He Whiritaunoka
The cover photograph shows knotted taunoka (native broom). The image references Hōri Kingi Te Anaua’s act of tying a knot in taunoka as an expression of his desire to see an end to the conflict caused by the New Zealand Wars of the nineteenth century. The photograph was taken by Carolyn Blackwell.
### SHORT CONTENTS

**Volume 1**

Letter of transmittal ................................................................. xlvii

Glossary ................................................................. liii

## CHAPTER 1: INTRODUCTION ......................................................... 1

1.1 He Whiritauanoka ................................................................. 1
1.2 Preamble ................................................................. 1
1.3 The claimants ................................................................. 3
1.4 The claims ................................................................. 6
1.5 What struck us most ................................................................. 7
1.6 Housekeeping ................................................................. 9

## Matapihi 1: From Petre to Wanganui to Whanganui .......................... 15

M1.1 Background ................................................................. 15
M1.2 What happened? ................................................................. 21
M1.3 Developments after our district inquiry ......................................................... 23
M1.4 In conclusion ................................................................. 23
M1.5 Findings ................................................................. 24
M1.6 Nomenclature in this report ................................................................. 24

## Kia Ui Uia Mai ................................................................. 27

## Chapter 2: Ngā Wā o Mua: Iwi, Hapū, and their Communities in the Whanganui Inquiry District to circa 1845 ......................................................... 29

2.1 Te kaupapa: the purpose of this chapter ................................................................. 29
2.2 Mai i te Kāhui Maunga ki Tangaroa: mountains, land, waterways, and the coast .. 30
2.3 Ngā Toi Whenua: origins and arrivals ................................................................. 47
2.4 Te Taura-whiri-a-Hinengākau i te Rau Tau 1800: peoples of the inquiry district in the early nineteenth century ................................................................. 55
2.5 Tikanga Whanganui: social organisation in the Whanganui inquiry district .. 96
2.6 Population figures and settlement patterns, 1840–45 ................................................................. 106
2.7 Concluding Reflection ................................................................. 108
Chapter 3: The Treaty Comes to Whanganui ........................................ 123
  3.1 Introduction ................................................................. 123
  3.2 The parties’ positions ...................................................... 124
  3.3 Whanganui Māori’s experience of Pākehā before the Treaty signing at Pākaitore . 125
  3.4 Why and how Did the Crown bring the Treaty to Whanganui in May 1840? .... 127
  3.5 Whanganui Māori who signed the Treaty ................................ 130
  3.6 Māori understanding of the Treaty .................................... 133

Chapter 4: The Meaning and Effect of the Treaty in Whanganui ... 141
  4.1 Introduction ................................................................. 141
  4.2 The Waitangi Tribunal’s jurisdiction ................................... 141
  4.3 The meaning and effect of the Treaty ................................ 146
  4.4 The principles of the Treaty ............................................ 154
  4.5 Conclusion ................................................................. 158

Chapter 5: Whanganui and the New Zealand Company ............. 161
  5.1 Introduction ................................................................. 161
  5.2 The parties’ positions ...................................................... 162
  5.3 The purchase deed and Crown attempts to resolve
      the company’s Whanganui claim ........................................ 162
  5.4 Did the Spain commission confirm the New Zealand Company’s
      purchase of Whanganui? .................................................. 177
  5.5 Findings ................................................................. 194

Chapter 6: War in Whanganui, 1846–48 .................................... 199
  6.1 Introduction ................................................................. 199
  6.2 The parties’ positions ...................................................... 200
  6.3 The involvement of Whanganui Māori in hostilities in the Hutt Valley in
      1846 and the Crown’s response ........................................ 200
  6.4 The development of hostilities and the appropriateness of the Crown’s response . 207
  6.5 Peace is re-established in the district .................................. 222
  6.6 Findings ................................................................. 224
### Short Contents

#### Chapter 7: The Whanganui Purchase
- 7.1 Introduction ........................................ 229
- 7.2 The parties' positions ................................ 230
- 7.3 Final negotiations in 1848 .......................... 231
- 7.4 A fair price? .......................................... 253
- 7.5 Reserves ............................................... 257
- 7.6 Findings ............................................. 269

#### Matapihi 2: Pākaitore
- M2.1 Introduction ....................................... 275
- M2.2 Why we tell the story of Pākaitore ............ 275
- M2.3 Where it all began ................................. 275
- M2.4 Pākaitore not set aside as a reserve .......... 276
- M2.5 The 1995 occupation ............................... 278
- M2.6 Resolution? ....................................... 281
- M2.7 The court's job differs from ours ............. 281
- M2.8 Where Was Pākaitore? ............................ 281
- M2.9 What we say ....................................... 289

#### Chapter 8: Politics and War in Whanganui, 1848–65
- 8.1 Introduction .......................................... 291
- 8.2 The parties’ positions ............................... 291
- 8.3 Māori initiatives and Crown responses .......... 293
- 8.4 Kīngitanga, Pai Mārire, and the Crown ....... 308
- 8.5 Findings ............................................... 341

#### Chapter 9: Providing for the Future Needs of Māori
- 9.1 Introduction .......................................... 349
- 9.2 The parties’ positions ............................... 350
- 9.3 What did land mean to Māori? .................... 350
- 9.4 The Treaty context .................................. 351
- 9.5 The Crown’s ‘sufficiency’ policy ................. 352
- 9.6 The Crown’s role in the economy ............... 359
- 9.7 Economic prospects and Whanganui land .... 364
- 9.8 Calibrating Māori and settler needs .......... 366
Chapter 10: Politics and Māori Land Law, 1865–1900

10.1 Introduction .............................................. 375
10.2 The hot tub .............................................. 376
10.3 This chapter .............................................. 378
10.4 The parties’ positions .................................. 379
10.5 The land court’s early years, 1862–69 .................. 381
10.6 Purchasing, reforms, and reaction, 1869–77 .......... 389
10.7 Māori respond to Crown purchasing, 1877–84 ....... 402
10.8 Railways and reform, 1884–92 ......................... 416
10.9 The Liberals and Māori land, 1892–1900 ............ 420
10.10 Findings .................................................. 425

Chapter 11: The Operation of the Native Land Court in the
            Whanganui District, 1866–1900 ...................... 435

11.1 Introduction .............................................. 435
11.2 The parties’ positions .................................. 436
11.3 Overview of court activities, 1866–1900 .............. 436
11.4 Engagement with the court .............................. 440
11.5 Involvement in the court’s process ..................... 444
11.6 Māori input in the court’s deliberations ............... 452
11.7 The costs .................................................. 456
11.8 Avenues for seeking redress ............................ 465
11.9 How extensive was fractionation? ...................... 469
11.10 Findings .................................................. 471

Chapter 12: Crown Purchasing in Whanganui, 1870–1900 ..... 477

12.1 Introduction .............................................. 477
12.2 Who bought Māori land in Whanganui? ............... 477
12.3 Monopoly purchasing powers ........................... 480
12.4 How did the crown buy Māori land? ................... 483
12.5 Did the Crown pay a fair price? ....................... 496
12.6 What happened in the Murimotu area .................. 501
12.7 Restricting land from alienation ....................... 522
12.8 Why Whanganui Māori sold their land ............... 527
12.9 Land still in Māori ownership by 1900 ............... 530
12.10 Findings .................................................. 531
Volume 2

Chapter 13: The Waimarino Purchase ............................... 545
13.1 Introduction ................................................. 545
13.2 The parties' positions ....................................... 548
13.3 Why was the Crown keen to purchase? ....................... 550
13.4 The Waimarino block application ............................ 561
13.5 Determination of interests .................................. 589
13.6 The Crown's purchase ...................................... 600
13.7 Dividing up the land ....................................... 620
13.8 What remedies were available? .............................. 640
13.9 Findings ....................................................... 647

Chapter 14: Land Issues for Whanganui Māori, 1900–52 .......... 661
14.1 Introduction ................................................. 661
14.2 Seddon's acknowledgements ................................ 661
14.3 The parties' positions ....................................... 662
14.4 What the Crown and Māori agreed in 1900 .................. 663
14.5 Changes to the 1900 regime ................................ 675
14.6 The extent of Crown obligations .............................. 681
14.7 Findings ....................................................... 684

Chapter 15: Māori Land Purchasing in the Twentieth Century .... 689
15.1 Introduction ................................................. 689
15.2 The parties' positions ....................................... 689
15.3 Taihoa, 1900–09 .............................................. 692
15.4 Crown and other purchasing, 1910–29 ....................... 704
15.5 Impacts on Māori landholdings since 1930 .................. 722
15.6 Findings ....................................................... 729

Matapihi 3: The Interests in Māori Land of Mere Kūao ........... 737
m3.1 Introduction ................................................ 737
m3.2 The Murimotu block ....................................... 737
m3.3 Murimotu 5B2A ............................................. 738
m3.4 Murimotu 3B1A ............................................. 740
m3.5 Murimotu 3B1A2 ........................................... 742
m3.6 ‘Hono whenua, hono tangata, hono wairua’ ................ 750
**Chapter 16: Scenic Reserves along the Whanganui River**

- 16.1 Introduction .................................................. 753
- 16.2 The parties’ positions ........................................ 755
- 16.3 The Crown acts to protect the scenery ...................... 756
- 16.4 Crown wrongs in preserving scenery ....................... 787
- 16.5 Māori participation in managing reserves .................. 802
- 16.6 Findings .......................................................... 803
- 16.7 Recommendations .............................................. 805

**Chapter 17: Native Townships** .................................................. 813

- 17.1 Introduction ..................................................... 813
- 17.2 The parties’ positions ........................................... 813
- 17.3 Our approach in this chapter .................................. 816
- 17.4 The legislation .................................................... 817
- 17.5 Pīpīriki: establishment and management .................... 827
- 17.6 Taumarunui: another native township ....................... 845
- 17.7 Findings on native townships .................................. 883

**Chapter 18: The ‘Vested Lands’ in Whanganui** ....................... 899

- 18.1 Introduction ..................................................... 899
- 18.2 The parties’ positions ........................................... 900
- 18.3 Vesting land and setting up leases ............................ 901
- 18.4 Management of the vested land ............................... 922
- 18.5 Amalgamation, incorporation, 1955–2009 .................... 938
- 18.6 Māori occupation of vested land ............................. 946
- 18.7 Findings .......................................................... 960
- 18.8 Recommendations .............................................. 962

**Chapter 19: The Whanganui Māori Economy and Land Development** ........................................ 969

- 19.1 Introduction ..................................................... 969
- 19.2 What the claimants Said ....................................... 970
- 19.3 What the Crown Said ........................................... 972
- 19.4 Whanganui Māori economic development ................... 972
- 19.5 The obstacles to land development ......................... 985
- 19.6 Land development schemes ................................... 997
- 19.7 Post-war rehabilitation assistance ......................... 1018
SHORT CONTENTS

19.8 Other Crown assistance after 1945 .................................................. 1019
19.9 Findings ......................................................................................... 1021
19.10 Recommendations ................................................................. 1023

Chapter 20: Waimarino in the Twentieth Century ....................... 1033
20.1 Introduction .................................................................................. 1033
20.2 Stout and Ngata’s hopes for development ........................................ 1039
20.3 First wave of land alienation, 1910–30 ............................................. 1042
20.4 The cases of Tawatā and Kaitieke .................................................... 1058
20.5 Whakapapa Island (Moutere) ......................................................... 1064
20.6 A lull in land purchasing, 1930–50 ................................................... 1069
20.7 Second wave of land alienation, 1951–75 ........................................... 1072
20.8 Māori land in Waimarino today ....................................................... 1079
20.9 Findings ......................................................................................... 1083
20.10 Recommendations ................................................................. 1087

Volume 3

Matapihi 4: Waikune Prison ............................................................. 1093
M4.1 Introduction .................................................................................. 1093
M4.2 The life and land of Waikune Prison ................................................. 1095
M4.3 The closure of Waikune Prison ....................................................... 1096
M4.4 The demolition of Waikune Prison ................................................... 1099
M4.5 Waikune Prison after the demolition .............................................. 1102
M4.6 Conclusion ................................................................................... 1105
M4.7 Findings ......................................................................................... 1106
M4.8 Recommendations ................................................................. 1106

Chapter 21: Education, Health, and Other State Assistance ........... 1109
21.1 Introduction .................................................................................. 1109
21.2 The parties’ positions .................................................................. 1110
21.3 State assistance in the 1800s .......................................................... 1111
21.4 The period from 1900 to 1935 ......................................................... 1125
21.5 State assistance, 1935–84 ............................................................. 1142
21.6 Into the present day .................................................................... 1158
21.7 Findings ......................................................................................... 1172
21.8 Recommendations ................................................................. 1176
**Chapter 22: The Whanganui National Park** ........................................ 1189
  22.1 Introduction ......................................................... 1189
  22.2 The parties’ positions .............................................. 1190
  22.3 What interests were there in the lands that became the park? ............ 1194
  22.4 The establishment of the national park .................................. 1207
  22.5 Managing Whanganui National Park ..................................... 1219
  22.6 Treaty principles and the management of conservation land .................. 1232
  22.7 Findings and recommendations ........................................ 1236

**Chapter 23: Introduction to Local Issues** ................................. 1243
  23.1 Introduction .......................................................... 1243
  23.2 Discrete remedies and local issues ..................................... 1243
  23.3 What are the local issues in Whanganui? .................................. 1245
  23.4 Conclusion ............................................................... 1253

**Chapter 24: Northern Whanganui Local Issues** .......................... 1257
  24.1 Introduction .......................................................... 1257
  24.2 Tūwhenua (Taumarunui Aerodrome) ..................................... 1259
  24.3 Te Anapungapunga ..................................................... 1265
  24.4 Taringamotu School .................................................... 1270
  24.5 Te Horangapai takings .................................................. 1273
  24.6 Taumarunui Hospital ................................................... 1273
  24.7 Te Peka marae ........................................................... 1281
  24.8 The King Country Electric Power Board depot ............................. 1286
  24.9 Ōhura South G4E2 ...................................................... 1289
  24.10 Other Taumarunui area issues ......................................... 1292
  24.11 The Piriaka puna ...................................................... 1299
  24.12 Piriaka School site ..................................................... 1301
  24.13 Ōhura South B2B2C2 and the Pukehou Road quarry ...................... 1305

**Chapter 25: Central Whanganui Local Issues** ............................ 1319
  25.1 Introduction .......................................................... 1319
  25.2 The Ōhākune area ...................................................... 1320
  25.3 Mangamingi marae lands ............................................... 1338
  25.4 Parinui Native School site .............................................. 1342
  25.5 The Pīpīriki School site ............................................... 1345
  25.6 Manganui-a-te-ao issues .............................................. 1350
**SHORT CONTENTS**

25.7 Tūrangarere railway reserve land ................................................. 1358
25.8 Whangaehu River ................................................................. 1364

**Chapter 26: Southern Whanganui Local Issues** .................. 1377
26.1 Introduction ................................................................. 1377
26.2 Ōtoko issues ................................................................. 1378
26.3 Taukoro Bush ................................................................. 1383
26.4 Ōhotu 6F1 ................................................................. 1386
26.5 Koriniti Native School ......................................................... 1389
26.6 The proposed Ātene Dam ..................................................... 1394
26.7 Parikino Native School site .................................................. 1397
26.8 The Puketarata 4G1 taking .................................................. 1399
26.9 Kaiwhaiki Quarry ............................................................. 1402
26.10 Taonga tūturu .............................................................. 1406
26.11 Kaitoke Lake and Lake Wiritoa ........................................ 1411
26.12 Kai Iwi issues .............................................................. 1416

**Chapter 27: Prejudice, Causation, and Liability** .......... 1429
27.1 Introduction ................................................................. 1429
27.2 What the parties said ......................................................... 1430
27.3 How do we approach prejudice? ......................................... 1431
27.4 How do we approach causation? ......................................... 1444
27.5 How do we approach liability? .......................................... 1450
27.6 Conclusion ................................................................. 1454

**Chapter 28: Findings and Recommendations** ........... 1457
28.1 Introduction ................................................................. 1457
28.2 Matapihi 1: Whanganui – Wanganui .................................. 1457
28.3 Chapter 2: Ngā Wā o Mua: hapū and their communities until about 1845 ........................................... 1458
28.4 Chapter 3: The Treaty comes to Whanganui ......................... 1458
28.5 Chapter 4: The meaning and effect of the Treaty in Whanganui ......................................................... 1458
28.6 Chapter 5: Whanganui and the New Zealand Company ............ 1459
28.7 Chapter 6: War in Whanganui, 1846–48 ................................ 1460
28.8 Chapter 7: The Whanganui purchase .................................. 1461
28.9 Matapihi 2: Pākaitore ......................................................... 1462
28.10 Chapter 8: Politics and war in Whanganui, 1848–65 .......... 1462
28.11 Chapter 9: Providing for the future needs of Māori ............. 1464
<table>
<thead>
<tr>
<th>Chapter 28: Findings and Recommendations—continued</th>
</tr>
</thead>
<tbody>
<tr>
<td>28.12 Chapter 10: Politics and Māori land law, 1865–1900</td>
</tr>
<tr>
<td>28.13 Chapter 11: The operation of the Native Land Court in the Whanganui district, 1866–1900</td>
</tr>
<tr>
<td>28.14 Chapter 12: Crown purchasing in Whanganui, 1870–1900</td>
</tr>
<tr>
<td>28.15 Chapter 13: The Waimarino purchase</td>
</tr>
<tr>
<td>28.16 Chapter 14: Land issues for Whanganui Māori, 1900–52</td>
</tr>
<tr>
<td>28.17 Chapter 15: Māori land purchasing in the twentieth century</td>
</tr>
<tr>
<td>28.18 Matapihi 3: The interests in Māori land of Mere Kūao</td>
</tr>
<tr>
<td>28.19 Chapter 16: Scenic reserves along the Whanganui River</td>
</tr>
<tr>
<td>28.20 Chapter 17: Native townships</td>
</tr>
<tr>
<td>28.21 Chapter 18: The ‘vested lands’ in Whanganui</td>
</tr>
<tr>
<td>28.22 Chapter 19: Māori farm development in the twentieth century</td>
</tr>
<tr>
<td>28.23 Chapter 20: Waimarino in the twentieth century</td>
</tr>
<tr>
<td>28.24 Matapihi 4: Waikune Prison</td>
</tr>
<tr>
<td>28.25 Chapter 21: Socio-economic issues</td>
</tr>
<tr>
<td>28.26 Chapter 22: Whanganui National Park</td>
</tr>
<tr>
<td>28.27 Chapter 23: Introduction to local issues</td>
</tr>
<tr>
<td>28.28 Chapter 24: Northern Whanganui local issues</td>
</tr>
<tr>
<td>28.29 Chapter 25: Central Whanganui local issues</td>
</tr>
<tr>
<td>28.30 Chapter 26: Southern Whanganui local issues</td>
</tr>
<tr>
<td>28.31 Chapter 27: Prejudice, causation and culpability</td>
</tr>
</tbody>
</table>

| Appendix I: Record of Claimant Groups and Hearings | 1539 |
|------------------------------------------------------|
| 1.1 The 66 claims filed in the Whanganui district inquiry | 1539 |
| 1.2 Claimant groupings, claimants, claims | 1542 |
| 1.3 Tribunal hearings and site visits | 1551 |

| Appendix II: New Claims | 1559 |
|-------------------------|
| 11.1 New claims that filed evidence | 1559 |
| 11.2 New claims that did not file evidence | 1562 |

| Appendix III: Survey Charges in Whanganui, 1866–1900 | 1563 |

| Appendix IV: Discrete Remedies Pilot | 1567 |
Appendix v: Local Issues Cases Investigated in this Report ....... 1569

Appendix vi: Te Horangapai ............................................................... 1573
vi.1 Introduction ............................................................................. 1573
vi.2 Te Horangapai gravel pit ......................................................... 1573
vi.3 ‘Unproductive’ Land at Te Horangapai ..................................... 1574
vi.4 Conclusions ............................................................................. 1574

Appendix vii: List of Urupā and Wāhi Tapu
Compulsorily Taken for Scenery Preservation ......................... 1577
vii.1 Wāhi tapu and urupā at Mangapāpapa ................................. 1577
vii.2 Urupā on Ahuahu B ................................................................. 1577
vii.3 Wāhi tapu and urupā at Oteapu on Waharangi 2 ................. 1577
vii.4 Puketapu maunga and urupā on Tauakirā 2N ....................... 1577
vii.5 Pukemanu maunga and urupā on Kōiro 1 ......................... 1578
vii.6 Urupā on Paetawa North ....................................................... 1578
vii.7 Urupā and papakāinga on Ōhotu 5 ......................................... 1578
vii.8 Kāinga and urupā at Tīeke in Waimarino 5 ....................... 1578
vii.9 Urupā ‘Puketapu’ on Taumatamahoe .............................. 1578
vii.10 Wāhi tapu, Waiora Spring, near Pīpīriki ......................... 1578

Appendix viii: Select Record of Inquiry ........................................ 1581
Select record of proceedings ..................................................... 1581
Select record of documents ....................................................... 1589
Documents from other records of inquiry .............................. 1626

Picture credits ............................................................................ 1629
Chapter 13: The Waimarino Purchase

