was a difficult and complex task (a fact to which Wellington-based officials and politicians did finally admit, but only after much prevarication), involving significant sums of money, a proper system was never established to cope with the work required. Furthermore, no Government department

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[353] Dearle to Postmaster, Kuaotunu, 13 December 1893, ibid.

[354] Northcroft to Gordon, 8 October 1891, BACL A208/633, NA, Auckland.

was willing to take responsibility for its administration and these circumstances were worsened by the involvement of four different departments. Each could pass complaints onto another and any necessary action could be avoided. Several Wardens expressed concern at their role in the administration of the Native revenue, a justifiable sentiment given the nature and number of their other duties. No doubt this was a task which properly sat with the Native Department, but perhaps given their emphasis on land purchase, the work did not receive the attention required.

The fragments regarding the revenue accrued on the Kuaotunu blocks show significant annual variations, but this is probably explained by the volatile nature of the mining industry, rather than the poor administration of the accounts. They also show that the Warden did try to ensure payments were made, and that the rentals received could be significant. Nevertheless, in general the administration of the Native revenue was deeply flawed and although there was a great deal of good intentions, there was very little action. Government officials moved a great deal of paper, but did not act to rectify the problem.

Part 6: Conclusion

The fundamental question this report was designed to address was the legitimacy of the Warden's action in establishing a mining township at Kuaotunu. The legality of his actions were in doubt because of accusations made by Pierce Lanigan. Unfortunately, a definitive answer cannot be given. It is clear that the Warden had the township laid off and allowed claims to be marked out before the deed of cession was completed. This was probably because he was under the impression he had obtained the necessary signatures. Given the difficulties he encountered in completing the deeds, this does not appear surprising. However, it is clear the Warden did not adjudicate on the applications for residence sites and mining claims until the owners had ceded the land to the Crown for mining purposes. Thus, although the township was opened, it was some months before applications were dealt with. And even then, because Hohepa Mataitaua had yet to sign the deed, Northcroft refused to deal with part of the land as he had no jurisdiction.

Nevertheless, in terms of the legality of the Warden's actions, the question of proclaiming the land subject to the Mining Act is important. The Under Secretary of the Mines Department was not sure that this was necessary, but the Crown Law Office considered the move advisable. It is not clear as a result if it was required under the provisions of the Mining Act in force at the time.

Perhaps what is most important was the Warden's actions. Even if the land had not been proclaimed at the time he heard applications for licenses and mining claims on the blocks, he did wait until he had received the permission of the Maori landowners. In this way, it appears they were not prejudiced by his actions.

As to the cession of mining rights, the Warden was placed in a difficult and invidious position. George Wilkinson had been based at Thames as the Government's Native Agent until the mid-1880s when he was moved to Otohoranga where he was responsible for the Auckland, Thames and Waikato regions. Responsible mostly for land purchases, he was no doubt moved into the Waikato to begin acquiring land there and to attempt to open up the Rohe Potae. Consequently he had little time for Thames, and no replacement was appointed for about a decade. Much of the work he had undertaken there was left to the Warden, usually by default. The Warden became involved in land purchases, distributing the Native revenue, and negotiating with Maori landowners for the cession of mining rights. It is fairly clear these were jobs Northcroft had little time for and did not want. It is also clear he found negotiating

the cession of mining rights for the Kuaotunu blocks an arduous and difficult task. This may be a result of little or no experience in dealing with Maori.

The Warden was asked to a job for which he had little or no training and this is reflected in the length of time it took to complete the deeds and the problems which arose. It seems the Warden knew little of Maori landownership and the process of appointing successors. The lack of co-operation from other Government officials probably contributed further problems. Notably, despite all these difficulties and the associated frustration, Northcroft appears to have acted honourably and fairly to the Maori landowners. Moreover, there is no evidence to suggest that any pressure was used to encourage the owners to sign the deed. In fact some of the owners, at least, indicated a willingness to do so. The Warden's complaints to Eliott regarding the cession of mining rights are very significant as a result. The work should have been undertaken by more experienced officials and in this light, Northcroft appears to have done well in very trying circumstances.

James Mackay's role on the other hand is much more problematic. Although the dispute between Pierce Lanigan and the Warden developed during the collection of signatures on the deed of cession, it needs to be dealt with separately. This is because the Warden's relationship with the Maori landowners was distinct from his dispute with Lanigan. And though Mackay described himself as the agent for the Maori landowners, there is much evidence to suggest he was in fact less concerned to represent their interests, than to protect Lanigan's interests.