13.1 Introduction ................................................. 545
13.2 The parties’ positions ...................................... 548
  13.2.1 What the claimants said ............................... 548
  13.2.2 What the Crown said .................................. 549
13.3 Why was the Crown keen to purchase? ................. 550
  13.3.1 Introduction ............................................. 550
  13.3.2 The people of ‘Waimarino’ .......................... 550
  13.3.3 ‘Waimarino’ ............................................ 550
  13.3.4 Depression and development to 1884 ............... 551
    (1) Policy vacillations ...................................... 551
    (2) The Crown tries to buy the Ōwhango block ......... 552
    (3) Bryce pegs back Crown purchasing .................. 552
    (4) Depression, the railway, and the Rohe Pōtae ....... 552
    (5) Resources ............................................... 554
      (a) Timber ................................................ 555
      (b) Gold .................................................. 555
    (6) ‘Opening up’ the Rohe Pōtae .......................... 555
      (a) The four tribes ...................................... 557
      (b) Government overtures unsuccessful ............... 557
      (c) The Crown keeps up the pressure ................... 557
      (d) The Aotea Pact ...................................... 558
  13.3.5 The Stout–Vogel Government ......................... 559
    (1) Colleagues criticise Ballance’s messages to Māori .. 559
    (2) The Government proclaims the railway route ....... 559
    (3) Tangata whenua remain opposed to intervention .... 560
  13.3.6 Why the Crown was keen to purchase ............... 561
13.4 The Waimarino block application ......................... 561
  13.4.1 Introduction ............................................. 561
  13.4.2 Who were the applicants? ............................ 562
    (1) Te Rangihuatau ........................................ 562
    (2) Tāwhirimatea .......................................... 562
    (3) Tūrehu-o-te-motu ..................................... 562
    (4) Connected with what land? ........................... 562
    (5) Named claimants sufficiently representative? ....... 563
    (6) Our conclusions on the applicants ................... 564
  13.4.3 Was it clear to what land title was sought? ....... 564
    (1) What the claimants said .............................. 564
    (2) What the Crown said .................................. 565
### Volume 2 Long Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(3) What did the law require at the time?</td>
<td>565</td>
</tr>
<tr>
<td>(4) Was the description in the application sufficient?</td>
<td>565</td>
</tr>
<tr>
<td>(a) ‘[T]ae noa ki Owhango’</td>
<td>566</td>
</tr>
<tr>
<td>(b) Taurewa</td>
<td>566</td>
</tr>
<tr>
<td>(c) Potential uncertainty where boundary left rivers and streams</td>
<td>566</td>
</tr>
<tr>
<td>(d) Kirikau and Rētāruke included in error</td>
<td>566</td>
</tr>
<tr>
<td>(e) Inadequacies in description able to be remedied</td>
<td>566</td>
</tr>
<tr>
<td>(5) Overlapping boundaries and applications</td>
<td>567</td>
</tr>
<tr>
<td>(a) Interests of Ngāti Hāua</td>
<td>567</td>
</tr>
<tr>
<td>(b) Interests of Kōpere Tānoa, Tānoa Te Uhi, and Te Whiutahi</td>
<td>569</td>
</tr>
<tr>
<td>(c) Interests of Tūtemahurangi, Waikura, and Te Tarapounamu</td>
<td>569</td>
</tr>
<tr>
<td>(6) Conclusion</td>
<td>569</td>
</tr>
<tr>
<td>13.4.4 What were the issues with the sketch plan?</td>
<td>571</td>
</tr>
<tr>
<td>(1) The Native Land Court Act 1880, as amended in 1883</td>
<td>571</td>
</tr>
<tr>
<td>(2) What the claimants said</td>
<td>572</td>
</tr>
<tr>
<td>(3) What the Crown said</td>
<td>573</td>
</tr>
<tr>
<td>(4) Commentary on the parties’ positions</td>
<td>574</td>
</tr>
<tr>
<td>(5) Producing the Waimarino sketch plan</td>
<td>574</td>
</tr>
<tr>
<td>(6) Surveying the Tūhua district</td>
<td>575</td>
</tr>
<tr>
<td>(7) Crown officers coordinate the sketch plan</td>
<td>575</td>
</tr>
<tr>
<td>(8) Māori reluctance</td>
<td>576</td>
</tr>
<tr>
<td>(9) Consequences</td>
<td>576</td>
</tr>
<tr>
<td>(10) Conclusion</td>
<td>576</td>
</tr>
<tr>
<td>13.4.5 Was the Crown’s involvement proper?</td>
<td>577</td>
</tr>
<tr>
<td>(1) The role that Butler played</td>
<td>577</td>
</tr>
<tr>
<td>(2) The conduct of the land purchase commissioners</td>
<td>578</td>
</tr>
<tr>
<td>(3) The handling of the applications</td>
<td>579</td>
</tr>
<tr>
<td>(4) Other applications for title to land in the block</td>
<td>579</td>
</tr>
<tr>
<td>(5) The court’s practice in managing applications for title</td>
<td>580</td>
</tr>
<tr>
<td>(6) The Crown’s influence on the court’s process</td>
<td>580</td>
</tr>
<tr>
<td>(7) The Crown not involved in prioritising applications</td>
<td>581</td>
</tr>
<tr>
<td>(8) Overlapping applications</td>
<td>581</td>
</tr>
<tr>
<td>(9) The problem of concurrent court hearings</td>
<td>581</td>
</tr>
<tr>
<td>(10) Managing effects of concurrent hearings</td>
<td>582</td>
</tr>
<tr>
<td>(11) Effects of concurrent hearings on tangata whenua</td>
<td>582</td>
</tr>
<tr>
<td>(12) Conclusion</td>
<td>583</td>
</tr>
<tr>
<td>13.4.6 Notice’s effectiveness and legal compliance</td>
<td>583</td>
</tr>
<tr>
<td>(1) Legal requirements</td>
<td>583</td>
</tr>
<tr>
<td>(2) Notice of the Waimarino block application</td>
<td>584</td>
</tr>
<tr>
<td>(3) Complaints about not receiving notice</td>
<td>584</td>
</tr>
<tr>
<td>(4) Associated complaints</td>
<td>585</td>
</tr>
<tr>
<td>13.4.7 Conclusions on the Waimarino block application</td>
<td>585</td>
</tr>
</tbody>
</table>
### Volume 2 Long Contents

<table>
<thead>
<tr>
<th>Section</th>
<th>Title</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>(1)</td>
<td>The applicants and their representative capacity</td>
<td>585</td>
</tr>
<tr>
<td>(2)</td>
<td>The clarity and legality of the application</td>
<td>586</td>
</tr>
<tr>
<td>(3)</td>
<td>The issues with the sketch plan</td>
<td>586</td>
</tr>
<tr>
<td>(4)</td>
<td>The Crown's involvement in bringing the application</td>
<td>587</td>
</tr>
<tr>
<td>(5)</td>
<td>The handling of the applications</td>
<td>588</td>
</tr>
<tr>
<td>(6)</td>
<td>The effectiveness and legality of the notice</td>
<td>588</td>
</tr>
<tr>
<td>(7)</td>
<td>Determination of interests</td>
<td>589</td>
</tr>
<tr>
<td>13.5.1</td>
<td>Introduction</td>
<td>589</td>
</tr>
<tr>
<td>13.5.2</td>
<td>The court's hearing of the Waimarino application</td>
<td>590</td>
</tr>
<tr>
<td>(1)</td>
<td>The advantage of being the applicant</td>
<td>590</td>
</tr>
<tr>
<td>(2)</td>
<td>Te Rangihuatatau includes objectors in his application</td>
<td>591</td>
</tr>
<tr>
<td>(3)</td>
<td>The court cuts out objectors' land on Ruapehu</td>
<td>591</td>
</tr>
<tr>
<td>(4)</td>
<td>The court cuts out land for Ngāti Pare</td>
<td>591</td>
</tr>
<tr>
<td>(5)</td>
<td>Paiura Te Rangikātatu's objection fails</td>
<td>592</td>
</tr>
<tr>
<td>(6)</td>
<td>The court amends the ownership list</td>
<td>592</td>
</tr>
<tr>
<td>13.5.3</td>
<td>Deficiencies and responsibility for them</td>
<td>592</td>
</tr>
<tr>
<td>(1)</td>
<td>How the evidence was tested</td>
<td>592</td>
</tr>
<tr>
<td>(2)</td>
<td>What the law said about establishing ownership</td>
<td>593</td>
</tr>
<tr>
<td>(3)</td>
<td>The Crown's responsibility for the title investigation</td>
<td>594</td>
</tr>
<tr>
<td>(4)</td>
<td>Did Butler's actions constitute Crown breaches?</td>
<td>594</td>
</tr>
<tr>
<td>(5)</td>
<td>Other legal requirements</td>
<td>595</td>
</tr>
<tr>
<td>(6)</td>
<td>What should have happened after title issued</td>
<td>596</td>
</tr>
<tr>
<td>(7)</td>
<td>What happened</td>
<td>597</td>
</tr>
<tr>
<td>(8)</td>
<td>The proper process</td>
<td>597</td>
</tr>
<tr>
<td>(9)</td>
<td>The Crown's role</td>
<td>598</td>
</tr>
<tr>
<td>13.5.4</td>
<td>Conclusion</td>
<td>599</td>
</tr>
<tr>
<td>13.6</td>
<td>The Crown's purchase</td>
<td>600</td>
</tr>
<tr>
<td>13.6.1</td>
<td>Introduction</td>
<td>600</td>
</tr>
<tr>
<td>13.6.2</td>
<td>What the claimants said</td>
<td>600</td>
</tr>
<tr>
<td>13.6.3</td>
<td>What the Crown said</td>
<td>601</td>
</tr>
<tr>
<td>13.6.4</td>
<td>The law relevant to the Crown's purchase</td>
<td>601</td>
</tr>
<tr>
<td>(1)</td>
<td>Legislation privileges the Crown</td>
<td>601</td>
</tr>
<tr>
<td>(2)</td>
<td>The Crown exempt from provisions to protect Māori</td>
<td>602</td>
</tr>
<tr>
<td>13.6.5</td>
<td>The Aramoho hui</td>
<td>602</td>
</tr>
<tr>
<td>13.6.6</td>
<td>The terms of the purchase</td>
<td>603</td>
</tr>
<tr>
<td>(1)</td>
<td>Setting the price</td>
<td>603</td>
</tr>
<tr>
<td>(a)</td>
<td>Officials communicate about the price</td>
<td>603</td>
</tr>
<tr>
<td>(b)</td>
<td>Māori had no input</td>
<td>603</td>
</tr>
<tr>
<td>(c)</td>
<td>Was the price fair?</td>
<td>604</td>
</tr>
<tr>
<td>(d)</td>
<td>Butler settles on a minimum price</td>
<td>604</td>
</tr>
<tr>
<td>(e)</td>
<td>A range of payments</td>
<td>605</td>
</tr>
<tr>
<td>(2)</td>
<td>Reserves</td>
<td>606</td>
</tr>
</tbody>
</table>
13.6.7  Dividing up the land, and relative interests ........................................ 606
(1)  The Crown stymies partition of the block ........................................... 606
(2)  Māori protest in vain ................................................................. 607
(3)  When partition applications could have been heard ............................... 607
(4)  What should have happened? .......................................................... 608
(5)  Butler determines relative shares ...................................................... 608
(6)  Owners dislike Butler’s methods ....................................................... 608
13.6.8  Were Wai marino owners willing sellers? ........................................... 609
(1)  Some were willing ........................................................................ 609
(2)  Motivations to sell ........................................................................ 609
(3)  Expressions of dismay ................................................................... 610
13.6.9  The agents’ modus operandi ............................................................ 610
(1)  Purchase agents eager to buy ............................................................ 610
(2)  Agents conceal the true price ............................................................ 611
(3)  The Crown’s price does not reflect the true acreage ............................. 612
(4)  Butler misleads owners about reserves .............................................. 613
(5)  The Crown’s inducements ............................................................... 613
13.6.10 The purchase of minors’ interests .................................................... 614
(1)  The parties’ submissions ................................................................. 614
(2)  The law regarding interests of minors .............................................. 615
(3)  The Crown’s involvement in appointing trustees ............................... 616
(4)  Involvement of Crown purchase agents suspect ................................ 616
(5)  Crown agents’ interventions ............................................................ 616
(6)  The Crown overrides formal legal process ......................................... 617
13.6.11 Owners try to halt the Crown’s partition ......................................... 618
13.6.12 Conclusions ................................................................................ 618
13.7  Dividing up the land ........................................................................... 620
13.7.1 Introduction ................................................................................ 620
13.7.2 What the claimants said ............................................................... 620
13.7.3 What the Crown said ................................................................ 621
13.7.4 Survey of the block ................................................................ 621
(1)  Grassroots Māori opposition to survey ........................................... 621
(2)  What was the legal situation re the survey plan? ......................... 622
13.7.5 Reducing the number of owners .................................................... 623
(1)  ‘Duplicates’ in the owners’ list .......................................................... 623
(2)  Butler and others wrongly delete list’s ‘duplicates’ ............................. 623
13.7.6 Determining the Crown’s interests ............................................... 624
(1)  The case of those who had not sold ............................................... 624
(2)  The Crown’s case ........................................................................ 624
(3)  Support for the Crown’s case lacking .............................................. 625
(4)  Te Rangihuatua’s written statement ............................................... 625
(5)  The court’s decision ................................................................... 626
(6) The court's awards to those who did not sell.......................... 627
   (a) How the court decided on non-seller block locations ........ 627
   (b) The court probably followed Butler's suggestions .......... 627
   (c) Marr’s hypothesis for Butler’s scheme ..................... 627
   (d) The court had to rely on available evidence .............. 629
(7) Non-attendance at court fatal ...................................... 629
(8) The court determines relative interests of non-sellers ........ 629
13.7.7 Implementing the court’s decision ............................. 631
   (1) Establishing the reserves for those who had sold .......... 631
   (2) Butler’s plan for reserves .................................. 632
   (3) Should more land be reserved? ............................. 632
   (4) The Crown’s unilateral reduction .......................... 633
   (5) Were the reserves sufficient? ................................ 633
   (6) Surveying the non-seller blocks and seller reserves ...... 634
   (7) Missing reserves and areas left out of non-seller blocks 636
       (a) Hayes’s report ......................................... 636
       (b) Loss of some sites inevitable .......................... 637
   (8) Tieke ...................................................... 637
   (9) Kirikiriroa .................................................. 638
13.7.8 Conclusions on the dividing up of the block ................. 639
13.8 What remedies were available? ...................................... 640
   13.8.1 What the claimants said .................................. 641
   13.8.2 What the Crown said .................................... 641
   13.8.3 Applications for rehearing ................................ 641
   13.8.4 Letters and petitions .................................... 642
       (1) Te Hurinui Tūkapua’s petition .......................... 643
       (2) The petition of Kataraina Maihi and 18 others .... 643
   13.8.5 The Native Affairs Committee ..................... 643
       (1) The Native Affairs Committee inquiry 1886 ...... 644
       (2) The Native Affairs Committee’s decision ........ 644
   13.8.6 The protests of Te Kere Ngātaiērua ...................... 645
       (1) Who was Te Kere Ngātaiērua? .......................... 645
       (2) The May 1887 letter .................................... 645
       (3) The 1888 petition ...................................... 645
       (4) The 1890 appeal to Lewis ............................. 645
       (5) Te Kere remains in occupation ..................... 646
   13.8.7 Conclusions .............................................. 646
13.9 Findings ............................................................ 647
   13.9.1 Concessions .............................................. 647
   13.9.2 The application ......................................... 647
   13.9.3 The determination of title ............................. 648
   13.9.4 The purchase .......................................... 649
Chapter 14: Land Issues for Whanganui Māori, 1900–52

14.1 Introduction ............................................. 661
14.2 Seddon’s acknowledgements ............................. 661
14.3 The parties’ positions .................................... 662
  14.3.1 What the claimants said ............................... 662
  14.3.2 What the Crown said ................................. 663
14.4 What the Crown and Māori agreed in 1900 .......... 663
  14.4.1 Introduction ........................................... 663
  14.4.2 Te Keepa’s last words to the Crown ............... 664
  14.4.3 New land legislation debated in 1898 and 1899 .... 665
    (1) Ministers promote the 1898 Bill ...................... 665
    (2) Suggested amendments to the Bill .................... 666
    (3) Bills of 1898 and 1899 both dropped ................. 667
  14.4.4 Parliament passes the 1900 Act ...................... 667
  14.4.5 Land management under the 1900 regime .......... 668
    (1) Options for Māori landowners under the 1900 Act .. 668
    (2) The option of vesting land in the council .......... 668
  14.4.6 Māori representation on district land councils .... 669
  14.4.7 The Aotea District Māori Land Council ........... 669
  14.4.8 The Maniapoto–Tūwharetoa land council ........... 670
  14.4.9 Whanganui Māori support the 1900 regime ........ 673
    (1) Seddon explains the new regime at Pūtiki ........... 673
    (2) Amendments ........................................... 673
  14.4.10 Conclusions on the 1900 Act ....................... 675
14.5 Changes to the 1900 regime .......................... 675
  14.5.1 Introduction ........................................... 675
  14.5.2 Why did the regime change? ......................... 675
    (1) Change afoot ........................................... 676
    (2) Carroll introduces new Bill just before the election 676
  14.5.3 The Stout–Ngata commission of 1907 ................ 677
  14.5.4 Māori representation on Whanganui land boards ... 679
    (1) Moves to change the land boards ..................... 679
    (2) Native Land Amendment Act ends Māori membership .. 679
VOLUME 2 LONG CONTENTS

(3) Parallel changes for Maniapoto–Tūwharetoa district ............... 680
14.5.5 The district Māori land boards in Whanganui ................. 680
14.5.6 The end of the land boards ........................................ 680
14.5.7 Conclusions .............................................................. 681
14.6 The extent of Crown obligations ........................................ 681
14.6.1 Introduction .............................................................. 681
14.6.2 The Public and Māori Trustees – Crown agents? .............. 682
14.6.3 Were land councils and land boards Crown agents? .......... 683
14.6.4 Was the Crown otherwise responsible? ......................... 683
   (1) The composition of councils and boards ......................... 683
   (2) The Crown’s responsibility .......................................... 683
14.7 Findings ................................................................. 684

CHAPTER 15: MĀORI LAND PURCHASING IN THE TWENTIETH CENTURY .... 689
15.1 Introduction .............................................................. 689
15.2 The parties’ positions ................................................... 689
   15.2.1 What the claimants said ......................................... 689
   15.2.2 What the Crown said ............................................. 691
15.3 Taihoa, 1900–09 ........................................................... 692
   15.3.1 Introduction ........................................................ 692
   15.3.2 ‘Completing’ purchases, 1900–05 ............................. 693
      (1) Debate over what ‘completion’ of purchases meant ......... 693
      (2) What the law said in 1899 ....................................... 694
      (3) What the law said in 1900 ....................................... 694
      (4) Were the Crown’s purchases after 1899 ‘completions’? ... 694
         (a) Purchases in Rangitatau ...................................... 694
         (b) Purchases in Taonui ............................................ 695
         (c) Purchases in Ōhura South .................................... 695
         (d) Purchases in Parapara 2 ...................................... 695
         (e) What we can discern from the evidence ................. 695
   15.3.3 Events after the Crown stopped purchasing .................. 696
   15.3.4 The Crown revises its purchasing approach, 1905 .......... 697
   15.3.5 Stout–Ngata on what land Māori could spare ............... 697
   15.3.6 Why Whanganui Māori restarted selling land .............. 698
   15.3.7 Crown purchase agents resume previous practices .......... 700
   15.3.8 Immediate consequences for Māori .......................... 701
   15.3.9 The fairness of the Crown’s prices, 1900–09 ............... 701
      (1) The parties’ positions ............................................. 701
      (2) Difficult to compare and assess land prices ............... 701
      (3) What the Crown was paying ................................... 701
      (4) The equitableness of the prices ............................... 702

Downloaded from www.waitangitribunal.govt.nz
15.4 Crown and other purchasing, 1910–29

15.4.1 Introduction ................................................................. 704

15.4.2 The Native Land Act 1909 .............................................. 705
(1) The Crown advantaged as purchaser ............................... 705
(2) Native reservations .......................................................... 705
(3) Māori land could be Europeanised and sold ..................... 706
(4) Meetings of assembled owners ......................................... 706

15.4.3 The Crown's aims in the 1909 Act ................................. 706

15.4.4 The 1909 Act modified in 1913 ...................................... 708

15.4.5 Crown purchase policy and practices, 1910–29 .............. 708
(1) The Crown purchases from 'single individuals' ............... 710
(2) The Crown makes use of meetings to purchase ............... 710
(3) Meeting rejecting sales does not stop the Crown ............. 711

15.4.6 Serial partitioning and survey liens ............................... 711
(1) Whakaihuwaka ............................................................... 711
(2) Taumatamāhoe ............................................................... 712
(3) Ahuahu ....................................................................... 712
(4) Ōhura South ................................................................. 712

15.4.7 The effect of the Crown's use of proclamations .............. 712
(1) Proclamation orders extended ..................................... 712
(2) Taumatamāhoe 2B2B extensions ................................. 713
(3) Kai Iwi 6E extensions .................................................... 713

15.4.8 Did Māori want to or need to sell? .............................. 713
(1) Sale to realise funds for development ............................. 714
(2) Poverty ................................................................. 715
(3) Debt ................................................................. 715
(4) Outstanding rates ...................................................... 715
(5) The effect of proclamations ......................................... 715
(6) Landholdings fragmented ............................................. 715
(7) Land of poor quality and without access ..................... 716
(8) Owners had moved away ............................................ 716

15.4.9 Prices for Māori land increase from 1910 to 1930 .......... 716
(1) Crown versus private prices ....................................... 716
(2) Government valuations .............................................. 716
(3) 'Land boom' ............................................................. 717

15.4.10 Stout and Ngata's advice on Whanganui land ............. 717

15.4.11 'Sufficiency' and 'landlessness', 1910–30 ..................... 717
(1) The effects on Whanganui land retention ...................... 719
(2) Recommendations had no discernible effect ................ 719
(3) How was the law administered, in practice? ................. 719

15.4.12 Conclusions for the 1910 to 1929 period .................... 720
15.5 Impacts on Māori landholdings since 1930  ........................................ 722
  15.5.1 Introduction  ................................................................. 722
  15.5.2 The Crown focuses less on buying Māori land  ......................... 722
  15.5.3 The Crown legislates for Māori land  ................................ 723
    (1) ‘Uneconomic’ shares under the Maori Affairs Act 1953 ............ 723
    (2) The Hunn and Prichard–Waetford reports ......................... 724
    (3) Status changes under the 1967 amendment Act .................... 724
  15.5.4 Why some Māori continued to sell after 1930 ...................... 724
    (1) Land yields too little income ........................................ 724
    (2) The Crown acquires Raetihi land for multiple reasons .......... 725
      (a) Robert Cribb’s evidence about Mokopuna Tirakoroheke .... 725
      (b) The Raetihi 2B interests of Mere Rora Kupa and others .... 725
      (c) The purchase of other interests in Raetihi 2B and 3B1 ....... 726
  15.5.5 The fate of the Whanganui purchase reserves ........................ 727
  15.5.6 Conclusions on the period from 1930 on ............................. 727

15.6 Findings  ................................................................. 729
  15.6.1 A promising start soon compromised  ................................ 729
  15.6.2 Crown prices for land too low ..................................... 729
  15.6.3 Serial partitions detrimental ....................................... 730
  15.6.4 Stout and Ngata unheeded .......................................... 730
  15.6.5 1909 Act facilitated land loss ..................................... 730
  15.6.6 Ensuring Māori kept sufficient land  ................................ 731

Matapihi 3: The Interests in Māori Land of Mere Kūao  ...................... 737
  M3.1 Introduction  ................................................................. 737
  M3.2 The Murimotu block  .......................................................... 737
  M3.3 Murimotu 5B2A  ................................................................. 738
    M3.3.1 Discussion  ................................................................. 738
    M3.3.2 Findings and recommendations .................................... 740
  M3.4 Murimotu 3B1A  ................................................................. 740
    M3.4.1 Discussion  ................................................................. 740
    M3.4.2 Findings and recommendations .................................... 742
  M3.5 Murimotu 3B1A2  ................................................................. 742
    M3.5.1 Pinus contorta at Karioi State Forest ......................... 742
    M3.5.2 What has been done to tackle the spread ..................... 744
    M3.5.3 Pinus contorta on Murimotu 3B1A2  ............................... 746
    M3.5.4 Funding eradication from Crown forest rents ................. 748
    M3.5.5 Findings and recommendations .................................... 748
  M3.6 ‘Hono whenua, hono tangata, hono wairua’ ......................... 750
Chapter 16: Scenic Reserves along the Whanganui River .......................... 753
16.1 Introduction .................................................................................. 753
  16.1.1 What this chapter is about ...................................................... 753
  16.1.2 Tribunal approach to public works takings ......................... 754
  16.1.3 How this chapter is organised ............................................... 755
16.2 The parties’ positions .................................................................. 755
  16.2.1 What the claimants said ....................................................... 755
  16.2.2 What the Crown said ......................................................... 756
16.3 The Crown acts to protect the scenery .................................... 756
  16.3.1 Introduction ......................................................................... 756
  16.3.2 The Crown’s interest in scenery preservation .................... 757
    (1) The Wanganui River Trust Public Domain ........................... 758
    (2) Uncertainty and carelessness dealing with Māori land .......... 758
      (a) The Ahuahu block ................................................................. 758
      (b) Ōhura South and Taumatamāhoe blocks ............................ 758
      (c) The Trust’s approach to Māori land ................................. 758
  16.3.4 Effect of concern for river scenery on legislation ............. 760
  16.3.5 The Crown’s powers under the 1903 Act ............................ 762
  16.3.6 The Commission’s consultation with Māori ..................... 762
  16.3.7 The Commission’s recommendations ............................... 763
  16.3.8 The Crown resorts to compulsory acquisition .................. 768
    (1) The acquisition of Waiora and surrounding land ............... 768
    (2) Cabinet funds the purchase of 19,000 acres ....................... 769
    (3) Poor process ........................................................................ 769
    (4) Pōtaka whānau land at Atene ............................................. 769
    (5) Preserving forest for scenery and for flood prevention ..... 769
    (6) Conflict .............................................................................. 770
    (7) The Scenery Preservation Amendment Act 1910 ............... 771
  16.3.9 Māori protests and the Crown’s response ......................... 771
    (1) The Pōtaka whanau protests again .................................... 773
    (2) Protest by petition ................................................................ 773
    (3) Holding on to what was left ............................................... 773
  16.3.10 What Māori told the River Reserves Commission .......... 774
    (1) Agricultural land should not have been taken .................... 774
    (2) Māori land targeted for compulsory acquisition ............... 774
    (3) Too much was gone and Māori needed what was left ....... 774
    (4) Wāhi tapu should be returned ............................................ 775
    (5) Māori landowners should have been consulted ............... 775
    (6) Compensation unfair ............................................................ 775
    (7) The mana in the river was theirs ....................................... 775
  16.3.11 The River Reserves Commission’s report ....................... 776
(1) Modest concessions to Māori concerns ........................................... 777
(2) Minority report ................................................................. 777
16.3.12 The Crown's response to the report ........................................ 777
16.3.13 Amount of land taken for scenery preservation ......................... 778
16.3.14 A legacy of bitterness ..................................................... 778
16.3.15 Reserves administration and management ................................. 782
(1) Protection of Māori interests ............................................... 782
(2) The permanent ranger and honorary rangers ................................. 782
(3) No representation ............................................................. 782
(4) Deteriorating state of the scenic reserves .................................... 784
(5) The Wanganui River Scenic Board ......................................... 785
(6) A new era in reserve management .......................................... 785
(7) A move away from local control of scenic reserves ....................... 786
16.3.16 Summary of historical facts .............................................. 786
16.4 Crown wrongs in preserving scenery ........................................ 787
16.4.1 Compulsory acquisition and the Treaty .................................. 787
16.4.2 'In the national interest'? ............................................... 787
(1) The acquisition of Māori land for the Tūrangi township ............... 788
(2) The acquisition of Māori land for the Maraetai Dam .................... 788
(3) Scenery preservation and the national interest ............................. 789
16.4.3 A 'last resort'? ............................................................. 789
(1) Did the Crown inform itself about Māori landholdings? ............... 789
   (a) The Stout–Ngata Commission ........................................... 790
   (b) Wanganui River Reserves Commission ............................... 790
   (c) Interests other than scenery preservation not prioritised ......... 790
   (d) The Crown unprepared to change track .............................. 791
(2) Could Māori afford to lose the land? ..................................... 791
   (a) Economic and cultural consequences .................................. 792
   (b) Revised recommendations to no avail ................................. 792
   (c) Ngāti Hineoneone .......................................................... 792
   (d) Ahakoa he iti, he pounamu (although it is small, it is greenstone) ......................................................... 793
   (e) Loss of commercial opportunity ....................................... 793
   (f) The loss of land of particular cultural significance ............... 794
   (g) The Crown's approach flawed ......................................... 794
(3) Alternatives to compulsory acquisition by the Crown .................... 794
   (a) Māori land use compatible with protecting scenery ............... 795
   (b) The impact on scenery of Pākehā land use .......................... 795
   (c) Supporting mana Māori .................................................. 795
   (d) Alternative sites .......................................................... 796
   (e) Was Māori land the only land suitable for scenic reserves? .... 796
   (f) Other reasons for preferring to take Māori land ..................... 797
(g) Conclusion on alternative sites .......................... 797
(4) The Crown contemplated nothing less than freehold .......................... 797
(a) Negotiation before purchase standard practice .......................... 798
(b) The Scenery Preservation Commission and consultation .......................... 798
(c) Māori would have negotiated .......................... 798
(5) Conclusion .......................... 799
16.4.4 Fair process? .................................. 799
16.4.5 Fair price? .................................. 800
(1) Who? .................................. 800
(2) Arbitration versus the Native Land Court .................................. 801
(3) Compensation is monocultural .................................. 801
16.5 Māori participation in managing reserves .................................. 802
16.6 Findings .................................. 803
16.6.1 Compulsory acquisition breached article 2 .................................. 803
16.6.2 National interest advanced but no exigency .................................. 803
16.6.3 Takings not in last resort .................................. 803
16.6.4 Taking wāhi tapu particularly reprehensible .................................. 804
16.6.5 The Crown must consider if Māori can spare land .................................. 804
16.6.6 Compulsory acquisition regime monocultural .................................. 804
16.6.7 Valuation process .................................. 805
16.6.8 Poor process .................................. 805
16.6.9 Cultural harm .................................. 805
16.6.10 Economic harm .................................. 805
16.6.11 Māori excluded from management of reserves .................................. 805
16.7 Recommendations .................................. 805

Chapter 17: Native Townships .................................. 813
17.1 Introduction .................................. 813
17.2 The parties’ positions .................................. 813
17.2.1 What the claimants said .................................. 813
(1) The legislation, and economic benefits .................................. 813
(2) Pīpīrīki .................................. 814
(3) Taumarunui .................................. 814
17.2.2 What the Crown said .................................. 815
(1) The legislation, and economic benefits .................................. 815
(2) Pīpīrīki .................................. 815
(3) Taumarunui .................................. 816
17.3 Our approach in this chapter .................................. 816
17.4 The legislation .................................. 817
17.4.1 The background to the native townships regime .................................. 817
17.4.2 Interest in townships grows during the 1890s .................................. 817
17.4.3 Genesis of the first native township regime ........................................... 818
(1) Carroll an advocate for native townships ............................................ 818
(2) Seddon thought Māori could not manage their land ....................... 819
(3) Some politicians say scheme ‘draconian’ ........................................... 819
17.4.4 The Native Townships Act 1895 ......................................................... 819
17.4.5 The 1895 regime and Māori occupation ........................................... 820
17.4.6 Public works and costs ........................................................................ 820
17.4.7 A management or advisory role for Māori? ..................................... 821
(1) Examples of Māori involved in land management ............................. 821
(2) No substantive management role for Māori ...................................... 821
17.4.8 A second native townships regime ..................................................... 822
(1) How different was the 1902 regime from that of 1895? .................... 822
(2) The Crown, land councils, and land boards ....................................... 822
17.4.9 Pressure to sell township land grows ................................................ 823
(1) The Liberal Government supports perpetual leases ....................... 823
(2) Landowners in some towns push to be able to sell ......................... 823
17.4.10 The Native Townships Act 1910 ....................................................... 823
(1) What would the new legislation do? ............................................... 823
(2) Bill introduced without discussion with Māori ............................... 824
(3) Perpetual leases and sales of township land allowed ..................... 824
(4) Were Māori interests protected? ............................................... 824
17.4.11 The Native Land Amendment Act 1913 ......................................... 825
17.4.12 The return of land to Māori after 1952 ............................................ 825
17.4.13 Conclusions on the legislative framework .................................... 826
(1) The native townships regime of 1895 ............................................. 826
(2) The second regime of 1902 ................................................................. 826
(3) The changes of 1910 ......................................................................... 826
(4) Finally .......................................................................................... 827
17.5 Pipiriki: establishment and management ............................................. 827
17.5.1 Introduction ...................................................................................... 827
17.5.2 Establishing a township at Pipiriki .................................................. 827
(1) A meeting in 1895 ................................................................. 827
(2) Te Keepa supports Crown involvement ................................. 827
(3) A township at Pipiriki? ................................................................. 829
(4) Agreement? ........................................................................... 830
(5) The three-day hui at Whanganui and Pipiriki ............................ 830
(6) How did the Government respond? ........................................... 831
(7) Did Whanganui Māori understand the 1895 Act? ....................... 832
(8) Te Keepa’s terms ................................................................. 833
(9) Were Te Keepa’s terms accepted? ........................................... 833
(10) Conclusions on establishing a township at Pipiriki .................... 833
17.5.3 Proclamation and survey ............................................................... 834
17.5.4 The financial management of Pipiriki ................................................. 834
(1) Introduction .................................................................................. 834
(2) The economic picture ....................................................................... 834
(3) The management of leases: a declining income ......................... 836
(4) The impact of costs .......................................................................... 837
(5) Conclusions about the economic benefits .................................. 838

17.5.5 Owners’ influence on the management of Pipiriki ....................... 839
(1) Owners have no formal management role until 1958 ................. 839
(2) Owners and the distribution of rents ............................................ 839
(3) Perpetual leases and delays in returning land ......................... 839
(4) Public reserves ............................................................................... 841
(5) Native allotments and problems with partitioning ............... 842
(6) Incorporation and post-1960 issues ............................................. 842
(7) Conclusions about the management of Pipiriki ...................... 844

17.6 Taumarunui: another native township ........................................... 845
17.6.1 Introduction .................................................................................. 845
17.6.2 Setting up Taumarunui ................................................................. 845
(1) Early plans for a town at Taumarunui .................................. 845
(2) Wilkinson sent to discover Māori opinion on a town .......... 847
(3) After Wilkinson’s report ............................................................... 850
(4) The Crown proceeds with a survey before partition .......... 850
(5) The legislative regime under which the township came ...... 850
(6) Simm’s 1903 survey ....................................................................... 851
(7) The proclamation of the town ......................................................... 851
(8) The final town layout: the land council’s plan, 1903–04 .... 852
(9) The land council replies to objections and applications .... 853
(10) Streets and public reserves ............................................................ 854
(11) Conclusions about setting up the town ................................ 855

17.6.3 A Māori role in local government in Taumarunui? .......... 856
(1) Taumarunui township’s first local government body .......... 856
(2) The Native Town Council: a Māori seat at the table ........ 857
(3) The borough council: Māori influence declines further ...... 859
(4) Conclusions on local government in Taumarunui ............... 860

17.6.4 Lease management: the system and Māori ......................... 861
(1) The problems with calculating and distributing rents .......... 861
(2) Short-term leases ......................................................................... 861
(3) Long leases and valuation issues ................................................. 862
(4) Subletting ....................................................................................... 862
(5) How did costs affect rental incomes? ........................................ 863
(6) An additional burden: land taxes ................................................ 863
(7) Paying rates ................................................................................. 864
(8) Local government public works .................................................. 864
### 17.6.5 The sale of township land
1. Why did Māori sell the land? ........................................... 865
2. Lack of Crown remedies for Māori financial problems .......... 867
3. The fairness of the sales process ..................................... 868
4. Did the sales benefit Māori? ........................................... 868
5. Conclusions about the sale of township land ..................... 868

### 17.6.6 The Māori trustee and the remaining leases

### 17.6.7 Māori presence in Taumarunui township
1. Individual native allotments ......................................... 870
2. Mōrero marae (section 1, block XIVA) ......................... 871
   (a) Public works takings ............................................ 872
   (b) Mitigation of prejudice by the returning of land ........ 874
   (c) The partition and sale of land in section 1, block XIVA ... 875
3. Wharauroa marae (block XIX) .................................... 876
   (a) Partitions begin ............................................... 877
   (b) Sales begin ................................................... 877
4. Matapuna ............................................................... 877
5. Taumarunui papakāinga and Ngapūwaiwaha marae ........... 880
   (a) Owners initially resist partition ............................ 880
   (b) Partitions begin .............................................. 880
   (c) Sales ........................................................... 882
   (d) Rezoning ....................................................... 882
   (e) Improvements ............................................... 882
6. Conclusions about Māori presence in Taumarunui ........... 882

### 17.6.8 Conclusions about native townships .......................... 883

### 17.7 Findings on native townships ...................................... 883

#### 17.7.1 Findings on the legislation
1. Consent to the native township legislation ...................... 883
2. Compulsion .......................................................... 884
3. Ownership and management ........................................ 884
4. Survey costs .......................................................... 884
5. Rent distribution ....................................................... 884
6. Perpetual leases ....................................................... 885
7. Land sales ............................................................. 885
8. Māori occupation of the towns .................................... 885
9. Public works provisions .............................................. 885

#### 17.7.2 Findings on Pīpīriki .............................................. 886
1. Setting up Pīpīriki .................................................... 886
2. Economic benefits, and managing Pīpīriki ..................... 886

#### 17.7.3 Findings on Taumarunui ....................................... 887
1. Setting up Taumarunui township .................................. 887
Chapter 18: The ‘Vested Lands’ in Whanganui

18.1 Introduction ......................................................... 899
18.2 The parties’ positions .......................................... 900
  18.2.1 What the claimants said .................................. 900
  18.2.2 What the Crown said ....................................... 901
18.3 Vesting land and setting up leases ............................ 901
  18.3.1 The land and the people .................................... 902
  18.3.2 Māori intentions and aspirations in vesting land ...... 902
    (1) Owners keen to farm the land ............................. 904
    (2) Possible motives for vesting the whole block ............. 905
    (3) Summary of known facts .................................. 906
  18.3.3 Was the process of vesting the land well managed? ..... 906
    (1) Legislative requirements hard to fulfil .................... 906
    (2) Pressures at play ........................................... 907
    (3) Vesting Tauakirā ............................................ 907
  18.3.4 Were the terms of the leases reasonable? ................. 907
    (1) What were the owners’ expectations? ...................... 907
    (2) Preparing to lease the land ................................ 909
    (3) Rules and regulations ..................................... 909
    (4) Meeting about the vested lands in Whanganui ........... 910
    (5) Leases for 42 years, or perpetually renewable? ........ 910
    (6) The failure of the first lease offer ......................... 910
    (7) Regulation 78A – compensation for improvements ........ 910
    (8) Road access ................................................. 911
    (9) The Crown presses for perpetually renewable leases .... 911
    (10) Important meetings of the Aotea Māori land council .... 912
        (a) The meeting on 2 July ................................. 912
        (b) The meetings on 4 and 5 July ......................... 913
        (c) The aftermath of the meetings ......................... 914
        (d) The issue of lease terms goes back to the council .. 914
    (11) The land council decides on lease conditions ............ 914
    (12) Regulation 78A ............................................. 915
    (13) Māori views on compensation for improvements .......... 916
        (a) No limit on improvements that would be compensated . . 916
(b) Māori awareness of redemption issues ...................... 916

(14) Improvements an issue of the day ................................. 917
   (a) Māori councillors surely grasped the implications ........ 917

(15) Trees and timber ......................................................... 917
   (a) Deeds silent on timber ........................................... 917
   (b) Timber on Ōhotu sections ....................................... 918
   (c) Lower royalties ................................................... 918
   (d) Situation different on Raetihi blocks ......................... 919
   (e) The role the Crown played ...................................... 919
   (f) Delivering benefit to landowners from the timber ........ 920

18.3.5 Conclusions on the early years of the vested lands ................. 920
   (1) The Crown compromises surveying and roading ............... 920
   (2) The Crown is pressed for perpetual leases ..................... 921
   (3) Management of costs ............................................. 921
   (4) Managing compensation for improvements ....................... 921
   (5) Managing the timber resource for landowners ................. 921

18.4 Management of the vested land ...................................... 922
18.4.1 Why and how was land permanently alienated? ................... 922
   (1) Sales of vested lands ............................................. 922
      (a) Law on sale of vested land ................................... 923
      (b) Lessees renew pressure to be allowed to buy ............... 923
      (c) The Crown buys vested land in the Tauakirā block .......... 923
      (d) Vested land purchased in Rētāruke .......................... 924
      (e) Vested land in Raetihi 3B1 .................................. 924
   (2) Perpetually renewable leases in Ōtiranui ......................... 924

18.4.2 The Crown and compensation for improvements .................... 924
   (1) Legislative changes ................................................ 924
   (2) Enforcing payment of compensation .............................. 925

18.4.3 Why was rent not set aside to pay compensation? .................. 926
   (1) The first 21-year term ........................................... 926
   (2) The second 21-year term ........................................ 927
   (3) The impact of valuations on rents ............................... 927
      (a) Valuations pre-1910 .......................................... 927
      (b) ‘Residue method’ continued to be used on leases after 1910 ... 927
      (c) New valuation methodology .................................... 928
      (d) ‘Unimproved value’ defined .................................... 928
      (e) Land board seeks legal advice on valuing improvements .... 928
      (f) Improvements not valued on usefulness to property ......... 928
      (g) The decline in value of unimproved land ..................... 929
   (4) Rent reductions during the Depression ............................ 929
      (a) How the relief system worked .................................. 929
      (b) The land board’s application of relief rules ................. 929
(c) Hardship for owners ...................................................... 930
(d) Relief continued long after the Depression ....................... 930

18.4.4 Compensation for improvements investigated ................. 930
(1) Possible solutions debated ........................................... 930
(2) Searching for a solution ............................................... 931
(3) What did owners want? ............................................... 932
(4) Perpetually renewable leases rejected again ...................... 932
(5) Owners favour an overall solution ................................. 932

18.4.5 The 1951 Commission .................................................. 932
(1) Members and terms of reference .................................. 933
(2) Hearings in Wanganui ................................................ 933
(3) The commission’s views and recommendations .................. 933

18.4.6 What agreement did owners and lessees come to? ............. 934
(1) The Government’s 1952 proposals ................................ 934
(2) Negotiations in 1952 and 1953 ...................................... 934
(3) The 1954 legislation ................................................... 935
(4) Was the 1954 Act good for Māori owners or lessees? ........... 935

18.4.7 Conclusions on the 1906–54 period ............................... 936
(1) The vexed problem of compensation for improvements ....... 936
(2) Government did not insist on sinking funds ...................... 937
(3) Royal commission had no ‘magic bullet’ .......................... 937
(4) The Crown responded slowly and poorly ....................... 937
(5) Rent relief for lessees ................................................ 938

18.5 Amalgamation, incorporation, 1955–2009 .......................... 938
18.5.1 The cost of resuming the land .................................... 938
(1) The 1954 Act in action ............................................... 940
(2) Ōhorea Station ......................................................... 940
(3) Other resumptions .................................................... 940

18.5.2 The decision to amalgamate ....................................... 940
(1) The Whanganui Vested Lands Advisory Committee ............. 941
(2) Legislation to amalgamate Whanganui vested lands ............. 941
(3) Application to amalgamate .......................................... 942

18.5.3 Incorporation or trust? ............................................... 942
(1) Owners seek a different kind of trust ............................. 942
(2) The Maori Affairs Amendment Act 1967 ........................ 943
(3) The Crown opposes a statutory trust .............................. 943
(4) Seeking support for an incorporation ............................. 944

18.5.4 Ātihau–Whanganui Incorporation administers the land .... 944

18.5.5 Conclusions on amalgamation and incorporation ............ 945

18.6 Māori occupation of vested land .................................... 946
18.6.1 How and why were the papakāinga reserves created? ........ 946
(1) Land council in charge of papakāinga location, size .......... 947
18.6.2 The system of occupation licences .............................................. 948
(1) Licences rather than leases ......................................................... 948
(2) Licence to occupy for no longer than 36 years .............................. 949
18.6.3 The move to part XVI leases ...................................................... 949
18.6.4 More Māori leave the land ....................................................... 950
(1) Unoccupied papakāinga leased out .............................................. 950
(2) One unoccupied papakāinga not leased ....................................... 951
(3) Evidence about papakāinga near Matahiwi ................................. 951
18.6.5 From part XVI leases to post-1954 leases .................................. 954
18.6.6 Revesting and reservation ......................................................... 954
18.6.7 Were Māori assisted to take up general leases? ......................... 954
(1) Land council rejects concessionary approach ............................... 956
(2) Council holds back 11 sections to allow owners to apply ............... 956
(3) Tiemi Te Wiki seeks the right to farm land ................................. 957
18.6.8 Why Māori did not continue with general leases ...................... 958
18.6.9 Some leases continue in Māori ownership ................................. 958
18.6.10 Conclusions on Māori occupation of vested land ..................... 958
(1) Owners involved in set-up of papakāinga ................................. 959
(2) Legal status and tenure problematical ....................................... 959
(3) Issue of permanent occupation rights left unaddressed ................. 959
(4) The special character of papakāinga land lost ............................ 959
(5) Finally ................................................................. 959
18.7 Findings .................................................................................... 960
18.8 Recommendations ..................................................................... 962

Chapter 19: The Whanganui Māori Economy and Land Development ............................................. 969
19.1 Introduction ................................................................................. 969
19.1.1 The Crown’s obligations ......................................................... 969
19.1.2 A new era? ............................................................................. 970
19.1.3 How this chapter is organised ................................................. 970
19.2 What the claimants Said ............................................................ 970
19.3 What the Crown Said ............................................................... 972
19.4 Whanganui Māori economic development ................................ 972
19.4.1 The nineteenth century ........................................................... 973
(1) The customary economy ............................................................ 973
(2) Response to the new economy .................................................... 973
   (a) Initial economic expansion .................................................... 973
   (b) Setbacks ............................................................................. 973
   (c) Economic recovery ............................................................ 974
19.4.2 The period from the 1880s to the 1930s ................................................. 976
   (1) Transformation of the colonial economy .............................................. 977
   (2) Gradual growth in farming ................................................................. 977
   (3) Subsistence agriculture ..................................................................... 978
   (4) An increase in dairying ..................................................................... 978
   (5) Marginal land prone to ‘reversion’ ...................................................... 979
   (6) Commodity prices, the Depression, and Wanganui ......................... 979
   (7) Māori farmers fall on hard times ......................................................... 979
   (8) Alternatives to farming ..................................................................... 980
   (9) Māori and timber .............................................................................. 980

19.4.3 The 1940s and post-war economies .................................................. 982
   (1) A slow decline in Whanganui ............................................................... 982
   (2) Māori farmers leave the land ............................................................... 982
   (3) Some owners keen to farm the land ...................................................... 983
      (a) Kaiwhaiki ....................................................................................... 983
      (b) Mangaporou Ahu Whenua Trust ..................................................... 983
   (4) Other employment ............................................................................. 983

19.5 The obstacles to land development ..................................................... 985
   19.5.1 Land quality .................................................................................. 985
   19.5.2 The amount of land ..................................................................... 987
   19.5.3 Farm size ....................................................................................... 987
   19.5.4 The land title system .................................................................. 989
      (1) No legal means for groups to operate effectively ......................... 989
      (2) Incorporation not popular ............................................................... 989
      (3) Multiple ownership a problem ....................................................... 990
      (4) Partitioning issues ........................................................................ 990
   19.5.5 Farming experience and education ................................................. 991
      (1) Stout and Ngata want Māori educated in farming ..................... 991
      (2) Formal education ........................................................................... 991
   19.5.6 Finance for Māori farmers ............................................................. 992
      (1) Crown policy up to 1900 ................................................................. 992
      (2) Mortgages on Māori land ............................................................... 993
         (a) What the available figures show ................................................. 993
         (b) Mortgages we know about .......................................................... 993
         (c) Land loss as a result of failed mortgages ................................. 994
         (d) Paternalism of the land board .................................................... 994
         (e) Other forms of security .............................................................. 994
      (3) The Advances to Settlers Office ..................................................... 995
         (a) Strict rules for Māori borrowers ................................................. 995
         (b) Carroll fails to get a change in the rules .................................. 995
      (4) Crown response to need for development loans ....................... 995
         (a) Legislative amendments ............................................................ 996
(b) More efforts to get State advances to Māori ............... 996
(c) The success of the measures .............................. 996
(5) Conclusions on mortgage finance for Māori ................. 997

19.6 Land development schemes .................................. 997
19.6.1 Introduction ............................................. 997
19.6.2 The Morikau scheme ...................................... 997
(1) How and why the land was vested ............................ 998
(2) How Morikau was to operate ................................. 999
(3) Development begins ......................................... 1000
(4) Resistance to the scheme .................................... 1002
(5) Scheme finances and management ............................ 1002
   (a) Complaints about management .............................. 1002
   (b) Growing debt ............................................. 1003
   (c) Owners’ discontent ....................................... 1003
   (d) Better days ............................................... 1004
(6) Owner-occupied farms, employment, and training .......... 1005
   (a) What about training? ...................................... 1006
   (b) Owners get freehold lots .................................. 1006
   (c) New manager disinclined to employ owners .......... 1007
(7) Conclusions on the Morikau scheme .......................... 1007
19.6.3 The development schemes of the 1930s ..................... 1008
(1) Ngata’s vision ................................................. 1008
(2) The structure ................................................ 1008
19.6.4 The Rānana scheme ....................................... 1009
(1) An overview ............................................... 1009
(2) Was the Rānana scheme well run? ......................... 1009
   (a) The structure initially worked well ..................... 1009
   (b) Problems emerge ........................................ 1011
   (c) Noxious weed control .................................... 1013
   (d) Farm shape and size .................................... 1013
   (e) Debt ................................................ 1015
   (f) The station debt grows ................................... 1015
   (g) Further large investment ................................. 1016
   (h) The end of the development scheme .................... 1016
(3) Did the scheme have benefits for owners? ................. 1016
19.6.5 Smaller schemes .......................................... 1017
(1) Aramoho .................................................... 1017
(2) Kōpuaruru ................................................. 1017
(3) Conclusion ................................................ 1018
19.7 Post-war rehabilitation assistance ............................. 1018
19.7.1 Rules for rehabilitation scheme applications .......... 1018
19.7.2 The Raetihi Farm Settlement ................................ 1019
Chapter 20: Waimarino in the Twentieth Century