It is clear that Lanigan's lease to part of Kuaotunu No. 1D was incomplete, and that he had no legal title to the land. No documents relating to this lease appear to have been submitted to the Native Land Court for registration, and Northcroft reported that some of the landowners were not willing to sign the lease. Lanigan thus had no claim to any part of the block. However, he did have a major problem of his own making. This was because he had sub-let parts of the land and some substantial buildings had been erected. One was Loram's hotel. Since Lanigan had no legal title to the land, he could not offer his lessees any security of tenure either. This may indicate why he alleged the Warden had acted illegally as Northcroft's actions undermined his claim to the land. It should also be noted that Lanigan did eventually support the Warden negotiating the cession of rights. He may have seen this as a way of gaining a legal title to the land.

James Mackay's role in this dispute shows he was much more concerned with Lanigan's claims than with the Maori landowners' interests. He advised the Crown to purchase the land and strongly represented Lanigan's claim after the Warden began negotiating for the cession of mining rights. His threat of legal action may have had some substance, but it is doubtful he could have proved his client's claim. It does

appear that Mackay negotiated with miners on behalf of the Maori landowners for access to the blocks, but he must also have acted for Lanigan at the same time. The evidence shows that Mackay was concerned about his own legal position when offering to negotiate the sale of the land for the Crown. He wanted the Crown to indemnify him for breach of contract and when considered in terms of his subsequent advocacy of Lanigan's rights, it suggests that he too was placed in a problematic position regarding the leases on the No.1D block. Moreover, his conduct in the alienation of part of Kuaotunu No. 2 suggests that in these instances his knowledge of the legal technicalities of Native land law may have been limited. It should also be noted that the new agreement with the Warden was more generous in financial terms than the 'lease' negotiated by Mackay for Lanigan.

As to the Native revenue, this report has shown there were major problems with its administration. With respect to the Kuaotunu blocks specifically, the evidence is very patchy, but some comments can be made. First, there were some complaints, but over ten years they were few and far between. Second, the revenue paid was a substantial sum, but it could vary considerably from year to year. As there were relatively few complaints, this might suggest the significant variations were a result of the volatility of the mining industry rather than poor management of the money received.

The alienation of each of the blocks has been described in detail and in general no major issues arise out of these sales. There is a question relating to price and another with reference to three of the blocks regarding the process of alienation, both of which are discussed below. The significant exception to the general rule is the sale of Kuaotunu No. 2A3 to Te Aira Rangiarua. In light of the declaration made to the Native Land Court in support of the transfer of the land to her husband E.T. Dufaur, this transaction is problematic. It is clear that the land was in effect sold to her husband and that her name was used simply to facilitate the transaction. Equally problematic is the certification of the documents by an interpreter who appears to have had an interest in the sale.

As has been shown, Kuaotunu No. 2A3 was eventually sold to the Crown and the price paid raises questions about the fairness of the price paid for the other Kuaotunu blocks. The block was sold for a price per acre in excess of £4. This was about twice the price paid by the Crown for other land at Kuaotunu. It is also significantly more than the price paid to the original Maori landowner by Dufaur eight years earlier. Unfortunately no valuations are available for the land at the time it was alienated. When Kuaotunu No. 1D2 was sold in 1912, the land was valued at just over £1 per acre. However, by this time mining was almost non-existent and this may explain why the value had declined so much. Nevertheless, the price variation between that paid to Dufaur and that paid to the Maori landowners during a period when mining was underway, even if in decline, is significant.

The alienations of three other Kuaotunu blocks also require further comment. Kuaotunu No. 1C, Kuaotunu No. 2A1 and Kuaotunu No. 2A2 were all sold to the Crown in 1902. In all three cases the copies of the deeds retained by the Native Land Court were not certified by a judge (with the exception of the interests of the two minors in Kuaotunu No. 1C), and it appears no Court hearing was held to confirm any of these alienations. It should be noted an investigation of the land transfer documents relating to the blocks was not included in this report because that work had already been undertaken by David Alexander. His block histories give no indication that the copy of the deed sent to the District Land Registrar for registration was certified by a judge in any of these cases. Furthermore, it would be rather surprising for the judge to certify one copy of the deed but not the duplicate. Other deeds held by the Native Land Court were signed and dated by judges. These four points suggest the deeds were not certified by a Native Land Court judge. The question which then arises is whether the deeds had to be certified. In other words, what protective mechanisms governed the alienation of Maori land.