20.1 Introduction ........................................... 1033
  20.1.1 What happened in the late nineteenth century history: recapitulation ... 1033
  20.1.2 Māori land in the Waimarino block in 1900 .............................. 1035
  20.1.3 What the claimants said .............................................. 1038
  20.1.4 What the Crown said .............................................. 1038
20.2 Stout and Ngata’s hopes for development .................................... 1039
  20.2.1 The Stout–Ngata commission and Waimarino ......................... 1039
    (1) Land for Waimarino owners wanting to farm ............................. 1039
    (2) Waimarino land for others to lease ..................................... 1040
    (3) An optimistic vision .............................................. 1040
  20.2.2 Waimarino 3 owners’ aspirations for development .................... 1041
20.3 First wave of land alienation, 1910–30 ..................................... 1042
  20.3.1 Introduction ........................................... 1042
  20.3.2 The Crown compulsorily acquires Waimarino land .................... 1042
    (1) Waimarino 4 takings all breached the Treaty ............................. 1044
    (2) Waimarino 4B2 particularly hard hit ..................................... 1044
    (3) Waimarino 4 targeted for public works takings? ......................... 1044
    (4) Land taken for defence purposes ..................................... 1045
    (5) Land taken for a scenic reserve ..................................... 1046
    (6) Compensation .............................................. 1046
    (7) Notice not required for defence taking ..................................... 1046
    (8) The Crown argues that there was de facto notice ......................... 1047
    (9) Consultation .............................................. 1048
  20.3.3 Other Crown purchases .............................................. 1048
    (1) A small minority of owners decide to sell blocks ......................... 1048
    (2) Waimarino 7 .............................................. 1049
    (3) Waimarino B3B2B .............................................. 1049
    (4) Waimarino B3B2A and Kākahi .............................................. 1050
      (a) The descendants of Tūtemahurangi ..................................... 1050
      (b) Tūtemahurangi whānau return to Kākahi ..................................... 1051
(c) Whānau propose land exchange to get a foothold in Kākahi . . 1051
(d) Haggling over terms ............................................. 1052
(e) The Crown drives a hard bargain ......................... 1052
(5) Waimarino F and Waimarino 8 .......................... 1053
(a) Background .......................................................... 1053
(b) Minority votes in favour of sale ......................... 1054
(c) The māmae of Ngāti Waewae ............................ 1054
20.3.4 Private purchasing ............................................. 1054
(1) Why Waimarino Māori sold their remaining land ..... 1055
(2) Waimarino 3 .......................................................... 1055
(3) Waimarino A .......................................................... 1056
(4) Waimarino E .......................................................... 1056
(5) Waimarino CD .......................................................... 1057
(6) Waimarino 2 .......................................................... 1057
(7) Waimarino 5 .......................................................... 1057
(8) Waimarino 6 .......................................................... 1057
20.4 The cases of Tawatā and Kaitieke ......................... 1058
20.4.1 Introduction ..................................................... 1058
20.4.2 Tawatā ............................................................. 1058
(1) The process of determining ownership of the reserve ..... 1058
(2) Karanga Te Kere resists sale of Tawatā interests .......... 1060
20.4.3 Kaitieke ............................................................. 1060
(1) Te Kere’s people living on land slated for settlement ...... 1060
(2) Mix-up at Paitenehau ............................................. 1062
(3) The Crown reneges on the five-acre reserve .............. 1062
(4) The fate of the Paitenehau reserve ......................... 1063
20.4.4 Conclusion ....................................................... 1063
20.5 Whakapapa Island (Moutere) ............................... 1064
20.5.1 Introduction ..................................................... 1064
20.5.2 Whakapapa Island and its original owners .......... 1065
(1) Ngāti Hikairo and Ngāti Manunui customary interests .... 1066
(2) The importance of Whakapapa Island .................... 1066
20.5.3 Whakapapa Island and the Crown ...................... 1066
(1) The island’s owners ............................................... 1067
(2) Ownership contested ............................................ 1067
(3) The Crown investigates ....................................... 1067
(4) Wrong advice ..................................................... 1068
(5) Whakapapa Island becomes a scenic reserve .......... 1068
20.5.4 Conclusion ....................................................... 1068
20.6 A lull in land purchasing, 1930–50 ......................... 1069
20.6.1 Remaining land less attractive to purchasers .......... 1069
20.6.2 Problems with access ....................................... 1070
### 20.7 Second wave of land alienation, 1951–75

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20.7.1</strong> Introduction</td>
<td>1072</td>
</tr>
<tr>
<td><strong>20.7.2</strong> The Crown buys Waimarino 4A1, 4A2, 4A3, 4A4</td>
<td>1073</td>
</tr>
<tr>
<td>(1) The Crown tries to purchase land in Waimarino 4A</td>
<td>1073</td>
</tr>
<tr>
<td>(2) The owners of Waimarino 4A3 hold out</td>
<td>1073</td>
</tr>
<tr>
<td>(3) The Crown's purchase of Waimarino 4A</td>
<td>1076</td>
</tr>
<tr>
<td><strong>20.7.3</strong> Private purchasing</td>
<td>1076</td>
</tr>
<tr>
<td><strong>20.7.4</strong> Why Māori owners sold, 1950–75</td>
<td>1076</td>
</tr>
<tr>
<td>(1) The system facilitated sale</td>
<td>1076</td>
</tr>
<tr>
<td>(2) Partitions reduced viability</td>
<td>1077</td>
</tr>
<tr>
<td>(3) Fractionation</td>
<td>1077</td>
</tr>
<tr>
<td>(4) The law changes in 1967</td>
<td>1077</td>
</tr>
<tr>
<td>(5) A majority quorum stipulated in 1974</td>
<td>1078</td>
</tr>
<tr>
<td>(6) The case of Waimarino 6A3B</td>
<td>1078</td>
</tr>
<tr>
<td>(7) The legislation disempowered communities</td>
<td>1078</td>
</tr>
<tr>
<td><strong>20.7.5</strong> The 'Europeanisation' of Māori freehold land</td>
<td>1079</td>
</tr>
</tbody>
</table>

### 20.8 Māori land in Waimarino today

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20.8.1</strong> The amount of Māori land left</td>
<td>1079</td>
</tr>
<tr>
<td><strong>20.8.2</strong> The land and people today: ongoing frustrations</td>
<td>1082</td>
</tr>
<tr>
<td>(1) The Pēhi whānau and Waimarino 4B2</td>
<td>1082</td>
</tr>
<tr>
<td>(2) Poor access frustrates other owners</td>
<td>1082</td>
</tr>
<tr>
<td>(3) Too many owners</td>
<td>1082</td>
</tr>
<tr>
<td>(4) Ahi kā</td>
<td>1082</td>
</tr>
</tbody>
</table>

### 20.9 Findings

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20.9.1</strong> Proposals for partnership, 1900–10</td>
<td>1083</td>
</tr>
<tr>
<td><strong>20.9.2</strong> A failure of active protection, 1911–30</td>
<td>1083</td>
</tr>
<tr>
<td><strong>20.9.3</strong> Whakapapa Island</td>
<td>1085</td>
</tr>
<tr>
<td><strong>20.9.4</strong> Fewer purchases but other problems, 1931–50</td>
<td>1085</td>
</tr>
<tr>
<td><strong>20.9.5</strong> Sales by meetings of assembled owners, 1951–75</td>
<td>1086</td>
</tr>
<tr>
<td><strong>20.9.6</strong> General findings</td>
<td>1086</td>
</tr>
</tbody>
</table>

### 20.10 Recommendations

<table>
<thead>
<tr>
<th>Section</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>20.10.1</strong> Land taken for defence purposes from Waimarino 4B2</td>
<td>1087</td>
</tr>
<tr>
<td><strong>20.10.2</strong> The five acres at Paitenehau</td>
<td>1087</td>
</tr>
<tr>
<td><strong>20.10.3</strong> Whakapapa Island (Moutere)</td>
<td>1087</td>
</tr>
</tbody>
</table>
13.1 Introduction

In 1886, the Crown set about purchasing the Waimarino block. The purchase was significant to our inquiry for a number of reasons.

First, the land area comprised in the block was truly vast. Located in the north-eastern reaches of our inquiry district, it is variously computed as 707 square miles, 1,830 square kilometres, and approximately 452,196 acres. This is one-sixth of our entire inquiry district. The block stretched from Taumarunui in the north to Hukaroa, a hill a few kilometres south of the present town of Raetihi; and from near the meeting point of the Tāngarākau and Whanganui Rivers in the west to the Whakapapa River in the east.

Many Māori had interests in this land, for it incorporated to some extent the rohe of more than 40 hapū. They included many Whanganui groups; surviving groups of early ‘tangata whenua’ (pre-waka) people such as Ngāti Hotu; and hapū strongly associated with Ngāti Tūwharetoa and Ngāti Maniapoto.1

Securing the block was an important part of the Crown’s plan to complete the construction of the North Island main trunk railway, seen as vital to the rejuvenation of a depressed economy. Waimarino was the largest single Crown purchase in the North Island, and to buy it the Crown deployed many of the dubious practices we described in chapters 8 and 10.

The block’s location ensured that the purchase was politically dynamic. Part of it lay within the Rohe Pōtae, and was the territory of northern Whanganui groups who supported the Kingitanga. The Rohe Pōtae was the subject of a political agreement between the Crown and Kingitanga leaders about the passage of the railway and the operations of the Native Land Court there.

In December 1885, the Native Land Court received an application to determine the title of the Waimarino block. In March 1886, after a hearing over a two-week period in which the court sat for just four days, the court awarded the block to approximately 1,000 Māori from a number of hapū. By April 1887, the Crown had succeeded in purchasing 411,196 acres, comprising the interests of more than 80 per cent of those owners, before setting aside 33,140 acres in reserves. Thus, in a period of just over a year, a huge tract of customary land was taken through the Native Land Court and permanently alienated from its traditional ownership.

In this chapter, we consider how the Crown managed to buy so much land so quickly, and whether its methods of purchase breached Treaty principles. We also consider how the purchase affected the many groups with interests there.
In broad terms, the claimants argued that the Crown’s process for purchasing the Waimarino block, from its involvement in the application for title determination to the establishment of reserves, was deceitful. They said that there was overwhelming evidence for us to conclude, on the balance of probabilities, that the Crown acted in bad faith when purchasing it, and that the purchase breached Treaty principles. The breaches ‘resulted in the loss of hundreds of thousands of pounds in terms of land value to the Maori owners’.2

The Crown, in its opening submissions, acknowledged that it purchased the Waimarino block at ‘a price that was substantially less than the price that Crown officials had previously set for the purchase of the Block’. Its officials were aware of valuable timber resources on the block, and those resources were not reflected in the price paid. The Crown conceded that

> [it] failed in its purchase of the Waimarino Block to ensure it paid a fair price for the land, including its resources. The purchase at this price did not live up to the standards of good faith and fair dealing that found expression in the Treaty of Waitangi, and this was a breach of the Treaty of Waitangi and its principles.3

In closing, the Crown amplified how it failed to comply with the high standards expected of it as a privileged purchaser of Māori land:

- it discouraged owners’ applications to partition individual interests in the block, although the court had not determined relative interests;
- it purchased shares based on its own assessment of the relative shares of the owners;
- it did not provide full information to owners about how it fixed the price; and
- the reserves it allocated to sellers were less than the deed appears to have contemplated.

Counsel went on to concede that the Crown’s purchase of the Waimarino block failed to meet the standards of reasonableness and fair dealing that found expression in the Treaty of Waitangi and was a breach of the Treaty of Waitangi and its principles.4

However, the Crown rejected many of the claimants’ other allegations, arguing that while there were undoubted aspects of the Waimarino purchase that could be criticised as irregular, that did not mean that the Crown acted in bad faith.5

Here, we summarise concessions that the Crown made in the course of this inquiry about the Native Land Court and Crown purchasing which, taken together with its specific concessions relating to the Waimarino block, enable us to focus our inquiry in this chapter. The Crown conceded that it:6

- failed to provide communal governance mechanisms, instead enabling individuals to deal with land without reference to iwi and hapū;
- did not protect Māori interests when it was a privileged purchaser of their land, thus breaching standards of good faith and fair dealing;
- diminished the ability of Māori groups to retain land by deploying aggressive purchase techniques, making advance payments, and implementing monopoly powers;
- neither established nor followed a clear process for identifying land that Māori would retain when it purchased large acreages from a particular group;
- did not ensure that groups retained sufficient land for present and future generations; and
- neither ensured that reserves were adequate nor ensured that they were adequately protected from alienation.

In this chapter, we address issues that claimants raised regarding the Native Land Court’s process for determining title, and the Crown’s approach to purchasing interests in the block. We ask:

- Why did the Crown want to purchase land in the Waimarino block?
- How was it brought before the Native Land Court?
- By what process were interests in the Waimarino block determined?
Map 13.1: The Waimarino land block
13.2 The Parties’ Positions
We refer to the parties’ submissions throughout this chapter as we address the questions listed above, but we give a brief outline here.

13.2.1 What the claimants said
The claimants submitted that Māori were disadvantaged by Crown actions at each stage of the Waimarino purchase process, from the application for title to be determined to the setting aside of reserves.

They contended that the Crown manipulated Native Land Court application processes to ensure that the Waimarino title determination proceeded before other applications. Māori with interests in the block were also disadvantaged because the court was determining title to Waimarino in Wanganui in early 1886, when a court in Taupō was simultaneously determining title to Taupō-nui-a-tia subdivisions, including Ōkahukura. Many claimed interests in all three blocks. The claimants accepted that judges of the court (rather than the Crown) decided when to conduct hearings but submitted that the Crown was responsible for the native land legislation, which should have provided ‘a coherent system for notification and some legislative requirement for the court to allow proceedings to be organised to ensure that affected Maori could attend.’ The claimants also argued that the Crown’s direct control over the ‘gazettal process’ (the process of publicly notifying applications to the court) meant that the Crown could decide which applications were notified. In this way, the Crown was responsible for the clashing court dates, which
left some of those with interests in Waimarino unable to attend title determination hearings.\textsuperscript{10}

The claimants alleged that the purchase of the Waimarino block was directed from the highest level of Government and carried out despite Māori opposition.\textsuperscript{11} They pointed out many dubious aspects of the purchase, including an anomalous deed of purchase.\textsuperscript{12} The Crown’s Treaty duties toward Māori were ‘no less than the standard required for trustees in the law at time’,\textsuperscript{13} but it did not meet it.

The claimants said that there was no informed consent to either the purchase area or the price; that Crown officials misled Māori regarding the partitioning of the block; and that the Crown illegally purchased minors’ interests.\textsuperscript{14} The Crown neither determined whether owners would have sufficient land left for their support nor made reserves adequate for needs. It did not abide by the terms of the deed regarding reserves’ extent and location.\textsuperscript{15} All of these factors led the claimants to contend that ‘outside of confiscation, it is rare to find such duplicity, illegality, bad faith and large scale prejudice in combination.’\textsuperscript{16}

\subsection*{13.2.2 What the Crown said}

We have already outlined the Crown’s concessions regarding the purchase of the Waimarino block and the price that it paid. These acknowledgements aside, the Crown did not consider that its conduct was improper, and rejected any assertion that it had acted in bad faith.\textsuperscript{17}

The Crown also denied that it interfered with the title determination process in the Native Land Court, submitting that the hearing progressed quickly due to the lack of opposition from Māori.\textsuperscript{18} It submitted that some of the issues raised by the claimants wrongly attributed functions of the court to the Crown, noting, for example, that the Crown was not responsible for deciding when hearings would occur.\textsuperscript{19}

The Crown submitted that little could be inferred from its buying so many interests in the block so quickly. It said
that this happened because the Government organised finance to develop major infrastructure and encourage settlement for rapid economic stimulus during a lengthy depression. The Crown was acting in its own interests when purchasing the block, not as a fiduciary (or trustee) for the owners. Its duty towards Māori was to ‘deal fairly with those who wished to sell.’

13.3 Why Was the Crown Keen to Purchase?

13.3.1 Introduction

In the years up to 1885, the Crown purchased comparatively little land in the upper Whanganui district. Crown officials like James Booth, the Crown’s land purchase officer for Whanganui in the early 1880s, recommended against the Crown’s purchasing land in the area that became the Waimarino block, because it was too remote to be of benefit to the colony. The decision to buy land there thus signalled a policy change, for which there were two main drivers: the need to stimulate the colonial economy in a time of depression; and the desire to challenge the dominance of the Kingitanga in the central North Island by ‘opening up’ the Rohe Pōtae.

13.3.2 The people of ‘Waimarino’

Before proceeding further, we explore a little further who the people were whose interests were affected by the Crown’s activities in this huge block.

Many of the more than 40 hapū with interests in Waimarino were Whanganui groups, while others on the Whakapapa River side, and to the north about the upper Whanganui River, were strongly associated with the Tūwharetoa and Maniapoto peoples, including Ngāti Manunui, Ngāti Rangatahi, Ngāti Waewae, Ngāti Hikairo, Ngāti Hinewai, and others. In the same area there were also surviving groups of early ‘tangata whenua’ (pre-waka) people, such as Ngāti Hotu. These groups’ interests extended over the central mountains where western slopes reached into the wide region known as Tūhua, which extended northwards into the Rohe Pōtae and southwards into the Waimarino block at least as far as the Rētārake River. In more or less the same areas, but generally to the west and down the upper Whanganui River, lived the many hapū associated with Ngāti Hāua: Ngāti Hāuaroa, Ngāti Hekeāwai, Ngāti Tū, Ngāti Rangi, Ngāti Reremai, and others (see chapter 2).

In the south-east of what became the Waimarino block was ‘Waimarino proper’ – the open plains north of the Manganui-a-te-ao River. Westwards to the Whanganui River and beyond were the rohe of the many hapū associated with Tamakana, Tamahaki, and Uenuku. The descendants of Tamakana included Ngāti Tamakana themselves, in whose name the Waimarino block was claimed; Ngāti Maringi, who claimed the Taumatamahoe block; and at least 12 other hapū. Tamahaki groups, such as Ngāti Hinekura, Ngāti Tūkoio, and others, lived at Tieke, Tata, Parinui, and other settlements on the upper Whanganui, often with Ngāti Taipoto and Ngāti Ruru. Ngāti Uenuku groups dominated the Manganui-a-te-ao Valley and Waimarino Plains. At the time of the purchase many of these groups were often based at Ruakākā, on the Manganui-a-te-ao River. On the eastern edge of the Waimarino Plains was the well-known kāinga, Ngātokoērua, home then to chiefs of the Tūroa family (see chapter 2).

13.3.3 ‘Waimarino’

Some of the claimants in our inquiry said that the nomenclature of the Waimarino block was erroneous: they knew the land in the vast block by other names.

Ngāti Tūwharetoa, for example, told us that they knew of no area called Waimarino, but the block included districts they called ‘Tūhua’ (or ‘Te Puru ki Tūhua’), Whanganui, and Tongariro. The name ‘Tongariro’ covered land south-west of Mahuia on the north-western flanks of Ruapehu, including what became the Rangataua block, as well as land north and north-east of the Whanganui inquiry boundary. The name Ōkahukura applied to some of those parts. South of the districts of Tongariro, Ōkahukura, and Tūhua lay the “Whanganui”

Māori told early Pākehā explorers their names for places in what became the Waimarino block. In 1883, James Kerry-Nicholls, travelling with an interpreter, reached the Waimarino Plains, travelling there from Murimotu and the land south of Ruapehu via the river.
Māori gave various names for different parts of the Waimarino block during the title determination and partition hearings. In the 1886 title determination hearing, Paiura Te Rangi-katatu of Ngāti Kaponga stated that Ōmahurangi was the proper name for the part of the block he claimed. Witnesses in the partition hearing of 1887 referred to the south-eastern part of the block as ‘Waimarino proper’. Also in 1887, Te Kere Ngātaíērua of Ngāti Tū and Te Huiatahi of Ngāti Wae wae wrote to the Native Minister informing him that the Waimarino block included:

Mangatiti, Patarua, Matahiwi, Ruatiti, Ria ria k i, Nga- puarakau, Te Kapango, Makaretu, Te A roorahanga, Paritea, Apokowero-o-huia, Tutaepatua, Oio, Kawakitatu, Otautawa and Manganui-Taurewa and all its parts.  

Because hapū knew the many districts within the block by these other names, some claimants criticised the term ‘Waimarino block’, noting historian Cathy Marr’s observation that Waimarino was an artificial construct.

13.3.4 Depression and development to 1884
(1) Policy vacillations
Between 1865 and the end of the century, governments were constantly attending to Māori land administration. The extent to which central government controlled the purchase of Māori land changed often over this period. When the Native Lands Act 1865 was passed into law, the Crown abandoned pre-emption and withdrew from purchasing Māori land. Māori were free to deal with private interests. Then, in 1870, the Fox-Vogel administration’s Immigration and Public Works Act saw the Crown re-enter the land market. The Act was the means by which the colonial treasurer, Julius Vogel, sought to invigorate the economy, acquiring loans to finance the rapid expansion of both infrastructure and land settlement (see chapter 8). Subsequently, in 1877, Harry Atkinson’s short-lived administration (September 1876 to October 1877) took the Crown out of the land market again, drafting its Native Land Court Bill to sponsor a return to fully-fledged private purchasing of Māori land. Grey succeeded Atkinson in short order, and his administration (October 1877 to October 1879) rapidly expanded the Crown’s land purchase activities. The so-called ‘continuous ministry’ of Hall (October 1879 to April 1882), Whitaker (April 1882 to September 1883), and Atkinson (September 1883 to August 1884) curtailed Crown purchasing and abandoned some purchase negotiations. The rise of the Stout-Vogel administration (September 1884 to October 1887) saw another swing back to active intervention in the land market, with Vogel enthusiastically promoting Crown purchase of Māori land for infrastructure development and the expansion of Pākehā settlement.
Crown purchasing in the Waimarino district followed these philosophical and policy shifts. Activity expanded in the upper Whanganui district, of which the Waimarino block forms part, following the passage of the Grey administration’s Government Native Land Purchases Act 1877. The Act was intended to facilitate the completion of purchases that the Crown had initiated, but Crown agents used it to exclude private purchasers from the Māori land market and commence new purchases. Under it, the Crown could issue proclamations that excluded private interests from negotiating for land. The proclamations had no time limit, and endured until such time as the Crown officially lifted them – ousting private interests indefinitely from large areas at little cost to the Crown (see section 10.7.1). Between 1879 and 1881, the Crown completed purchases of 161,940 acres from 11 blocks proclaimed under the 1877 Act. An area covering about a million acres was proclaimed as being under negotiation, including the area that the Crown called the Ōwhango block (see section 12.3.2).³

(2) The Crown tries to buy the Ōwhango block

Like most land in the upper Whanganui, land in the Ōwhango block had not been through the Native Land Court. Booth described the block as extending from the Kawautahi block (near the Kirikau block) to Mount Ruapehu and Lake Taupō, and estimated that it contained 500,000 acres. It was said to comprise both open land and tōtara forest. According to Booth, it was the rangatira Tōpine Te Mamaku who proposed the sale of this land to the Crown. He had fought against the Crown during the wars of the 1860s; why he would have favoured such a sale is unclear. Booth reported considerable opposition among the supposed owners of the block when he first met with them, although he said that this fell away at subsequent meetings.³²

The Government proclaimed the block as being under negotiation for purchase in 1879, thereby excluding private purchasers. By this time the block’s boundaries had changed from Booth’s earlier description, and it no longer went as far as Taupō. Marr suggested that it encompassed the northern part of what became the Waimarino block.³⁵ However, a map in a Government report of 1884 shows the Ōwhango block, now estimated at 300,000 acres, located within the boundaries of what became Waimarino, with the Manganui-a-te-ao River marking much of its southern boundary.³⁴ By June 1879, Booth had paid £310 17s 4d for interests in Ōwhango, plus £14 on food and other expenses – but he did not complete the purchase.³⁵

(3) Bryce pegs back Crown purchasing

In October 1879, Crown purchasing policy shifted again with the formation of the Hall administration and the appointment of John Bryce as Native Minister. Bryce opposed what he viewed as the indiscriminate purchases of the previous Government, singling out the west coast of the North Island as a region where the land the Crown was buying was too rugged for settlement (see section 10.7.2). Bryce remained Native Minister for most of the next five years and during this period he consolidated existing Crown purchases, completing some and abandoning others.

In 1881, Booth reported that much of the land under negotiation in the Whanganui district was accessible only by river. Its remoteness made it undesirable for settlement, and ongoing Māori opposition to surveys made purchase difficult.³⁶ From 1882 to 1885, the Crown completed purchases in only two blocks, totalling 56,180 acres.³⁷ It did not, however, abandon all its negotiations, and proclamations often remained in place.

(4) Depression, the railway, and the Rohe Pōtae

The severe economic downturn that took hold in the early 1880s was another reason for the Crown to buy less land. Yet, paradoxically, it was the Depression that triggered the Crown’s rapid purchase of the Waimarino block, for the Government seized on completing the North Island main trunk railway from Wellington to Auckland as a much-needed economic boost. The project would stimulate economic activity, and the railway would also give access to extensive areas of the central North Island suitable for farming.³⁸ Despite discomfort about the level of public debt, the Government passed legislation in 1882 enabling it to borrow one million pounds to finish the railway.³⁹
Although the final route of the track was not settled until 1885, it was clear that a large section would need to run through the Rohe Pōtae and land to the south of it. 40

It will be recalled that the Rohe Pōtae was the name given to a large district in the central western North Island that was the territory of hapū aligned to the Kingitanga. The wars of the 1860s in Taranaki and Waikato divided the North Island, and afterwards the Kingitanga withdrew to the Rohe Pōtae. Pākehā were largely excluded from the area, which comprised nearly one-sixth of the North Island. Much of the upper Whanganui district lay within it, including most of what became the Waimarino block. As Professor James Belich famously pointed out, the Kingitanga managed to maintain a virtually autonomous Māori district from 1864 to at least 1881, and perhaps even up to 1890. For nearly two decades, the Rohe Pōtae aukati

Tōpine Te Mamaku (right) and Taiaho Ngatai, Tawatā, King Country, 1885. Tōpine Te Mamaku was a prominent chief who was originally left off the list of owners for the title for the Waimarino block.

13.3.4(4)
(blockaded boundary) kept at bay the Native Land Court and Crown purchasing.  

The extent of the Rohe Pōtae is subject to debate. Its southern aukati was sometimes said to be at Marae-kōwhai, just north of the confluence of the Rētāruke and Whanganui Rivers. It also seems to have included the Tāngarākau River valley, and perhaps extended as far south as Utapu (also known as Parinui), just upriver from Tieke.  

Historian Steven Oliver said that the entire Taumatamāhoe block, across the river from Waimarino, was included, apart from a small area south of Parinui.  

Manganui-a-te-ao communities do not seem to have been part of it, yet they were strongly supportive of the Kingitanga, and were regarded as among the political and physical barriers to European expansion.  

Acquiring the Waimarino Plains, the surrounding districts, and everything north of them became a strategic necessity for the Crown if it was to forge ahead with the railway, challenge the Kingitanga, and get settlers into the Rohe Pōtae. Completing the railway and opening up the Rohe Pōtae became entwined as policy goals. Purchase of land for the railway would usher in the Native Land Court for the first time, and once titles were defined and the railway was in place, settlers would come in and build farms.  

Ms Marr told us that the Crown’s purchases of Māori land ‘extended as far as possible into the upper Whanganui district, in an effort to undermine and push back the southern part of the Rohe Pōtae aukati.’ It purchased blocks like Rētāruke and Kirikau, further north and west, ‘in an effort to create a settlement close to the Rohe Pōtae aukati, to assist in undermining it.’ The Crown advanced £7,000 on purchases of blocks of land that were either within or overlapped with what became the Waimarino block, such as Kawautahi and Ngātukuwaru, adjacent to Kirikau and Rētāruke, and in the Ruapehu block.  

These were some of the purchases that the Crown abandoned under Bryce’s retrenchment policy.  

The Crown had not yet abandoned its purchase of the Ōwhango block, for which Booth had been negotiating in 1879.  

With completion of the North Island main trunk railway now firmly in view, officials focused again on acquiring land there, for a significant part of a possible ‘central route’ for the railway ran through it. In fact, the Crown’s proclamation of 1879 still applied to a significant portion of what became the Waimarino block – even though Booth had recommended abandoning the purchases in the district three years earlier.  

(5) Resources  

The availability of valuable resources, both real and rumoured, was another factor behind the Crown’s keenness to purchase land in the wider Waimarino district. Prime among these were timber and gold.
(a) Timber: Timber was known to be plentiful in the region. We noted James Booth’s report on tōtara forest in the Ōwhango block. Its value was confirmed in 1887, when a surveyor employed on the Waimarino survey wrote that ‘the Totara will probably repay the total cost of the [Waimarino] purchase’.49 We have noted the Crown’s concession about this in our inquiry (see section 13.1).50 Timber was also important for constructing the railway, its bridges, and stations.

(b) Gold: During the 1870s and 1880s, Whanganui newspapers regularly published rumours of gold in the upper Whanganui.51 Surveyors Rochfort and Cussen speculated on likely geological sources, with Rochfort opining in 1884 that there ‘was “good land” in the Tūhua district’ where gold might possibly be found.52 Settlers and politicians hoped for a gold rush like that in Coromandel and the South Island.

The Kingitanga movement, including its supporters in the upper Whanganui, blocked gold prospecting inside the aukati, fearing that such activity would see their land taken from them. Some gold prospecting did occur, though. The powerful Ngāti Maniapoto chief Wahanui Huatare protested against gold prospectors in Tūhua in April 1884,53 and that same year rumours of gold there were such that settlers and some Māori formed the Wanganui Gold Prospecting Company, with John Ballance, soon to be Native Minister and later the premier, as its chairman. Ballance tried but failed to secure Māori agreement to gold prospecting in the area, although he gained the support of Te Keepa Te Rangihiwinui.54 Native Minister Bryce declined the Wanganui Gold Prospecting Company’s request for a mining subsidy on the grounds that prospecting on customary Māori land at Tūhua would lead to ‘complications’.55

Ballance appears to have stepped down from the Wanganui Gold Prospecting Company as chairman and shareholder from about August 1884. Nor does he appear to have been involved in two subsequent Whanganui gold-prospecting companies set up in 1885. He was, however, Minister of Mines in this period, and in December 1884 offered a £500 reward for the discovery of any new goldfield. The reward was conditional on the Native Minister or his nominee approving any prospecting, and the consent of landowners.56

On 29 May 1885, the Under-Secretary of the Native Department, TW Lewis, gave the Wanganui Prospecting Association permission to prospect for gold in Tūhua, provided “the Native Chiefs interested in such land” agreed.57 No gold was found. Illegal gold prospecting persisted, and in 1885 Māori captured a party of prospectors in the Tūhua ranges.58

The potential for gold to be discovered was another motivation for the Crown to purchase the Waimarino block.

(6) ‘Opening up’ the Rohe Pōtae

Historian Dr Don Loveridge told us that in 1882 the Crown was initially inclined to wait and see if the Kingitanga would break up of its own accord from internal pressures; various Rohe Pōtae groups were becoming restive under Tāwhiao’s prohibitions against court hearings, surveys, gold prospecting, and road-making.59 Then the Government decided to bring in legislation that anticipated the area opening up.60

We mentioned the Government’s authorising a £1 million loan to complete the railway. To do that, it passed the North Island Main Trunk Railway Loan Act 1882. The preamble stated that ‘the construction of the Main Trunk Railway of the North Island should be proceeded with as soon as circumstances will permit’ and it apprehended that ‘the obstacles in the way of carrying on the extension from [Te] Awamutu may be shortly removed’. Native Minister Bryce negotiated with King Tāwhiao for access to the Rohe Pōtae. He went so far as to present Tāwhiao with a gold medal inscribed ‘Free Pass New Zealand Railways’ at Whatiwhatihoe. Tāwhiao rejected this and other offers, including a partial return of confiscated lands, a house, and official positions.61 Trying to circumvent Tāwhiao, Bryce proceeded without local agreement to authorise a survey of Kāwhia and the laying out of a township there. He also set in motion a trigonometrical survey, and exploration of the King Country for viable railway routes. Charles Hursthouse set about this work, but completed
A massive log slide at Kākahi, northern Waimarino. Timber was recognised as a valuable resource by the Government, and logs were used on site in railway construction.
only part of it before Ngāti Maniapoto chiefs stopped him at Ōtorohanga on 14 March 1883.  

(a) The four tribes: By the beginning of 1883, a group known as ‘the four tribes’, which included rangatira of Ngāti Maniapoto, Ngāti Raukawa, Ngāti Tūwharetoa, and Whanganui, emerged. Historians continue to debate the exact relationship between the four tribes and the Kingitanga, and the Tribunal’s Te Rohe Pōtae inquiry will explore that topic. It suffices to say here that the four tribes came together to develop their own strategy for dealing with the Crown. Later, the support of some Whanganui hapū fell away. Marr noted that the later support of Ngāti Hikairo from Kāwhia sometimes led to confusion about which were the ‘four tribes’.

The leaders of the four tribes established a zone that included all customary Māori land under the Kingitanga, and within it banned the ‘objectionable system’ of the Native Land Court. The zone included part of the Tūhua district in what would become the Waimarino block.

(b) Government overtures unsuccessful: The Government saw an opportunity to encourage a split in the Kingitanga by backing Wahanui of Ngāti Maniapoto, who led what the Government labelled the ‘progressive’ wing of the movement. Seeing Wahanui as easier to deal with, Native Minister Bryce made a concession to him and Taonui: at their request, he halted the trigonometrical survey – although only temporarily. The Government also sought to ease tensions by selectively pardoning chiefs who might obstruct the railway. One such was Ngātai Te Mamaku of Ngāti Hāua. He was implicated in the death of William Moffatt, a gun-runner killed in the Rohe Pōtae in 1880 after he defied the ban on Pākehā entering the zone. These overtures did not win Māori over to Crown involvement there, though. The surveyor Charles Hursthouse was seized and held prisoner for two days when he tried again to establish the line for the railway from Te Awamutu. His captors ill treated him, and Maniapoto chiefs had to come to his rescue.

John Rochfort, the surveyor responsible for finding a route for the railway north from Marton, was prevented from entering the part of Te Rohe Pōtae that would become the Waimarino block at Karioi in Murimotu. He returned to Upokongaro (near Wanganui) to consult Te Keepa Te Rangihiwini. He then travelled north to Ruakākā on the Manganui-a-te-ao River, and met with the principal men there. Some of them would later be involved in the negotiations for Waimarino: Te Kurukaanga, Te Peehi Hitaua Tūroa, Winiati Te Kākahi, Tūrehu, Taumata, and Te Rangihuatua. The men spoke against the railway and against Pākehā entering their land. Having determined to bar the surveyor’s route, they escorted him to Papatupu, near the mouth of the Manganui-a-te-ao, and then arranged for him to be returned down the Whanganui River to Upokongaro.

After securing the public endorsement of Te Keepa at a hui at Rānana, Rochfort resumed his mission. He was stopped, however, at Papatupu and obliged to return once more down the river. Learning that those who had barred his route had dispersed to plant their crops, Rochfort set off again. This time he made it as far as Taumarunui before Ngātai Te Mamaku told him that he could go no further as ‘the country was stopped’. A dozen or so of those who opposed Rochfort’s passage through the area met with him again a few days later, and reaffirmed that they would not allow him to travel on. With no other alternative, the surveyor withdrew to Tokaanu without completing his exploration.

If there was by this time any doubt at all that Te Rohe Pōtae Māori were set against the Crown’s coming into their area, the position was spelled out in June 1883, when the four tribes presented a petition to Parliament calling for the Native Land Court to be barred from their district.

(c) The Crown keeps up the pressure: This resistance was threatening to stall progress on the railway. In November and December 1883, Native Minister Bryce met with Te Rohe Pōtae leaders. He told a meeting at Kihikihi in November that the Government had altered the law in response to criticism of the Native Land Court: there was now money to fund surveys, and lawyers were banned from the court. Why then would Te Rohe Pōtae Māori not
apply to the court for title to the ‘whole of your territory’? He said the court had received applications concerning Te Rohe Pōtae land, but they had been held back so that issues could be discussed with Te Rohe Pōtae leaders. He declared that ‘when people ask to have titles to land investigated to which they have a claim, I recognise it is reasonable, and it can be no longer delayed’.71

Just before the Kihikihi meeting, the assistant surveyor general, Stephenson Percy Smith, sent Bryce’s private secretary a number of court applications that seemed relevant to Te Rohe Pōtae. Percy Smith noted, however, that little was known about the applications and that the boundaries of the land claimed were very rough. Marr told us that these applications dated from 1881 to 1883.72 It is not clear how or why Percy Smith had them, nor why he felt able to send them to the Minister’s office. At this time, it was the Crown’s responsibility to organise the survey of land subject to title applications in the Native Land Court. It could be that the applications that Percy Smith sent to Bryce were in the possession of the assistant surveyor general for this purpose – although the fact that some of the applications were two years old casts doubt on this theory. Bryce’s comments about holding back court applications suggest that the Crown might have been using its power under section 38 of the Native Land Court Act 1880 to prevent Native Land Court hearings.

(d) The Aotea Pact: Bryce struck up a compromise agreement, which Māori later called the Aotea Agreement or Aotea Pact, to allow an external survey of the vast Aotea block, encompassing much of Te Rohe Pōtae.73 On 1 December 1883, chiefs from the four tribes signed an application for a survey of this area to be undertaken.74 The surveying was done in 1884 and, on the survey plan at least, included land from Taumarunui southward as far as Kirikau and Rētāruke that was marked off with a dotted line.75 This area was later included in the Waimarino block. The survey line does not appear to have been marked on the ground.

The survey of the Aotea block marked the beginning of a process that broke up Te Rohe Pōtae. In April 1884, during the survey, Toakōhuru Tāwhirimatae and other chiefs led a section of upper Whanganui Māori to withdraw their land from Te Rohe Pōtae. These rangatira apparently suspected the intentions of Wahanui and Ngāti Maniapoto. They asked Native Minister Bryce for their land to remain ‘under the same authority and management as other Whanganui lands’. Tāwhirimatae was one of the three named persons who later applied for the court to determine title to the Waimarino block.76 In October 1885, the Tūwharetoa leader Horonuku Te Heuheu filed a claim in the Native Land Court on behalf of his tribe for the vast Taupō-nui-a-tia block. Te Heuheu was evidently
also suspicious about what Wahanui and Ngāti Maniapoto were up to.\textsuperscript{77}

Historian Dr Keith Pickens connected the withdrawal of Whanganui land from the Aotea block survey with the application to the court for it to determine title to the Waimarino block. He characterised the application for title to Waimarino as the Whanganui equivalent of the Tūwharetoa application for title to Taupō-nui-a-Tia block. Both applications signalled a dissolution of the isolationist stance of Te Rohe Pōtae, and both were fuelled by suspicion of ‘Wahanui’s’ boundary and the desire to assert independence from Ngāti Maniapoto control of that part of the country.\textsuperscript{78}

\section*{13.3.5 The Stout–Vogel Government}

In September 1884, a new Government took office under Premier Robert Stout. The other leading figure in this administration was Julius Vogel, who (as we have observed) was the architect of the large public works schemes of the 1870s. Now Vogel again advanced infrastructure development and intensification of Pākehā land settlement to effect economic recovery, and the new Government pressed on with plans to complete the North Island Main Trunk.

The Stout–Vogel Government passed the Native Land Alienation Restriction Act 1884, which reintroduced Crown pre-emption over an area that extended as far as 50 kilometres from the railway route. Although legislation changed from time to time, private land dealing was excluded from these one million acres of the Whanganui Inquiry District from 1884 to 1900.\textsuperscript{79}

\textbf{(1) Colleagues criticise Ballance’s messages to Māori}

John Ballance was Native Minister in the Stout–Vogel Government. He met with Whanganui Māori at Rānana in January 1885, and advocated the Government’s position on purchasing land for the railway. He put to the gathering the argument that the Native Land Alienation Restriction Act was a measure to benefit Māori. He said that it did no more than save the land for the owners, for the ‘land is absolutely the property of the Maoris, and more so than it was before.’\textsuperscript{80} He characterised private land speculators’ activities as ‘an injury to the people of both races’, and promoted the railway as a means for Māori and settlers alike to prosper. The Crown monopoly was needed to banish speculators from land along the railway: he wanted Māori, not private speculators, to benefit from the increased land values that the railway would bring.\textsuperscript{81} Ballance told the people who gathered at the Rānana hui, and then at one in Kihikihi, that the Government only wanted land sufficient for the actual railway line, cuttings, and stations. Also, it would not buy land in Te Rohe Pōtæ if Māori were willing to lease.\textsuperscript{82}

The parliamentary opposition criticised the Native Minister in the House for making these promises to Māori, lambasting his suggestion that the Government was not out to buy the freehold of the land along the railway for settlement.\textsuperscript{83} More significantly, Vogel did not support Ballance’s statements. He wrote him a letter warning that he had gone ‘much further than the Colony will affirm in regard to not taking any land along the railway’, and asserting that ‘the House the Colony and Common prudence demand that we should get large tracts of land into our own hands’. In the letter, Vogel said he understood the diplomatic reasons why Ballance had said what he did, but doubted that it was realistic for the Crown to perpetually lease land along the railway from Māori: that land should not be ‘shut out’ to ‘real bona fide settlement and government towns’; Ballance should have been seeking to ‘acquire immediately at least a million acres freehold’.\textsuperscript{84}

\textbf{(2) The Government proclaims the railway route}

In April 1885 the Government officially proclaimed the land for the railway, through Murimotu, across land that became part of the Waimarino block, and from Taumarunui to Te Awamutu. The area was proclaimed under both the Railways Authorisation Act 1884 and the Public Works Act 1882. The use of the Public Works Act signalled that compulsory acquisition of the land would follow, making disinclination to sell irrelevant. The Crown would pay compensation to landowners, once the Native Land Court determined title to the affected land.\textsuperscript{85} There was no legislative provision for the Crown to purchase
land adjacent to the route compulsorily, however, and this quickly became an issue.

(3) **Tangata whenua remain opposed to intervention**

On 7 September 1885 Tōpia Tūroa, Te Huiatahi, Kumeroa, and others convened a large hui at Poutū, near Rotoāira. The kaupapa was broad, and included the Crown’s attempts to purchase land. About a thousand people attended, from Tūhua, upper Whanganui, Taupō, and inland Pātea. Among them were Te Heuheu Tūkino, Te Aropeta Haeretūterangi of Murimotu, Matuaahu Te Wharerangi, and other influential leaders. Excepting a section of Tūwharetoa, those who attended adopted resolutions that acknowledged Tāwhiao as King; accepted the Queen’s authority but not that of the colonial Government; required withdrawal of all applications to the Native Land Court; banned surveys, sales, and leases; and laid down other prohibitions inside the boundaries.
of the King Country. As far as the railway was concerned, attendees agreed to refrain from active obstruction, but resolved that Māori would not provide labour, and would charge exorbitant prices for materials like timber that they might be called on to sell. These resolutions immediately threatened the Crown’s plans to buy land adjacent to the route of the railway, and the Crown moved quickly to counter them. On 23 October, Under-Secretary Lewis informed Ballance that he had taken preliminary steps to ensure that the Native Land Court determined titles of large blocks that the Crown wished to purchase as soon as possible. He did not mention the Waimarino block, but from October 1885 the Crown’s land purchase officials began charging expenses to a Waimarino block purchase account. It was not until two months later, on 27 December 1885, that Te Rangihuatau applied for title to the Waimarino block in the name of Ngāti Tamakana. This means that the Crown set about acquiring the land in the block even before there was a title application before the court.

13.3.6 Why the Crown was keen to purchase
The Crown wanted to buy the Waimarino block for two main reasons: to stimulate the economy by developing infrastructure and expanding and accelerating Pākehā land settlement and, simultaneously, to end the stalemate with the Kingitanga and open the Rohe Pōtæ to the Crown’s authority and the operations of the Native Land Court.

Not all the administrations from the late 1860s to the early 1880s pursued these goals with the same enthusiasm. Approaches differed depending on the extent to which they leaned towards more or less Government intervention in the economy and the land market. In 1883, the Atkinson Government, not ordinarily interventionist, decided that the North Island main trunk railway must be completed to restore the economy and end the long depression – a scheme to which the Stout–Vogel Government that followed was even more committed. As the route of the railway went through the autonomous Kingitanga region of the Rohe Pōtæ, completing the railway and opening up the Rohe Pōtæ effectively became one mission.

Not content with buying up just the land needed for the railway track, the Stout–Vogel Government wanted to secure a much larger adjacent area for on-sale to settlers – both to promote settlement, and as a source of funds to pay for the railway. The resolutions that Māori passed at Poutū in September 1885 threatened the Crown’s plans, and added new urgency to its efforts to purchase land in Waimarino.

13.4 The Waimarino Block Application
13.4.1 Introduction
By late October 1885 the Crown was taking steps to ensure that land it wanted to acquire for the railway and land settlement was brought before the Native Land Court. As we have said, Te Rangihuatau applied to the court for determination of title to the Waimarino block on 27 December 1885.

In this section, we look into the shortcomings of the Waimarino block application, and ask whether they were material. The question is whether the application sufficed to bring the title determination of the block fairly before the court or not. Following the direction of the claimants’ submissions, we look into the conduct of the Crown and of the court to ascertain Crown liability for any acts that were irregular, untoward, or unusual.

In our analysis, the questions concerning the Waimarino block application to which the Tribunal needs to seek answers are these:

- Who were the applicants, and did they have representative capacity to apply for the court to determine title to this land?
- Was it clear to what land the application applied? Did the description comply with the law?
- What were the issues with the sketch plan?
- What was the Crown’s involvement in bringing the application, and was it proper?
- Were the applications handled appropriately?
- Was notice effective? Did it comply with the law?
13.4.2 Who were the applicants?
The application that the Native Land Court received on 27 December 1885 called the block to which it asked the court to determine title ‘Waimarino tae noa ki Owhango’ (Waimarino as far as Ōwhango) in the district of Tūhua. Te Rangihuatau signed it as principal applicant; Tāwhirimatea and Tūrehu-o-te-motu were the two other signatories. The application listed the names of 18 others as ‘kaitono’ (claimants). They did not sign, and their names were all in the same handwriting – probably that of William James Butler (see sidebar).90

(1) Te Rangihuatau
Te Rangihuatau claimed Waimarino as Ngāti Tamakana. He was also the principal claimant to the Taumatamāhoe block, across the Whanganui River from Waimarino. There, he claimed as Ngāti Tamahaki and Ngāti Maringi. His claim to Taumatamāhoe was unopposed.91

Te Rangihuatau lived at Tieke, and claimed that area as Ngāti Taipoto. He also lived sometimes at Ruakākā in the Manganui-a-te-ao district. He had interests in the Whitianga block as Ngāti Tūahuiti. He gave evidence in the Popotea and Ngāporo investigations and in the 1894 Whitianga re-hearing.92 He was sometimes said to be a minor chief, but we received little evidence about his status.93 He said himself that he was a lesser chief than Te Kurukaanga, but that he was a principal man at ‘Waimarino proper’, although Tōpia Tūroa also had claims there.94 In the 1887 partition hearing, he said that he had only claimed to be ‘principal man’ because he was annoyed that others with less right than he had were receiving payment as principal chiefs.95

(2) Tāwhirimatea
Tāwhirimatea was probably the same Toakōhuru Tāwhirimatea who in April 1884 wrote (with 101 others) to Native Minister Bryce repudiating the Rohe Pōtæe boundary and withdrawing their land from it.96 We talked about Dr Pickens’s speculation that this event was ‘the genesis of the Waimarino claim’ (see section 13.3.4(6)).97 Toakōhuru Tāwhirimatea was of the Ngāti Rangitauwhata and Ngāti Reremai hapū of Ngāti Hāua and other northern groups, with interests in Ōpatu, Kirikau, Rētāruke, and Taumatamāhoe as well as Waimarino.98

(3) Tūrehu-o-te-motu
We know little about Tūrehu-o-te-motu, whose name sources also give as Tūkehu-o-te-motu and Tūrahu-o-te-motu.99 In March 1886, Te Rangihuatau advised the surveyor, James Thorpe, to use Tūrehu as a guide to points on the southern Waimarino boundary, but apparently Tūrehu refused. He was included in the Ngāti Tamakana list for Waimarino as a non-seller, and was named on the title of the Waimarino 3 block.100

(4) Connected with what land?
Te Rangihuatau and Tūrehu were principally associated with Manganui-a-te-ao. All three signatories said that their kāinga lay in the Manganui-a-te-ao district.101 We think that Te Rangihuatau probably applied for title determination of ‘Waimarino proper’ – that is ‘tae noa ki Owhango’, or as far as Ōwhango. The Native Land Court coined the term ‘Waimarino proper’ to signify the Waimarino Plains in the south-east quarter of the Waimarino block. Te Rangihuatau could claim there as Ngāti
The Waimarino Purchase

Tamakana and Ngāti Maringi, but later in the hearing he also acknowledged the claims of other ancestors. Toakōhuru Tāwhirimatea’s connections with Ngāti Hāua and Ngāti Reremai were probably the basis for the inclusion of land to the north of Te Rangihuatau’s claims.