The answer is problematic because the period between 1900 and 1909 was a time of flux in Maori land administration. By 1902, when these three Kuaotunu blocks were alienated, the Maori Land Administration Act 1900 had been enacted. This legislation created the Maori Land Councils (the forerunners to the Maori Land Boards) whose role was, among other things, to supervise the system of Maori land alienation.[355] However, according to Loveridge the Councils had a very limited role where the sale of land was concerned. Where land was owned by three or more individuals (as in the case of Kuaotunu No. 1C) the prior consent of the Governor-in-Council was required. There is no evidence to indicate such consent was gained in the alienation of Kuaotunu No. 1C.[356] Where land was owned by one or two individuals (Kuaotunu No. 2A1 and Kuaotunu No. 2A2) the provisions of the Native Land Court Act 1894 applied. This legislation required any alienation be confirmed by the Court after considering such matters as illegality, the payment of the purchase price and sufficient other lands. This part of the legislation does not appear to have been amended by the time of these alienations in 1902. It seems the Court should have considered these transactions but did not. As a result the statutory protective mechanisms in force at the time were not applied.

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[355] Donald M. Loveridge, *Maori Land Councils and Maori Land Boards, 1900 to 1952*, Waitangi Tribunal Rangahaua Whanui National Theme K, Wellington, 1996, p. 22.

[356] A search of the Gazette has not been made, but it would be expected any correspondence in relation to such consent would be contained in the Native Land Purchase Department file for the block.

The situation regarding the two reserves noted on the plan of the township has been outlined in full. Neither was a reserve created by the Native Land Court, both were set aside by the Warden for the Maori landowners. The Court considered neither to be a protected reserve, but as one was an urupa it decided that the area should be set aside. A title was issued and a caveat was registered to prevent any dealing with the land. It was later declared a cemetery reserve after an application by the County Council in what appears to have been a technical matter regarding local body rating.

The township at Kuaotunu was established at a time when mining in the Coromandel region was at the end of a long decline. The discovery of gold there was greeted with much enthusiasm as a result and the excitement generated probably masked just how limited the opportunities for establishing a long term mining industry in the district were. Gold mining at Kuaotunu was very short lived and collapsed just over two decades after the area was opened. Two major problems were the inability of the mining industry to provide the necessary capital for lower level mining and the very fine nature of the gold which required new extraction processes.

Nevertheless, in the first few years the mining industry at Kuaotunu could have provided a significant opportunity for the landowners to participate in the development of the field. Some of the owners at least were keen to do so, as shown by James Mackay's work on their behalf. At least one of the owners was a key figure in an early mining claim. And it should also be noted that all the owners received some benefit from the gold field while it was administered by the Crown in the form of the Native revenue. However, as has been seen, the shift in the status of the land led to litigation as two groups of owners battled to have their claims to part of the block recognised by the Native Land Court.

Many of the problems regarding the cession of mining rights and the payment of the Native revenue stemmed from the system of tenure and land ownership over which the Native Land Court presided. The ownership structure of the blocks meant there were numerous owners and for those original owners who were deceased there were, by 1890, a number of successors. As has been suggested, two of the major problems faced by the Warden in negotiating the cession of mining rights were the appointment of successors and the dispersed residences of the owners. This also caused problems in the allocation of the Native revenue, particularly in the calculation of money owed to each person, and then having to make individual payments to each owner.

The ownership structure was a direct cause of these problems. Furthermore, the litigation regarding the Kuaotunu No. 1D block shows that the system of tenure was unable to adapt to changing circumstances, both of the land itself and the owners of the land. The system itself was a contributing factor to the high level of litigation over the blocks, but equally, it was not able to solve the dispute. The Native Land

Court, which was not the system but the administrator of a system defined by legislation, simply became the forum in which the owners sought their own solution to the problems.

Therefore, although Northcroft acted fairly and did his best to administer the system, it was a massively flawed system. The same can be said of Scannell. The ownership structure created by the Court as required by legislation made it very difficult for the Warden to gain the cession of mining rights and pay the revenue due. Equally, it did not allow the Maori landowners to take advantage of the changing circumstances of the land because they were constantly involved in litigation. The land tenure system attempted to impose a new order on existing Maori rights, but it was an order which could not adapt to change. Nor could it provide a solution to the problem – despite days of evidence the owners were told to negotiate an arrangement by the judges in both partition hearings. Furthermore, the Kuaotunu blocks caused major problems because there were owners with different types of rights to the land, there were at least three main families with interests, and very few of the owners actually occupied the land. In a system where occupation was the central concern, this was a significant challenge. This system of land tenure did not allow the Maori landowners to speak collectively with one voice. In doing so it prevented effective governance of the land in the interests of the Maori landowners particularly where there were significant resources. The Native Land Court attempted to impose a rigid structure on Maori customary rights but in doing so generated chaos. Though not always evident it is certainly clear in the case of the Kuaotunu blocks.