As for the 18 others whose names were listed on the application, they were local rangatira some of whom were later named on titles of the Waimarino, Taumatamāhoe, and Rētāruke blocks. Because they did not sign, and because their names were written in one hand rather than by the individuals themselves, questions have been raised about their level of support for the application. Did they give their permission for their names to be on it? Did they even know? Historian Andrew Joel said in questioning: ‘I do not really know what the tikanga [was] around putting the names of these other people – there is the possibility that they did not know they had their names listed.’

We think it doubtful to infer that all those listed on the application who were eventually named on the title necessarily knew about and supported the claim. This is because at least four of those whose names were on the application – ‘Uanurewa’ or ‘Kanurewa’ (unclear), Kahu Karewao, Karaitiana Te Poumua, and Te Matewhitu – did not become owners on the title. The reasons are not known. It cannot be simply assumed that they initiated or supported the application. The other ‘kaitono’ would have known about the application at least by the time that they came to be listed on the title, but they may or may not have been involved at the application stage.

(5) Named claimants sufficiently representative?
The Crown submitted that the Waimarino block application was ‘a tribal Whanganui claim’, and that Māori intended that the block would be partitioned into hapū or community allotments and then individual interests or shares. In this way, the boundary of the Waimarino block denoted a tribal boundary that included hapū or community boundaries, and finally relative individual interests.

There are some problems with characterising the Waimarino block application in this way. An obvious comparison is the contemporaneous process for the Taupō-nui-a-tia block, which was much more evidently tribal in nature. Although the Taupō-nui-a-tia application, which similarly affected Māori interests over a huge area, proceeded in the name of the Tūwharetoa ariki, he was explicitly representing the interests of 141 hapū, some with ancestors who were not descended from Tūwharetoa or his forbears. An inclusive approach of this kind reflected chiefly values.

The three individuals who signed the application for title determination for Waimarino, however, seem to have been advancing the claim on their own behalf,
supposedly with the support of the 18 other persons named as ‘kaitono’. Yet this claim related to land extending from Taumarunui to beyond Raetihi, and from Ruapehu to the western reaches of the Whanganui River – a huge tract where many hapū had interests. Did the status and influence of the persons named extend over the whole district? If they were representing the interests of hapū, why did they not name them?

Moreover, the boundaries given in the Waimarino block application belie the idea that it was a Whanganui tribal claim, because they cut through the rohe (territory) of hapū, and left out Whanganui interests that were later included in blocks to the north, east, west, and south of the Waimarino block. Several claimants in Waimarino later applied to the court to complain that the block and their interests were not co-extensive – effectively, its boundaries were wrong if it was supposed to be comprehensive of tribal interests.

(6) Our conclusions on the applicants
It appears that the three principal claimants to the Waimarino block had interests in relevant areas, and were legitimate claimants. We do not know why the court did not award interests to four of the 18 other ‘kaitono’ whose names were listed on the application.

Essentially, we know too little about the persons named as claimants on the application, and about the process by which their names came to be listed, to say that they were not the right people to be there. We can only observe that, given the size of the block, it is surprising that there were not more names. That is particularly the case given that the application does not read as though it was advanced on behalf of Whanganui iwi nui tonu (all the Whanganui peoples). If the named claimants were all making claims to particular parts of the territory, one would arguably expect there to have been more individual claimants, and for them to have signed. However, we simply lack evidence to take these points further.

13.4.3 Was it clear to what land title was sought?
In order for any court proceeding to be regarded as fair, those who have rights that stand to be affected by the outcome need to know about it. This principle underlies the requirement that notice of the proceeding must go out to all relevant parties.

In the case of a proceeding to determine title to Māori land, affected Māori might not know that their interests may be affected if either the description of what is to happen does not alert them to the fact that their interests are before the court or they are not alerted to the fact of the court proceeding. This section concerns the first of these – namely, the adequacy of the description of the land in the court application. We consider, first, whether the description was sufficiently clear and, secondly, whether it complied with the law of the day. As part of this general topic of whether the land was clearly delineated, we then turn to the issue of the sketch plan that was tendered to the court.

In order for tangata whenua with land interests in the area to know whether the Native Land Court would be adjudicating their interests under the rubric of ‘the Waimarino block’, the description of the land had to be such that they could discern what area it covered. There were factors that made the area less clear than it could – and arguably should – have been.

As we have said, the name ‘Waimarino’ was not used traditionally for most of the block. Rather, the block comprised areas that Māori knew as Tūhua, Kawautahi, Ōwhango, Mākokomiko, Mangapapa, Ōtaihanga, Ruapehu, Mangatītī, Ruatītī, and Mangapūrua in Manganui-a-te-ao. The Crown labelled 300,000 acres of the block ‘Ōwhango’ as late as 1884. So what did the name ‘Waimarino’ convey to the 40 or more hapū with interests in the land to be taken through court? Cathy Marr told us that the ‘Waimarino block’ was ‘a largely artificial construct, created for Native Land Court purposes’.

(1) What the claimants said
The claimants submitted that the title determination application for Waimarino was misleading in ways designed to advantage the Crown. For instance, the application said that the block boundaries were clearly marked on the ground, having been cut or marked with stakes. This could not have been the case, the claimants said, because the boundaries included ‘te tihi o Ruapehu’, or ‘the
summit of Ruapehu: the available evidence showed that boundaries had not been cut or marked, and that both the applicants and the court knew it. The Crown was behind the fictitious application, which reflected ‘the government interest in maximising a purchase opportunity, rather than the truth of what the applicants intended.’

Claimants for Wai 764 and Wai 1147 (the descendants of Kopere Tānoa, Tānoa Te Uhi, and Te Whiutahi) said that the description of boundaries in the application and in Kāhiti was insufficient to inform their ancestors whether their lands were part of the application or not. The whole of the Tūhua lands, for example, were covered by the simple description: ‘Taurewa, thence to Waipatukakahu on the Whanganui river to the mouth of the Manganui a Te Ao Stream.’ (Taurewa, the mountain and district, are not part of Waimarino.)

(2) What the Crown said

The Crown rejected the contention that the Waimarino application contained misleading information, and the suggestion that the boundaries of the block had to be marked on the ground. It said that the Act then in force (the Native Land Laws Amendment Act 1883) did not require boundaries to be marked in this way. The application only had to describe the land ‘by name or otherwise, sufficient to identify it’ along with the name of the tribe or individuals admitted by the applicant.

(3) What did the law require at the time?

The claimants’ criticisms related largely to the application having been made on a printed form that conformed to the requirements of the Native Land Court Act 1880, not the Native Land Laws Amendment Act 1883. Under section 17 of the 1880 Act, an application had to include a ‘description of the land by name or otherwise, sufficient to identify it’; the name of the tribe or the names of the persons admitted by the applicant(s); a statement that ‘the boundaries have been clearly marked out on the ground by stakes or otherwise’; and, ‘if a plan has been made’, it should be deposited with the Native Land Court. The printed form used for the Waimarino application was designed to meet these requirements – but in December 1885, when Te Rangiwhaatau and others applied, it was the Act of 1883 that was in force. As the Crown pointed out, the 1883 amendment Act deleted the requirement for a boundary to be marked on the ground, and the reference to the plan was likewise deleted. All that was needed was a description of the boundaries of the block sufficient to identify it.

The legislation at the time therefore required the court to be satisfied that the boundaries described in the application were sufficient to identify it. Plainly, this was necessary to make the process fair, because Māori whose interests were affected had to be able to discern whether or not their land was the subject of the application. From a fairness perspective, it does not really matter how the land was identified, as long as it was properly and clearly established by some means as the land in question.

(4) Was the description in the application sufficient?

The land that was the subject of the application was described as ‘Waimarino tae noa ki Ōwhango i te takiwa o Tūhua,’ or ‘Waimarino as far as Ōwhango in the district of Tūhua.’

The description continued:

ka timata i te tihi o Ruapehu ka rere i roto i te awa o Mangahuia, Whakapapaiti, ka puta i te ia o Whakapapanui, te kawau, ka whati whaka te Marangai, Taurewa[;] tae tonu ki te Waipatukakahu[;] ka rere i te ia o Whanganui tae atu ki te ngutu awa o Manga Nui a Te Ao ka whati ki te Tonga, ka piki i Pukeatua tane tonu Ōkahure Hukaroa, Orangitakotohau ki te awa o Mangawhero ka whati ka rere i roto o tawa awa tae atu ki te Matapuna ka rere ki te tihi o Ruapehu te timatanga.

We translate this as follows:

[it] begins at the peak of Ruapehu, and goes along in the Mangahuia river [then] along Whakapapaiti until it emerges into the current of Whakapapanui, [then?] Te Kawau, then turns toward the north, Taurewa; and goes along to Te Waipatu-kākahu; it goes along in the current of Whanganui till it gets to the mouth of Manganui-a-te-ao; it turns south, ascends Pukeatua going past Ōkahurea, Hukaroa, and
Orangi-takoto-hau to the Mangawhero river; it turns and goes up within that river as far as te Matapuna and continues up to the peak of Ruapehu, the commencement.¹³⁷

These are of course few words by which to delineate a very large tract. The question, though, is whether they were adequate at the time to signify to tangata whenua whether their land interests lay within the territory as described or not.

(a) ‘Tae noa ki Owhango’: The application was said to be for land ‘as far as Owhango’, which implies that Owhango was the furthest point. In context, one would expect it to be the point furthest north. Yet the description names points that lie north of Owhango – and we are speaking here of the particular place called Owhango rather than the name of the block for which Booth negotiated in 1879. Owhango lies south of the northern reach of the Whanganui River, which is said to be the boundary from Te Waipatu-kākahu. Te Waipatu-kākahu appears to be a point along the Whanganui River, but we do not now know where. It is not marked on any early maps of Waimarino, nor on the sketch map used for the title hearing. The precise relative locations of Owhango and Te Waipatu-kākahu are therefore now uncertain, although it does appear from the other descriptors that Te Waipatu-kākahu was north of Owhango. Why ‘tae noa ki Owhango’ is therefore a mystery.

(b) Taurewa: The description of the boundary turning north towards Taurewa might have implied that land around Taurewa, the maunga, was actually inside the Waimarino block, when it was not. It became a subdivision of the Taupō-nui-a-tia block.

The description of the boundary at this point arguably also created uncertainty about whether the district of Tūhua lay wholly within the block. This potential misapprehension was made more likely by understandings that the Tūhua district lay within Te Rohe Pōtāe, and was therefore part of the Aotea block (we talk more about this below, in section 13.4.3(5)).

(c) Potential uncertainty where boundary left rivers and streams: Otherwise, though, it is clear that the Whanganui River formed much of the boundary. In fact, most of the block’s boundaries were rivers and streams, and we can safely assume that Māori of the region knew them well.

The greatest potential for confusion was where the description of the boundary departed from waterways. One such boundary was in the south of the block near the mouth of the Manganui-a-te-ao. The boundary ascended the hill, Puakeatu, and went on past three other named places before reaching the Mangawhero River, then left the river at Matapuna before arriving at the peak of Ruapehu. It is unclear how the boundary line would proceed between the named places. There was no natural feature for it to follow, just a notional straight line. Nor is it clear what is considered to be the peak of Ruapehu. Was it Paretetaitonga or the summit further south?

(d) Kirikau and Rētāruke included in error: Another uncertainty arose because the description included Kirikau and Rētāruke blocks as part of the Waimarino block. This was incorrect. Those blocks had been through the court, and the Crown had purchased them. Their inclusion could have confused Māori owners, or made the description of the area seem generally less reliable.

(e) Inadequacies in description able to be remedied: These factors all had potential to cause uncertainty, and could have been avoided had more care been taken, especially in the description of the boundary where it did not conform to fixed natural features. Because the places named were so few, and because straight lines are really fictional on hilly, forested terrain, envisaging the boundary on the ground demanded an imaginative leap, with much room for difference. There must have been uncertainty at some points about what land would lie within, and what outside, the boundary.

Were these uncertainties of a fundamental nature? First, we do not consider that the available evidence supports the characterisation of the boundary description as intentionally misleading, or so inaccurate as to render the
The Waimarino Purchase

567

application void. Looked at in isolation, the deficiency constituted by uncertainty or confusion about boundaries was one that could have been remedied. If they had known that title determination of this land was afoot, those potentially affected could have sought further and better information; asked to view the sketch plan produced for the court; or attended the title hearing itself. Moreover, the court was supposed to satisfy itself that the boundary had been marked on the ground.118 If all of this had been available or implemented, most should have been able to get themselves into a position to know what land was affected, certainly in broad terms.

Ultimately, though, as we shall see, the inadequate verbal description of the boundary was not a stand-alone problem, and in context was of less moment than issues like whether all affected parties had notice of the application; were actually in a position to obtain more information about it; could view an accurate sketch plan; or were in any way reasonably and practically able to defend their rights.

(5) Overlapping boundaries and applications

The boundary described in the Waimarino application overlapped with that of the Aotea block. The boundary of the Rohe Pōtate was laid down in June 1883 in a petition to the Crown. It became the subject of a pact between Rohe Pōtate Māori (including some Whanganui Māori) and the Government, and of an application to the Native Land Court in December 1883. In 1884, a sketch plan of the Rohe Pōtate, or Aotea block, was produced, based on triangulation surveys completed by the Crown.119 The block was massive, and included 88,000 acres that were later included in the Waimarino block. Another large area intruded into the Taupō-nui-a-tia block but was later corrected.120

In effect, the boundaries of the Waimarino and Taupō-nui-a-tia applications to the Native Land Court superseded the boundary of the Rohe Pōtate application and the sketch map of 1884. The boundaries of Waimarino and Taupō-nui-a-tia blocks effectively became the new borders of the rohe of Whanganui, Rohe Pōtate, and Taupō Māori. Unfortunately, this was a change that the affected parties never sat down to agree collectively. Many were unaware that their interests had effectively been transferred from the Rohe Pōtate to the Waimarino block. Māori of the Tūhua district seem to have been particularly affected in this way.

(a) Interests of Ngāti Hāua: The Tūhua district included land north and south of the Whanganui River, and lay within the Rohe Pōtate in 1884. The boundary in the Waimarino block application – the river – ran right through this land in a way that did not recognise customary interests.121 Ngāti Hāua claimants (Wai 48, Wai 81, and Wai 146) told us that their interests in the Tūhua district were in the northern part of Waimarino block and in the Ōhura South block, to the north and across the Whanganui River. Ngāti Hāua also had interests in the Kirikau and Rētāruke blocks. They said that their rangatira understood the Tūhua district to be part of the Rohe Pōtate, so that their rights there (including those later identified as part of the Waimarino block) were protected by the Rohe Pōtate agreement made with the Crown.122 They expected their claims to be heard in Ōtorohanga as part of the Rohe Pōtate, which became known officially as the Aotea or Aotearoa block.123

Their correspondence with the Government makes this clear. Ngātai Te Mamaku wrote to Native Minister Ballance on 8 May 1886, two months after the Waimarino title hearing, in these terms:

Tena koe. Taku kupu ki a koe ko te Poraka o Whaimarino waiho atu [illegible, possibly ‘aho’] i Waimarino. Kua e tae mai ki runga ki nga w[ ]enua a oku matua maku ano e whakahaere. Kaore e pai te tangata e mahi tahae mai nei i nga w[ ]enua i roto i te raina o Aotea Poraka. Me mutu atu i tai o Paparoa puta noa ki Waimarino. Ko roto nei o te raina o Aotea ma matou ano e w[ ]akahaere[;] e tata ana ka kotitia tenei poraka. Kei te mahi te w[ ]are ki Haerehua Waipa [. E hoa e mahi kino ana a Patara [Butler] ratou ko ona hoa ko Te Rangihuatau, me Paika hoki. Kua mohiota te kino o enei mahi w[ ]akararuraru.124

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Greeting to you. I address you with reference to the Waimarino Block. Let that block be where it is, and let it not come upon the lands of my ancestors, and let myself alone manage them. I do not approve of that person who is now carrying on secret acquirement of the lands included in the Aotea Block. Let his negotiations terminate at Paparoa as far as Waimarino, and leave ourselves to conduct matters within the Aotea boundary, this block will soon be adjudicated upon, and the House for that occasion is now being built at Haerehuka, Waiaupu. Friend, Mr Butler and his friends, Te Rangi-matau, and Paika, are acting very badly, and these proceedings productive of trouble have now been well known.

Map 13.2: The overlapping boundaries of the Te Rohe Pōtai, Taupō-nui-a-Tia, and Waimarino blocks.
Our modern translation of the original te reo is as follows:

Greetings. I address you concerning the Waimarino Block. Let that block stay where it is at Waimarino. Do not venture upon those lands of my ancestors; leave it to me to manage them. I do not approve the stealthy activities of the person meddling in the lands inside the Aotea block. He should cease doing what he is doing in the area from Paparoa extending right through to Waimarino. He should leave the conduct of matters within the Aotea boundary to us alone. The court will soon adjudicate this block [Aotea], for which purpose a house is under construction at Haerehuka, Waipa. Friend, Mr Butler and his cronies Te Rangihuatau and Paiaka are doing bad things. It has been known that their activities have generated a lot of dissent.

On the day Te Mamaku wrote this letter, Piripi Tūhaia and 39 others (including the important rangatira, Tānoa Te Uhi, Te Āwhitu, Tūao, and Te Manuautae) also wrote to Ballance in similar terms. They too asked for Waimarino to be ‘where it is’, and not to carry it inside the Aotea block boundary. They mentioned too that Aotea would soon be adjudicated in Haerehuka, the court house built at Ōtorohanga for the purpose.¹²⁶

Māori of the Tūhua district were also applying to the court at Ōtorohanga for the investigation of title to land that the Wanganui court had already heard. Te Aropeta Haeretūterangi drew the attention of the Wanganui court to this fact on 3 July 1886. He handed up a recent Gazette which, he said, showed that ‘some of the Whanganui people have joined the N’Maniapoto and are applying under a new name, and for another Court to sit at Otorohanga on 28 July 1886 for the investigation of the same lands.’ The judge advised that he would write to the presiding judge of the Ōtorohanga court, ‘calling his attention to the fact the boundaries sent forth in that gazette embraces lands already heard by this Court’.¹²⁷ This indicates that there was some misunderstanding: Māori with interests in the Waimarino block not only expected that their interests would be heard as part of the Rohe Pōtæ hearings, but were actively preparing for this event.

(b) Interests of Kōpere Tānoa, Tānoa Te Uhi, and Te Whiutahi: The descendants of Kōpere Tānoa, Tānoa Te Uhi, and Te Whiutahi (Wai 764 and Wai 1147) submitted that their interests included some 40,000 acres of the Waimarino block. They could not defend their interests, nor secure reserves for some 300 people, because Native Minister Ballance deliberately misled Tūao, their tupuna. Tūao maintained that Ballance had assured him that the Waimarino block was outside of the ‘Aotearoa Block’ (or Rohe Pōtæ Aotea block).¹²⁸

(c) Interests of Tūtemahurangi, Waikura, and Te Tarapounamu: Similarly, the descendants of Tūtemahurangi, Waikura, and Te Tārapounamu (Wai 1203) submitted that their ancestors did not take part in the Waimarino court process as they were led to believe that their lands would be heard at Ōtorohanga (as part of the Rohe Pōtæ Aotea block) rather than at Wanganui.¹²⁹

Ms Marr’s research revealed that from 1887 the Native Minister and various officials received a number of complaints regarding title determination for the Waimarino block from Māori with interests in the Tūhua district. Tūao was one of these. He was included in the ownership list for the block, but most of his people were not. Tūao was adamant that their interests should not have been part of Waimarino, and were protected by the Rohe Pōtæ agreement.¹³⁰

(6) Conclusion

The poor verbal description of the block in the application certainly created potential for uncertainty in the minds of those who read it about precisely what land was included, especially where the boundary departed from waterways.

Uncertainty also arose for Māori who understood their interests to be part of the Rohe Pōtæ, and expected them to go before the court as part of its determination of title to the Aotea block. These were most often people whose rohe was in the Tūhua district, and they were caught unawares when their rohe ended up included in the Waimarino block. We do not know precisely how many were affected in this way, nor how seriously they were affected, but the complaints that Marr told us about, which were
Sketch plan produced for the Waimarino title investigation, 1886
forthcoming for a number of years, indicate that the problem was probably neither confined to a very few nor very minor.

Lack of precision about what land was comprised in Te Rangihuatua’s application was part of a general situation regarding the Waimarino block in which preparation and process tended to be poor, which militated against Māori parties having the necessary degree of agency to manage their land interests effectively. Circumstances surrounding the sketch plan, which we move to now, contributed to this effect.

13.4.4 What were the issues with the sketch plan?
The issues with the sketch plan of the Waimarino block straddle both the application and hearing phase of the determination of title for this land.

The sketch plan, like the verbal description in the application that we have just discussed, is material to whether affected parties knew what land was to be before the court. We have noted the inadequacies of the verbal description. Now we look at whether there was a non-verbal resource — a plan, picture, map, or sketch of the land — to which Māori could have had reference in order to understand clearly to what land title was sought.

Later in this chapter, we explore fully the formal requirements for giving notice at the time when Te Rangihuatua lodged his application. For now, it suffices to note that the law did not require inclusion of any visual images (map, plan, or sketch) of the land comprised in the application. The chief judge could, as part of determining what constituted ‘proper publicity’ for an application, have decided that it was necessary to include an image, but in this case he did not do so.131

13.4.4(1) The Native Land Court Act 1880, as amended in 1883
Section 17 of the Native Land Court Act 1880 did have regard to the necessity for applications to provide affected parties (and the court) with good information about what land was comprised in the application. In addition to ‘a description of the land by name or otherwise, sufficient to identify it’, as required in section 1, subsections (3) and (4) stipulated that an application must contain:

(3) A statement that the boundaries have been clearly marked out on the ground by stakes or otherwise;
(4) And, if a plan has been made, a statement that it has been deposited in the Court.

Shortly afterwards, though, section 17 of the Native Land Laws Amendment Act 1883 amended the 1880 Act to delete these two subsections and to validate any applications that had not conformed to their requirements.

With the two subsections gone, it was not at the application stage but at the sitting of the Native Land Court that the court would

first require to be satisfied that the boundaries of the land have been marked out, if a plan has been deposited, that it is correct, and that the rules in respect of surveys have been complied with.132

Only when satisfied of these things would the court proceed to investigate title.133 It is to be noted that it could proceed without a plan or survey, so long as it was satisfied that the boundaries of the land were marked out.

A survey was required at the point in time when the court had conducted its investigation, had decided who the owners were, and was ready to issue a certificate of title. If a survey had been made, and the court had in its possession a ‘sufficient plan and description’, it would forthwith issue a certificate of title (section 26). But, under section 27:

In cases in which no such plan and description are in possession of the Court, it shall require a survey, if not already made, to be made, and a sufficient plan and description to be deposited in Court.

Under section 28, once a survey had been produced to the court,

it shall be the duty of the Court to give notice, in such manner as it may think best adapted to attract the attention of all persons whom it may concern, that the plan is ready for inspection at a place to be named in such notice.
Upon ascertaining the boundaries as defined in the plan, affected parties could serve notice to the court of any objection, giving their grounds. Then, the court would ‘adjust the boundaries according to the rights of the several parties interested.’