Part 7:Appendix One – The Alienation of Kuaotunu No. 1D2.

SUMMARY

Title Investigation:	1878.
Partitioned:	11 December 1891.
Title:	Provisional Register 25/69.
Ownership:	Two owners.
Area:	40 acres, 3 roods, 22 perches.
Plan:	Hamilton Maori Land Plan 3549.
Alienation:	Sold to Robert Perry Peddle, 5 June 1912.
Price:	£50.
Transfer agreement:	77463.

After the disputes over the partitioning of Kuaotunu No. 1D block were finally resolved at the hearing by Chief Judge G.B. Davy in 1894, the titles were approved and forwarded to the District Land Registrar for registration.[357] Three owners were entered on the provisional register:

1.	Hohepa Mataitaua. as successor to Peti Patene.	m,a.	1/2 share.
2.	Te Tiki Patene. as one of two successors to Wi Patene.	f,11.	1/4 share.
3.	Matene Patene. as one of two successors to Wi Patene.	f,10.	1/4 share.

The whole block was declared to be inalienable.

A succession hearing for the interest of Te Tiki Patene was held at Coromandel on 27 February 1899 before Judge J.A. Wilson.[358] Hohepa Mataitaua told the Court that she had died at Kirikiri in April 1898 and that he had seen her die. He claimed the land

[357] PR 25/69, LINZ, Hamilton.

[358] Coromandel Native Land Court minute book 6, 27 February 1899, fol. 23. Evidence of Hohepa Mataitaua given in an earlier case, see fol. 21.

on behalf of her sister, Mata Patene. He gave evidence that she left no children and no will. Although her mother was alive, her father was dead and the land came through her father. The Court called for objections and receiving none ordered that Mata Patene, an 18 year old minor, succeed to the interest, and appointed Hohepa Mataitaua and Mere Rewiti as trustees. This order was entered in the provisional register on 8 January 1914. As a result there were two owners in the block, Hohepa Mataitaua and Mata Patene, each holding a half share.

As discussed earlier, Hohepa Mataitaua offered this land to the Crown on several separate occasions, but the offers were rejected. The land was later purchased by a private individual through the District Maori Land Board under the provisions of the Native Land Act 1909.

On 24 August 1912 solicitors for Robert Perry Peddle, a farmer of Napier, applied to the Waikato-Maniapoto District Maori Land Board for confirmation of alienation by transfer.[359] The application shows the amount to be paid was £41. However, a valuation of the land dated 12 September 1912 showed the land was worth £50. This matter was dealt with at the hearing by the board. The application was accompanied by a title search and a schedule of other land:

Mata Patene	Wharekana 4B1C	72 acres
	Wharekana 4C3C	197 acres
Hohepa Mataitaua	Wharekana 4B1C	191 acres
	Wharekana 4C3C	397 acres

The application was considered by the board on 19 March 1913.[360] The minute book lists the Government Valuation as £50 and indicates that the purchase price had been increased from £41 to £50. Bennett, who appeared on behalf of Peddle, told the board that the price had been increased to conform with the valuation. Both owners had signed. The board decided to confirm the alienation subject to the payment of the purchase money.

Peddle's solicitors sent the receipts to the board on 3 April 1913. Eight receipts signed by Mata Patene and Hohepa Mataitaua were submitted along with a request to sign the confirmation certificate. Payments for interests in Kuaotunu No. 1D2 were made on eight separate occasions:

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[359] Kuaotunu No. 1D2 alienation file, BCAC A110/46 4785, NA, Auckland.

[360] Waikato-Maniapoto District Maori Land Board minute book 9, 19 March 1913, fol. 361.

Mata Patene	5 June 1912	£5
	29 June 1912	£2
	16 September 1912	£2
	7 February 1913	£5
	26 March 1913	£11
TOTAL		£25
Hohepa Mataitaua	26 August 1912	£5 10s
	5 June 1912	£15
	15 February 1913	£4 10s
TOTAL		£25

The certificate was signed by the board on the 10 May 1913 and the alienation registered against the title on 8 January 1914, shortly after the registration of Mata Patene as successor to Te Tiki Patene.[361] In 1947, the land was transferred from Peddle to the Coromandel County Council.[362]

The details of this alienation do not appear to raise any issues.

[361] Transfer Agreement No. 77463, LINZ, Hamilton.

[362] CT 219/276, LINZ, Hamilton. See Alexander, p. 254.

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