(2) What the claimants said
Claimant counsel Tom Bennion filed comprehensive submissions on the sketch plan and related issues on behalf of all claimants.

Bennion drew attention to the words in Te Rangihauatau’s application that said ‘Ko nga rohe o ti te poupou ki te rakau, kua oti ranei te kati nga raina i runga i te whenua.’ (We translate this as: ‘The areas have been marked out with stakes, or on which the boundaries have been marked out on the ground.’) Counsel emphasised that both statements were patently untrue, both at the time it was made, and when the application came to be heard... One obvious give away is the references to the summit of Ruapehu. It is such a generalised reference to a broad area of mountaintop covering thousands of hectares, with several high points, and in such a remote place, that the idea that some clear marking on the ground had been made between, for example, the source of the Mangawhero stream and the summit is absurd. Subsequent events showed this to be so.

He submitted that both the court and the applicants ‘knew that it was a fiction that the application was marked out on the ground or understood in anything other than in a very general way.’ He cited the comments that the judge who heard the application made about the boundaries when he issued the title order subject to survey. The judge implied the boundaries’ unreliability when he said:

The boundaries to be taken carefully as there is a lot of land on the east side included in the Gazette boundaries which belongs to Ngati Tuwharetoa and there are also blocks excepted.

In addition to the untruth about the marking out by stakes, the application also stated ‘4. Ko te mapi mehe-mea kua oti te whakaahua kua oti te tuku atu ki te Kooti.’ Despite this assertion that a plan had been deposited with the court, however, Bennion quoted Marr’s evidence that the surveyor James Thorpe did not receive instructions ‘to sketch survey’ until 25 January 1886. Bennion added:

If further confirmation is needed, we have this note from Surveyor John Annabell on 12 April 1886 ie after the court’s investigation: ‘Instructions Re Waimarino very meagre but I understand all boundaries have to be marked on ground & Rivers traversed &c.’

Bennion also focused on the sections 27 to 30 of the Native Land Court Act 1880, including the requirement that, if no sufficient plan and description were before the court, the court ‘should give Maori an opportunity to correct boundaries.’ A ‘sufficient plan and description,’ he said,

... did not mean a survey plan, just something sufficient to let Maori clearly understand what was before the Court. This makes sense if one remembers that the 1880 Act required the land to be physically marked on the ground by stakes or otherwise (and even after 1883, that the boundaries were ‘marked out’... Accordingly, the initial plan and description put into the Court, and the statement that boundaries had been marked out, and the evidence of witnesses on those points, was critical. If the Court rejected that evidence and those assertions or had a concern about them, it would require that, after the survey was completed, there would be notice, and a further period of objection allowed.

Bennion argued that the 1883 amendments did not remove the requirement to mark out the land in some physical way, even though the reference to stakes was removed. He acknowledged the possibility that the removal of the reference to stakes could have meant that ‘some sort of “fast track” process was proposed’. In that event, it became even more important that the court required an adequate description of the land.
As to the adequacy of the description of the land comprised in Te Rangihuatau’s application, Bennion observed:

Perhaps most significantly, given that the subsequent sketch map and final survey maps were to take existing surveys and blocks as boundary points, the application makes no reference at all to existing blocks or survey lines.\(^{142}\)

He went on to canvass what is known about the process of surveying the land in the Waimarino block, noting the difficulty that the survey officers encountered in getting locals to point out the boundaries. The officers nevertheless pushed on, prepared sketch plans, and made ‘crude guesses’ about boundaries. The Crown was complicit in this poor process, with the Government aware that these sketch plans, which had never been seen or assented to by the applicants, would nevertheless be presented in Court by applicants as a faithful rendering of their application.\(^{143}\)

It was a process in which the surveyor looked to Butler for guidance, and Bennion claimed that correspondence in evidence demonstrated that ‘Butler was setting the Waimarino boundaries prior to the Court hearing, and after the hearing.’\(^{144}\) Bennion quoted an exchange between the chief surveyor and Butler in February 1886, before the investigation of title, in which the chief surveyor wrote to Butler:

If you will go carefully over Waimarino boundaries & sketch on tracing alterations you require[,] I will have sketch plan made for court. I have no further information to enable me to amend plan but when hear from Thorpe we can connect south boundary.\(^{145}\)

Māori input was secondary.\(^{146}\) As to the impact of the uncertain block boundaries, Bennion cited evidence showing that, in the absence of clear information, various rangatira made incorrect assumptions about what land was included in the Waimarino block. He quoted Marr’s comment:

It is not clear what Waimarino Maori understood from surveys that were being conducted in parts of the Waimarino block at this time. It does seem that there was considerable potential for misunderstandings.\(^{147}\)

He drew attention to the fact that, when the Waimarino application was gazetted and heard, the only surveyed boundary was the Rohe Pōtae boundary surveyed in 1883 on instructions from Māori. Yet, '[a]stonishingly, that surveyed boundary is not mentioned in the Waimarino block application.' Bennion claimed that Butler resisted using that boundary even as a reference point for surveys, because:

A valuable forest lay north of the Rohe Potae survey line. The Waimarino plans have a ‘bulge’ to the north to include it. This subsequently caused confusion among Waimarino owners. . . .\(^{148}\)

(3) What the Crown said
The Crown contended that the words in section 17(2) of the Native Land Court Act 1880 stipulating that boundaries were to be ‘clearly marked out on the ground by stakes or otherwise’ (Crown emphasis), meant that a geographical description was enough provided it sufficiently identified the land. Moreover, the 1883 amendment Act dispensed with the requirement to use stakes. The Crown rejected the contention that there was misleading information in the application.\(^{149}\) Counsel noted:

The application was filed with the Native Land Court and notified before the sketch plan had been finalised. The application was filed in December 1885, notified in January 1886, but the sketch plan, according to Marr (A60 at p 279), was not finalised until about 15 February 1886. The hearing then commenced on 1 March 1886. There was no legal requirement for the sketch plan to accompany the application. Moreover the application could be notified before the sketch plan had been completed.\(^{150}\)

The Crown submitted that ‘Mr Bennion makes too much of the difficulties the surveyors had in accurately
identifying boundaries because of a lack of Maori cooperation’, and claimed that, although Butler had an input into the boundaries of the sketch plan, he did not set them. Moreover, there was nothing improper in Butler rendering assistance.\textsuperscript{151}

The Crown agreed with claimant counsel that a key safeguard where a sketch plan was used was that, following the provisional order as to title, the chief surveyor certified the final plan and made it available to all interested parties for comment or objection. However: ‘The evidence is unclear as to whether or not that provision was complied with in relation to Waimarino.’\textsuperscript{152}

The Crown characterised the use of sketch plans in place of complete surveys as ‘a practical and sensible reform’ that ‘tended to minimise unnecessary survey costs and promoted efficiency’.\textsuperscript{153}

(4) Commentary on the parties’ positions
Of course, at the time when Te Rangihuatau filed his application, the 1883 amendments had taken effect. There was no longer a formal requirement to lay out the boundaries on the ground at the application stage. It is interesting, though, that the applicants – no doubt advised by the Crown representatives on the ground, McDonnell and Butler – had in mind fulfilling the requirements of the 1880 Act when they included this misstatement in the application in 1885. It may be that this was simply because they were following the court’s form, which was apparently drafted to fulfil the requirements of the 1880 Act, and had not been updated to reflect the different requirements of the 1883 amendment Act.

The parties agreed that the statements in the application that the boundaries had been laid out, and that a plan had been submitted, were incorrect. The Crown nevertheless claimed that the application was not misleading. It is difficult to see how that could have been the case. Perhaps, as claimant counsel suggested, everyone knew the boundaries were fictional, and were included just to satisfy what they understood as the formal requirements. There is no getting around the fact, though, that the statements were wrong, and were not corrected. In particular, there is nothing to indicate that the boundaries were laid out on the ground at any time prior to the court’s investigation. This was all part of a situation of general confusion that arose because the application was prepared in accordance with legislation that no longer applied; made statements that were untrue; and contained one paragraph of fewer than 100 words that purported to describe an enormous area of the central North Island.

(5) Producing the Waimarino sketch plan
The court minutes confirm that the judge had the sketch plan on day one of the Waimarino block title hearing.\textsuperscript{154}

When the Waimarino sketch plan was produced a number of other surveys were underway. We mentioned earlier that Crown officials started recording expenses relating to the purchase of the Waimarino block two months before the Waimarino application was made. This included expenses for mapping work. Surveyors were conducting triangulation and topographical surveys for general information in the southern part of the block. Another survey party was working to complete the triangulation and topographical surveys in Te Rohe Pōtae, and preliminary surveys of the route of the main trunk railway were also in progress. Māori communities were often (understandably) confused about the purpose of the various survey parties. They were assured that triangulation surveys were for general information purposes, and that the railway survey was that agreed to for railway exploration and construction purposes.\textsuperscript{155} However, the Waimarino sketch plan drew on a lot of this work.\textsuperscript{156}

The compilation of the Waimarino sketch plan involved both the Auckland and Wellington survey offices. The boundary dividing their respective areas of responsibility ran through the top of the Waimarino block.\textsuperscript{157}

On 13 January 1886, Chief Surveyor J W A Marchant of the Wellington survey office contacted the Auckland survey office requesting a tracing of the northern part of Waimarino, and any other information they had on the places named in the application: ‘map has to be made for Land Purchase Department to submit to present Court matter is urgent.’\textsuperscript{158} The Auckland survey office replied that a tracing would be sent, but that there was little information available on many of the places named. The tracing
was itself based on the triangulation work of the surveyor Cussen for the Rohe Pōtae survey. The boundary of the neighbouring Taupō-nui-a-tia block had not been defined and was given as only approximate.\textsuperscript{159}

The information from Auckland made it clear that Cussen had yet to finish his Rohe Pōtae survey. He was engaged on a trigonometrical survey of the entire Rohe Pōtae, which involved clearing sites to establish trigonometrical (trig) stations through the region. Working from these, major and minor triangulation surveys defined the area. Trigonometrical survey was a different beast altogether from boundary surveys of the kind associated with the work of the Native Land Court.\textsuperscript{160} All block surveys would afterwards be tied to the trig stations that ensured their accuracy.\textsuperscript{161}

Although he was still working on the trig survey in January 1886, Cussen’s work had progressed sufficiently in 1884 for him to produce a sketch plan of the Rohe Pōtae.\textsuperscript{162}

\textbf{(6) Surveying the Tūhua district}

When he came to survey the Tūhua district, Cussen encountered strong opposition. According to Marr, Tūhua communities feared that survey would lead to title hearings in the Native Land Court, and that the Government would take land to pay for it. They also worried that the Government wanted to buy their land, and the Government dealt only with a few select ‘big chiefs’. The Tūhua people responded by forming their own local committee to manage their affairs, refusing to have trig stations on their land, or to assist the survey in any way.\textsuperscript{163}

The opposition of people in the Tūhua district to Cussen’s survey work suggests that the purpose of his survey was unclear. They seem to have thought it was for the purposes of the Native Land Court. It also appears that they might not have known about or been involved in the Aotea Pact – the 1883 agreement between rangatira of Te Rohe Pōtae and the Crown that permitted the area to be surveyed. These people of Tūhua had a history of opposing and preventing the survey of their land; they still supported the Kingitanga, and their leaders understood that their land interests, along with those of other Rohe Pōtae Māori, would come before the court at Ōtorohanga. They had no involvement in the Waimarino block application, and were unaware of it when the Waimarino sketch plan was being worked on.

\textbf{(7) Crown officers coordinate the sketch plan}

The resistance of the Tūhua people meant that the triangulation survey of their district was incomplete. In turn, the extent of the overlap between the Rohe Pōtae survey and Waimarino block was unclear. Equally unclear was the southern boundary of Waimarino which, as stated, departed from the waterways that defined most of the block. Marr told us that a number of early sketches of the block showed that the boundary ran in ‘a fairly straight line’ from the confluence of the Manganui-a-te-ao and Whanganui Rivers to the summit of Ruapehu. This boundary was shown in some sketches as a dotted line to indicate its uncertainty.\textsuperscript{164}

James Thorpe, a surveyor working on the sketch map, sought assistance from Te Rangihauatau to complete the
sketch of the southern boundary. Te Rangihauata told Thorpe he was unavailable and referred him to another applicant, Tūrehu-o-te-motu, and also to ‘Peehi’ (Te Pēhi Hitaua Tūroa) and others. The other chiefs also ‘refused to shew the boundary points’, and Thorpe was forced to compile the sketch plan ‘from maps sent to me from Wellington & my own trig work’.165 Thorpe telegraphed twice to Marchant on 17 February that the ‘natives have refused to shew Southern boundaries’, that he had returned to Wanganui, and he would ‘compile the best plan possible from the maps you have sent to me & my own work near the Southern boundary’.166 Thorpe submitted an approved sketch plan to the court on 24 February 1886.167

Throughout, Butler coordinated the work on the sketch plan. He was sent a rough draft compiled from existing survey work, which he was told could form the basis of the sketch plan for the court. For this to occur the chief surveyor for Wellington, Marchant, required that Butler ‘go carefully over Waimarino boundaries & sketch on tracing alterations you require’.168 That survey officials would ask the Crown’s primary land purchase agent in Whanganui to make boundary adjustments for the plan to go before the Native Land Court’s title determination hearing suggests that all understood that the ultimate goal of mapping the block was to enable its purchase.

(8) Māori reluctance
Though we received no evidence to explain Māori reluctance to help Thorpe to map the southern boundary of Waimarino, it is possible that suspicion about the Crown’s intentions was rendering the Waimarino hearing increasingly contentious. Thorpe had been asked to locate and plot three blocks (Ōruapuku, Ngāporo, and Tahereaka) that lay within the boundaries of the land that was the subject of Te Rangihauata’s application.169 In her report, Marr noted several applications received prior to Te Rangihauata’s application, and others delivered after it, which appear to have concerned land within its boundaries.170 The existence of so many applications indicates that Māori with interests in the Waimarino block had not come together to advance claims through the court, but were acting separately. Thorpe’s inability to secure the help he needed to locate the Ōruapuku and Tahereaka blocks might well indicate that taking the land through the court lacked support, making rangatira uneasy about being seen to be aiding that process.

(9) Consequences
On a practical level, the delay in completing the sketch map meant that Māori had to rely on the description of Waimarino boundaries in the Gazette notice. It was on the basis of those boundaries that Māori were forced to determine whether their interests were covered by the application. As mentioned, this was a particular problem for hapū that found their interests were covered by two applications. Tūhua-based hapū were convinced that the boundaries described were mistaken as their lands went under the Aotea Pact, and would be heard at Ōtorohanga. On the eastern side of the block, the boundary overlapped the boundaries of Taupō-nui-a-tia, an application to be heard at Taupō. This also proved an issue in the south of the block, on the slopes of Ruapehu, where the uncertainty of the boundary led Winiata Te Kākahi to conclude that tens of thousands of acres claimed by his 12 hapū were within the block.171 Much of this area later proved to be in the Urewera block to the south.172

(10) Conclusion
It is apparent that, legally, there was no requirement at the time when Te Rangihauata made his application for the block boundaries to be marked out on the ground, nor for a plan to be attached to the application. However, those involved in lodging the application evidently did not understand this, because it untruthfully stated both that the boundaries of the block had been marked out in the manner required by repealed provisions in the 1880 Act and that a map of the block had been submitted. It is difficult to assess what effect these misstatements may have had, because it is not clear how many saw the application. Most would have relied merely on the notice that appeared in the Kāhiti.
There seems to have been uncertainty – even confusion – about what the legislation actually required by way of defining the area that was the subject of the application. There was considerable focus on getting together a sketch plan; a sketch plan was obviously handed up in court on the first day of the hearing; but there is no specific mention of sketch plans in the legislation.

The evidence of Government files reveals that the Crown drove the preparation of the sketch plan, and offered it to the court without explaining its limitations. In fact the plan was neither reliable nor comprehensive. Of necessity – because it had to be prepared quickly; because the trigonometrical survey data was not complete; and because tangata whenua who were supposed to act as guides for surveyors would not do so – surveyors fell back on ‘best guess’ methodology at a number of points.

Although there was no requirement for a plan at the commencement of the court’s title investigation, the court was supposed to satisfy itself that the boundaries of the land had been marked out, and, if a plan had been deposited, that it was ‘correct, and that the rules in respect of surveys have been complied with.’ Only after ‘such facts have been established to the satisfaction of the Court’ would it proceed to take evidence as to the title ‘of the applicant and of other natives to the land’.

Comparing the legal requirements with how those involved conducted themselves, we conclude that there was too little grasp of what the legal requirements actually were. Ironically, the misapprehension that the requirements under the 1880 Act were still current could have served to make clearer what land was comprised in Te Rangihuatua’s application – except that the application lied about fulfilling those requirements. Likewise, the apparent misapprehension that the court required a sketch plan could have led to better information for tangata whenua – except that the sketch plan was neither comprehensive nor accurate, and was not based on complete survey data, although it purported to be. What this added up to was a muddle that left none of the affected parties with reliable information, and without the safeguards afforded by a clear and transparent process.

We will return to these issues when we focus on what happened at the title hearing itself.

### 13.4.5 Was the Crown’s involvement proper?

Here, we focus on alleged impropriety in the role of the Crown’s land purchase commissioners, McDonnell and Butler, and especially Butler, in drafting and bringing what we refer to as Te Rangihuatua’s application.

Claimants also alleged impropriety in the nature and extent of Crown involvement and conduct as regards when, and in what order, the court dealt with applications; and in the definition and mapping of the area comprised in the block. We address those matters above and below under the headings ‘What were the issues with the sketch plan?’ and ‘Were the applications handled appropriately’.

#### (1) The role that Butler played

The parties in our inquiry agreed that the Crown’s land purchase commissioner, Butler, probably completed the application form on behalf of the three principal claimants. Historian Andrew Joel said in questioning that the handwriting on the application closely matched Butler’s writing in many letters under his name. Cathy Marr went only so far as to say that the application ‘may well have been prepared with encouragement and advice from officials.’ We cannot conclude decisively that Butler completed the application form, but it seems likely that it was either his work or that of another Crown official.

It was the claimants’ case that Butler got in on the process because the Crown had decided to purchase the Waimarino block, and wanted to manage things so that the title to the block was determined quickly and purchasing could begin.

There is evidence to suggest that getting title determined quickly as a precursor to purchase was indeed the Crown’s strategy. We mentioned how Native Under-Secretary Lewis told Ballance in October 1885 that steps had been taken to ensure that the court determined the titles of large blocks that the Crown wished to purchase as soon as possible; the Crown kept a Waimarino purchase account from this time. Getting Crown purchase agents
to help applicants to fill out and submit applications to court might well have been among the steps to which Lewis was referring.

The idea that Butler played an extensive role in the Waimarino application must be approached with caution, though, because he did not arrive in Wanganui to take up the job of land purchase commissioner there until late December, and the application was filed on 27 December 1885.

One of the first expenses that Butler charged to the Waimarino purchase account was the cost of his relocation from Wellington to Wanganui in late December 1885. Because Butler came so late to the scene, we think it unlikely that he played the major role in getting tangata whenua to apply for title determination. Before Butler arrived though, Thomas McDonnell, his predecessor, had been working on purchasing the Waimarino block, according to expenses recorded against the Waimarino block in the Crown’s purchase accounts.

Butler could have worked on the application in its final stages, but his role was probably more secretarial (in which capacity he might have penned the names of the 18 kaitono) than substantive.

The evidence is clear that once stationed in Wanganui, Butler moved directly into facilitating the Crown’s purchase of the Ōpatu block (6,537 acres), across the river from Waimarino. On 28 January 1886, Butler informed Lewis that the court had determined title to Ōpatu without opposition, that Butler ‘assisted Maoris to prepare their case before going into Court’, and he hoped for similar success with the other upriver blocks. Butler later recounted how he tried unsuccessfully to reduce the number of owners on the Ōpatu block title, because having too many would complicate the purchase. Ultimately, though, he realised that omitting owners ‘might prejudice the successful investigation of the title to the larger blocks on the Whanganui river’. He went on to encourage Māori there to bring their land to court, and was active on a number of such blocks. However, all that was yet to come. Our focus here is on the Waimarino block application. With respect to that, we must logically conclude that his role was minor for the simple reason that he was not present for most of the critical preparation period.

Moreover, it was surely evident to Te Rangihuatau and others that McDonnell and Butler were both in the business of purchasing land for the Crown, and that applying to the court was a related activity. We think it was probably clear all along that the motivation of the Crown – whether in the person of McDonnell or Butler, or both – in assisting Māori to apply for determination of title was to advance the Crown’s interest in purchasing the land involved.

Later, Te Rangihuatau protested the Crown’s purchase of the Taumatamāhoe block, claiming that he had put before the court during the title determination of Waimarino an arrangement to reserve Taumatamāhoe ‘for the benefit of the future Maori race’, and it was on that basis that he consented to the purchase of Waimarino. This does not sound like a man in any doubt as to what the Crown was about – and presumably others present at court would have listened and also understood then, if not before, what was going on.

(2) The conduct of the land purchase commissioners

The Crown agreed that Butler probably completed the application, and that he and other Crown officials were motivated to assist Māori to obtain title because it was their job, acting for the Crown, to purchase the land in short order. The question was whether it was proper for Crown officials to assist in this way. It contended that there was nothing wrong in what Butler did, and that Māori – including Te Rangihuatau, who was not Butler’s puppet as the claimants implied – must have known what was going on.

If Māori were indeed in the picture, as the Crown argued – and as, we think, the situation and the evidence suggests – we agree that the officials’ conduct cannot be characterised as underhand or deceptive. As far as we can tell, the rangatira concerned were in a position to know the Crown’s intentions. If Te Rangihuatau and the others did not want to sell their land, and therefore did not require the court to determine their title, they could have
The claimants told us that public notice of Native Land Court applications was an important part of the process, and that it was within the Crown’s control, because the Crown published the Gazette and Kāhiti, its Māori language version. Claimants contended that the Crown held back applications that it did not want to proceed to hearing by not gazetting them, and instead gazetted applications that it wanted the court to hear. The Crown favoured the application for the Waimarino block that named Te Rangihuatau as principal applicant, and ensured that it was gazetted and that others were not. This was part of its plan to purchase the land involved.

The Crown denied that it manipulated the process of gazetting applications to ensure that the court heard the Waimarino application, arguing that the claimants’ position lacked supporting evidence, and attributed to the Crown tasks and responsibilities of the Native Land Court.

We also explore – further to the theme of how the applications for title should have been managed – evidence of concurrent hearings of the Native Land Court in different centres, all affecting the land interests of the same people.

Other applications for title to land in the block
The evidence showed that when the court received the Waimarino application of 27 December 1885, it had already received other applications seeking title to land within the block’s boundaries. The claimants queried why those earlier applications, and also others that post-dated the 27 December application, did not proceed to hearing. They suggested that the Crown inappropriately influenced the court’s process to ensure that it was the 27 December application that proceeded, rather than the others. This was depicted as a continuation of dubious Crown conduct that began with Butler’s inappropriate assistance to Māori who brought the application. We have already said that we do not consider that the evidence supports the claimants’ characterisation of the land purchase commissioners’ conduct as misleading or underhanded. Was there, though, something amiss with how the Native Land Court handled the application, and if there was, what was the Crown’s responsibility (given our jurisdiction is to make findings on Crown actions and omissions)? And did the Crown inappropriately interfere?

Marr described to us how, when the court received the Waimarino application of 27 December 1885, it was at the same time receiving many applications concerning land in the Whanganui district. Ballance claimed in August 1885 that applications for title determination in the Whanganui district covered some 1.2 million acres. Marr was uncertain as to the exact location of land covered by some of the applications, but believed that they might well have included parts of the Waimarino block. She went on to note that the Waimarino application appeared to lead to further applications for title determination hearings to smaller areas within its boundaries or close to the Waimarino block.

There is no doubt that the Crown would have regarded the large Waimarino application of 27 December 1885 as important: it covered land partly within the Rohe Pōtāe, which as we have seen the Crown was keen to ‘open up’, not least because it incorporated a good part of the route of the North Island main trunk railway. The claimants saw these motivations as reasons why the Crown manipulated the notification process for applications to ensure that the Waimarino application was heard. The Crown pointed to a lack of evidence for this proposition, and said that the ‘practice of the Court was to advertise applications when there was sufficient business to justify a Court sitting’. In other words, the court gave notice of an application for hearing when it had received enough applications to justify a sitting of the court.
The court’s practice in managing applications for title

The Crown was right about this. It was the court and not the Crown that decided when applications would be heard, and it tended to accumulate applications until the number on hand justified a sitting. This meant that if there were only a few applications for relatively small areas, they would not proceed quickly to hearing.

This is what we see when we look at the approach the court took to applications affecting land in the wider Taupō district. Horonuku Te Heuheu made the Taupō-nui-a-tia block application on 31 October 1885. At that time, the court had on hand 108 applications affecting land within the area of the Taupō-nui-a-tia block, some dating back as far as 1880. The court had been intending to give notice in the Kāhiti that very month, because it now had enough applications covering enough of the land to justify a comprehensive hearing. But as we describe shortly, the overarching claim of the Tūwharetoa ariki altered the situation.

The point for these purposes is that up to that juncture, the court had received many applications affecting the Taupō region, but it did not give notice of them as they came in. It gathered them up until it could see its way clear to conducting an inquiry into the interests of all the relevant parties, ideally at once. In the case of Taupō-nui-a-tia, this had taken several years.

The court approached similarly the various applications affecting land in the area of the Waimarino block that preceded Te Rangihuatua’s application. When that application came in, it had received only a few, smaller applications affecting the same area – not enough to justify a hearing. Once it received the more comprehensive application, it regarded the earlier applications as now effectively incorporated in that application. It showed no intention of hearing the earlier, more limited applications as they arrived (which the claimants argued might have been expected), but in fact dismissed them once it decided to proceed with Te Rangihuatua’s one. It saw efficiency in addressing the many claims of the many groups in a single, comprehensive hearing, rather than hearing them severally.

It is plain that hearing applications that covered large areas did offer practical benefits. This was an observation of the National Park Tribunal, which commented that one advantage was that it avoided a scramble among many different applicants for piecemeal determination of title that could involve considerable expenditure of time, effort, and financial resources. Applications to determine title to large areas like Waimarino had the potential – if affected interest-holders agreed – to make more efficient use of the time and resources that Māori communities had to expend to secure legal title to their land.

The Crown’s influence on the court’s process

This is not to say, however, that the Crown lacked either the ability or the willingness to influence the court’s process when it wanted the court to prioritise a preferred case. This is just what happened with the Taupō-nui-a-tia application. Te Kāhui Maunga: The National Park District Inquiry Report described how Horonuku Te Heuheu attended the large hui at Poutū that called for, among other things, the eradication of the Native Land Court ‘throughout the whole island’ – but then he went on, with ‘many others’, to submit the Taupō-nui-a-tia application to the court at the end of October. As noted, there were 108 earlier applications relating to land within the block, but,

Although the 108 claims were supposed to be published in the Kahiti o Niu Tireni on 10 October [1885], Under-Secretary Lewis suspended their publication, under direction from Native Minister Ballance. In giving the instruction, Ballance failed to follow the procedure laid down in the legislation, which stipulated that, where a claim was to be suspended, written notice was first to be provided to the court by the Governor. The suspension of the claims was not lifted until January. The hearing for the Taupōnuiātia block began on 14 January 1886, and judgment for the main block was given on 22 January. Just a day later, Lewis wired Chief Judge MacDonald regarding the 108 applications, and notice of the impending claims appeared in a Kahiti of the same date.

The Tribunal considered that ‘Ngāti Tūwharetoa would not only have been aware of the [108] claims, but would have likely approved of their suspension.'
This case shows that the Crown saw no need to subtly manipulate the process of notification behind the scenes, which the claimants alleged it did in the Waimarino application. Rather, it acted boldly to ensure that a preferred application went before others.

(7) **The Crown not involved in prioritising applications**
There is no evidence, however, that the Crown sought to prevent the notification of any pre-existing applications affecting land within the Waimarino block. This was quite probably because it appears that the court had not yet got to the point of giving notice. Rather, it was still accumulating applications, pending the time when there was sufficient business to justify a sitting of the court.

Thus, as regards Te Rangihuatau’s Waimarino application, we can say that:
- the Crown does not appear to have played any part in the court’s decision to proceed with that application and not the various others that it received both before and after it;
- the court’s practice was to accumulate a quantity of applications to determine title, and proceed to give notice and go to hearing when it was in a position to take a comprehensive approach to claims and claimants in an area; and
- the court’s proceeding with Te Rangihuatau’s application and not with the other applications was a regular part of its organisation of its own business; was within its competence; and had some merit in terms of efficiency.

The number of applications for determination of title to land in the Whanganui district was growing quickly in late 1885 and early 1886. They covered large portions of customary land, including the Waimarino block. The court’s decision not to hear applications affecting land that fell within the larger application of course had consequences other than the practical advantages we referred to above. There is force in the contention of claimant counsel that it mattered greatly because ‘[e]arlier applicants who might not agree with the latest application would be placed in the role of counter claimants’; claimants whose application the court proceeded to hear were in a primary position of knowledge as compared with others who might be unaware of what was going on, and lacked proper appeal options; and a single application taking in a large area made purchase arrangements easier for the Crown.  

(8) **Overlapping applications**
We have already described the difficulty caused by the Waimarino block overlapping with the Aotea block/Rohe Pōtāe area, which affected Tūhua Māori whose interests were subject to the Aotea Pact. It appears that no one told the court that there was an area that was within both the Rohe Pōtāe (as mapped in 1884) and the Waimarino block. Crown officials from the survey offices of Wellington and Auckland, and undoubtedly also Butler, since he was involved in negotiations concerning both blocks, were aware of the overlap but apparently did not feel called upon to tell the court. As a result, people expecting to have their interests determined at Ōtorohanga instead found that a court at Wanganui had determined the ownership of Tūhua lands. Counter claimants in the Waimarino block faced some difficult and intractable problems.

(9) **The problem of concurrent court hearings**
The court might not have been acting explicitly in the Crown’s interests when it opted to hear Te Rangihuatau’s application, but nonetheless, it suited the Crown.

The Crown was less happy, though, about the court’s decision to hear the Waimarino and Taupō-nui-a-Tia applications at virtually the same time at Wanganui and Taupō respectively. A few months later, the court began hearing the massive Aotea block claim at Ōtorohanga in the King Country. Other hearings at Napier and Te Kūiti also involved the people of Taupō, Whanganui, Hawke’s Bay, and places in between.

Concurrent court sittings in far-flung centres of Pākehā population had the potential to prejudice Māori interests very significantly. In chapters 10 and 11, we described how Māori had to attend court to defend their interests, ensuring their inclusion in ownership lists, and securing title to a fair portion of a block. Failure to do so often meant forfeiture of ownership rights.
In our inquiry, claimants of Ngāti Tūwharetoa (Wai 575), Ngāti Hikairo (Wai 833, Wai 965, and Wai 1044), Ngāti Hikairo ki Tongariro (Wai 1262), Ngāti Waewae (Wai 1260), and descendants of Kōpere Tānoa, Tānoa Te Uhi, and Te Whiutahi (Wai 764 and Wai 1147) all said that they were unable to adequately protect their interests in Waimarino and Taupō-nui-a-tia because hearings for the blocks coincided. Ngāti Hāua claimants (Wai 48, 81, and 146) submitted that their interests were affected because the court at Wanganui was holding the Waimarino hearings at the same time as hearings and hui were taking place at Te Kūiti and Ōtorohanga, and Ngāti Hāua needed to – but could not – attend them all.

The claimants in our inquiry argued that the Crown was ultimately responsible for the problem of concurrent hearings, as it designed the native land legislation that dictated the court process. The legislation should at least have required a coherent system for arranging and giving notice of proceedings in a way that facilitated the attendance of all affected Maori.

Hearings took place at Pākehā settlements closest to the land concerned. Although the biggest blocks had adjoining boundaries, they were so huge that proceedings affecting them could be heard simultaneously by courts that were hundreds of kilometres apart.

(10) Managing effects of concurrent hearings
Crown officials knew that the court’s decision to hear the Taupō-nui-a-tia and Waimarino cases at Taupō and Wanganui at about the same time had the potential to affect Māori adversely. In December 1885, the Native Under-Secretary Lewis communicated to Chief Judge Macdonald this view:

It is desirable in view of possible hitch in either that both should sit as notified. Principal natives saw me at Wanganui on subject & represented that as they wished to be at Taupo the Wanganui Court should be adjourned, but they were quite satisfied on my telling them that the Court would be requested by the Govt not to proceed with any cases in which they were interested until their return & promised to tick off on the list cases which might safely be gone on with.

The representations to which you refer were I presume made before this meeting. Kemp [Te Keepa Te Rangihiwinui] & Paore [Pōari Kuramate] stated that if the Taupo natives consented to put back the boundary of their claim there would be no need for the Wanganui Natives to remain at Taupo & they could return at once to go on with their own Court. Please state whether this meets your views.

And so it was that, after consultation with southern Whanganui chiefs regarding the potential clash between the Waimarino and Taupō-nui-a-tia cases, it was agreed that Whanganui Māori would indicate cases that could proceed. Other cases would be delayed until people returned from Taupō.

These efforts of the Crown and the court appear to have ensured that there was a gap of some weeks between the Taupō-nui-a-tia and Waimarino cases. The Taupō-nui-a-tia case began at Taupō on 14 January 1886, the court issuing judgment on 22 January. It issued titles for its two principal subdivisions, Ōkahukura (which bordered the Waimarino block) and Rangipō North, on 3 February 1886. The Waimarino application was notified in the Kāhiti on 21 January 1886, to be heard at Wanganui on 22 February 1886. In fact, the case did not get underway until 1 March 1886, so title hearings for the two blocks were separated by a number of weeks. However, the Taupō-nui-a-tia application was designed as a means of setting the external boundary of Ngāti Tūwharetoa’s tribal territory. It remained to determine the internal interests of hapū from which subdivisions would flow. These hearings took place at Taupō during February and March 1886, and a number coincided with the Waimarino title hearing.

(11) Effects of concurrent hearings on tangata whenua
According to Dr Pickens, Te Keepa Pūataata, an influential Tūwharetoa rangatira, missed the opening of the Waimarino hearing. Pūataata was knowledgeable concerning the customary rights of hapū in the area and would have been an important witness had he been able to attend the court. He was also a member of Ngāti Maringi, Ngāti Hikairo, and other hapū associated with Taupō, Whanganui, and Waimarino. Pūataata and another
man sent a telegram that the judge read out to the court at Wanganui. They asked that ‘the case [be] kept for them.’ Although the judge recorded Te Rangihuatau’s reply in his minute book, it is illegible. The Waimarino title determination proceeded without the expert input of Pūataata, because the judge was not prepared to await his arrival, or adjourn. Even though he was not present, Pūataata was later confirmed as an owner in both the Waimarino and Ōkahukura blocks. In this case, then, absence from court did not lead to loss of ownership rights – possibly because Te Rangihuatau was there, and he and Te Keepa Pūataata had in common whakapapa links to Ngāti Maringi.

The hearing to determine the ownership of the Taupō-nui-a-tia West block began on 1 March 1886 in Taupō, the same day that the Waimarino hearing began at Wanganui. We received no evidence on whether people claiming interests in Waimarino were affected by this clash. It could, however, have affected members of northern hapū such as Ngāti Hikairo, Ngāti Manunui, Ngāti Urunumia, Ngāti Waewae, and Ngāti Hinewai. Further hearings for the Ōkahukura block took place at Taupō on 5 March, prohibiting anyone involved from also taking part in the Waimarino hearing at Wanganui.

Although evidence on this point was limited, we can logically infer that Māori with rights in the Waimarino block probably were affected by the fact that multiple hearings were occurring at the same time for blocks in which they held rights. What were the consequences? It is impossible to be definitive about this. We observed that absence from court did not appear to affect Te Keepa Pūataata’s interests detrimentally. But what of the many others whose rights were similarly at stake, and who, for whatever reason, did not contact the court to warn that they would be unavoidably absent, or who did not have whanaunga there to protect their interests? Although we know enough to conclude that groups like Ngāti Hāua were almost certainly granted fewer land interests as a result of their absences from court, we cannot pinpoint retrospectively what they lost, or how many were actually affected.

We can be certain, though, that concurrent hearing dates were only a problem for those who were aware of the hearings. For many, a more serious problem was that they did not receive notice that the court would determine title to their land at a particular time and place. That was the position of many Whanganui Māori with interests in the Waimarino block, and they were of course completely unable to defend their interests.

(12) Conclusion
We cannot be definitive about which Māori lost land interests as a result of being unable to attend concurrent court hearings. However, it is apparent that both the court and the Crown knew of the problems that the clashes might cause, and neither took decisive action to ensure that these large blocks went through the court at different times. Their focus was consistently on what could be done to juggle things so that no significant delay would occur. A more leisurely timeframe that allowed the main blocks with overlapping interests – Waimarino, Taupō-nui-a-tia, Ōkahukura, and Aotea – to be heard sequentially was an obvious solution to, or at least mitigation of, the problem. It would have allowed people to attend all the court sessions they needed to attend to protect their interests. That this seems never to have been seriously considered must, we think, have been attributable at least in part to the pressing desire on the part of Crown interests for land to gain title in short order so that Crown purchases could proceed.

13.4.6 Notice’s effectiveness and legal compliance
Many complaints and protests followed the court’s determination of title for the Waimarino block. A common theme was that many people who would have sought inclusion in ownership of the block did not know that the court was determining the title of lands in which they had rights. This immediately raises the question of whether notice – a necessary feature of fair process at law – was adequate.

(1) Legal requirements
The Native Land Court Act 1880 prescribed the jurisdiction and practice of the court. As to notice, sections 20 and 21 directed:
20. After the receipt of any application as aforesaid [for title investigation], notice thereof shall be given by the Chief Judge in such manner as appears to him best calculated to give proper publicity to the same.

21. By the same or by any subsequent notice, the day and place when and where the Court will sit for hearing the application shall be notified.

Key aspects of these provisions are:
› it was the chief judge whose job it was to give notice of an application;
› the time within which he had to do it was not specified;
› the chief judge could give notice that the court had received an application either separately from or together with notice of when and where the hearing would take place;
› the chief judge had discretion as to how to give ‘proper publicity’ to applications; and
› the Act gave no guidance as to what proper publicity might comprise and set no parameters for how long after notice a hearing could occur.

(2) Notice of the Waimarino block application
The Waimarino block application was advertised for hearing in the Kāhiti on 21 January 1886. Advertising hearings in the Kāhiti was the standard means of alerting Māori to hearings. Although the Act quoted above gave scope for the chief judge to determine what proper publicity might comprise in any case, what happened with the Waimarino block reflected usual practice. There was simply a notice in the Kāhiti.

The notice announced that the hearing of Te Rangi-huatau’s application would take place at Wanganui on 22 February 1886, but the hearing did not start until 1 March. Even counting this extra week, the gap between notice of the hearing and its commencement was only five weeks. There were many things that had to happen within those five weeks if claimants were to be ready for action on 1 March. Copies of the Kāhiti had to reach Whanganui communities near and far; those communities had to make preparations for a potentially lengthy absence while they attended court; large numbers of interest-holders and their whānau had to get themselves to Wanganui; and they had to organise their cases, which at the very least would have included deciding who would give evidence, and planning what witnesses would say. All of this would have been greatly complicated for communities that knew that different courts were hearing different blocks at the same time. How were they to assert their interests to land at separate court hearings happening at the same time in different places?

Those with problems like these, even so, better off than the many who would have pursued their claims had they known that the court was holding these hearings.

(3) Complaints about not receiving notice
The Crown received petitions in 1887 and 1888 concerning the loss of rights in land in the Waimarino block.

On 4 May 1887, Te Kere Ngātaierua of Ngāti Tū and Te Huiatahi of Ngāti Waewae petitioned the Native Minister on behalf of 560 people who claimed rights in the Waimarino block. They said they had not attended the court’s title hearing for the Waimarino block because they received no notice of the hearing. Te Kere gave a long list of districts within Waimarino in which he had ancestral rights, and he wanted his land excluded from the Waimarino block.213 The petition was referred to Under-Secretary Lewis, who commented that Te Kere had the ‘full opportunity of attending the Court’ (at the beginning of April 1887, the partition hearing) when the Government’s award was made.214 Three years later, Te Kere sent a list to Lewis which included at least 162 people, many of whom belonged to more than one hapū. They belonged mostly to Ngāti Tū, but were also of Ngāti Ruru, Ngāti Taipoto, Ngāti Rangi, Ngāti Rongonui, and other hapū. One column named the places they inhabited within Waimarino. Te Kere wanted them included in the ownership of the Waimarino, Rētāruke, Kirikau, Ōpatu, and Maraekōwhai blocks.215 Lewis commented to the Native Minister that
Te Kere could apply to have the names inserted in the Maraekōwhai block, 'but the title to the other blocks cannot be disturbed.'

(4) Associated complaints
There were some circumstances in which it was not sufficient for affected parties just to receive notice that a hearing was in prospect. A case in point was the situation of Māori of the Tūhua district, who because of their understanding of the Aotea Pact, expected that the court at Ōtorohanga would consider their land along with those of other Kīngitanga Māori.

On 16 April 1886, less than a month after the court determined title for the Waimarino block, Ngātai Te Mamaku and others wrote to Ballance seeking a reserve for Ngāti Hāua. The reserve they proposed took in a large area of the northern Waimarino block, and part of the boundary followed the boundary of the Aotea block. Te Mamaku received no response, so wrote again on 8 May 1886, asking that the Waimarino block not extend onto the land of his ancestors (we discussed this letter earlier). He wrote another letter on 9 June 1887, this time to the governor. Writing on behalf of 107 others, he protested against the Crown purchasing their land, which had been included in the Waimarino block: this was Tūhua land that was part of Te Rohe Pōtāe; they wanted their land left alone; they never wanted to sell. Their grievance, the letter said, arose from their ignorance of the proceedings, courts, and acts of Government. Ballance refuted these claims in his own letter to the governor, in which he asserted that 'every Native who had any claim in the block had full opportunity of establishing it in Court' and that 1,000 or more individuals were included in the ownership of Waimarino. In 1888, Ngātai Te Mamaku and 19 others petitioned the Government, complaining that they had been robbed of their land as a result of the surreptitious passage of the Waimarino block through the court. No official response to this petition has been located.

In March 1887, during the hearing to determine and partition out the Crown's interests in the block, the court addressed some of these protests about the Waimarino title determination process. On 31 March 1887, Hōri Pukehika addressed the court, asking for an adjournment so that the title hearing could be re-opened, and those left out of the ownership lists due to their absence from the court could be included. Chief Judge Macdonald was present. He said that the case would not be reheard, as the claim has been duly gazetted, and notices no doubt sent to all, and after all the requirements of the law had been fulfilled, the case was proceeded with and this Court has no other action now in respect to that matter, but to accept the work of the Court upon the original investigation.

Notes recorded in the court at the time reveal that Macdonald went on to state that the 'absence of persons [from the title hearing] was no ground for Rehearing and none for adjournment or reopening.' Hōri Pukehika denied receiving notice, but this was refuted by others present. Butler later asserted that when the Kāhiti was issued, messengers were sent up the river with copies for all the settlements. There must be a question about whether notice that went 'up the river' would have reached populations that did not live on or near the river itself. Perhaps they would have heard about the case eventually, but not necessarily within the bare five weeks that the court allowed.

13.4.7 Conclusions on the Waimarino block application
(1) The applicants and their representative capacity
Three rangatira made the Waimarino application representing a number of hapū with interests in the Waimarino block. These rangatira did not, however, represent all of those with interests. It is not possible, given what we know, to say what proportion of owners in the block knew about and supported the initiative to get the court to determine title to the land at that time. We do not know whether the 18 'kaitono' whose names were listed on the application but who did not sign it, knew about and supported the application.
Nor can we say confidently that the block described in the application was the rohe of the applicants – although some of it certainly was. The block’s boundary cut through customary boundaries, excluding land in which the applicants held interests and including lands claimed by others. It ignored the boundary of Te Rohe Pōtāe, which was the subject of the Aotea Pact, an 1883 agreement between Te Rohe Pōtāe Māori and the Crown. There is no doubt that many were either unaware of the application, or mistakenly believed that their interests were protected by the Aotea Pact.

We know too little about the persons named on the application, and about the process of their names being listed, to say that they were not the right people to be there. However, given the size of the block, and given that the named claimants did not advance their claims in an obviously tribal or representative fashion, it is surprising both that the application went forward in the names of so few, and that so few signed. Claimants in Waimarino later complained that the block boundaries were wrong, because they cut through or across traditional tribal interests.

(2) The clarity and legality of the application
Fairness required that affected parties could ascertain whether or not their land interests were affected by the application. The law required that the application describe the land ‘by name or otherwise, sufficient to identify it’.222

Calling the block ‘Waimarino’ was misleading, because the area to which that name traditionally referred was only a fraction of the area of the block. Many interest-holders in the very large area that the block covered would not have connected the name ‘Waimarino’ with their land.

The boundary described also overlapped that of the Aotea block, as shown in the Crown’s sketch plan of 1884 following triangulation survey. The Aotea block corresponded roughly with Te Rohe Pōtāe. Now, though, and confusingly, the Waimarino and Taupō-nui-a-tia applications covered large areas that were formerly part of the Aotea block and within the boundaries of the Rohe Pōtāe. While Māori of the Taupō and upper Whanganui district had the right to apply to have their land interests included in another block, not all of those with interests in the 88,000 acres that were now claimed as part of Waimarino knew of this significant change. Many – particularly Māori of the Tūhia district – remained unaware that their interests had effectively been transferred from Te Rohe Pōtāe/Aotea block to the Waimarino block.

Although the verbal description in the application was skimpy, interest-holders would have recognised the names of the rivers and streams that comprised most of the block’s boundaries. The areas between would have been less clear, however, as the named places were few, and the line that the boundary would follow between them was unspecified. In those parts of the block where the description departed from waterways, the legal test – was the description sufficient to identify the land? – was almost certainly not met.

The application also said that the boundaries had been marked out with stakes, and that a sketch plan had been submitted to the court. Neither of these were legal requirements of applications in December 1885, but nor were the statements true. That the legal requirements were misunderstood, and that misstatements were tendered as true statements, rendered the information contained in the application unreliable. Also potentially confusing was the fact that the block as described included two smaller blocks that the Crown had already bought.

Information about the land covered by the application was thus generally inadequate, but it was not a stand-alone problem. On its own, it could have been fixed fairly easily, but in fact other aspects of poor process exacerbated it.

(3) The issues with the sketch plan
Butler coordinated the process of completing a sketch plan for the court. It appears that he was carrying out his job as land purchase commissioner, trying to ensure that the Waimarino block would pass quickly through the court to be available for Crown purchase. Surveyors acted under the instructions of Crown officers to compile the sketch map of the Waimarino block, which they did substantially without the assistance of locals. Tangata whenua were reluctant, it seems, to be associated with the process.

The sketch plan was not available at the application
stage, when a good plan could usefully have augmented the skimpy verbal description. However, there was no legal requirement for a plan to accompany the application, nor for the investigation in court to proceed with a plan from the outset. There seems to have been confusion about the actual requirements, though. Everyone seems to have regarded it as necessary for there to be a sketch plan in order for the court to begin its title investigation. This was a reasonable assumption from a practical point of view, because otherwise how could the court be sure that it, or those involved, really knew what land was at issue? However, the legislation required only that the court was satisfied that the boundaries of the land had been marked out, and that if a plan was deposited, that it was correct.

The court minutes indicate that the sketch plan was handed up on day one of the title investigation. It is not apparent, though, what the court did to satisfy itself either that the boundaries had been marked out, or that the plan was correct.

There is no evidence that claimants viewed and assented to the sketch plan presented in court. It is not even clear that they saw it before it was handed up to the judge. We do not know what they made of it, if anything. Nor is there evidence that the Crown informed the judge that the plan was compiled substantially without the assistance of tangata whenua, and on the basis of incomplete surveys. At that time, the only surveyed boundary was the boundary of Te Rohe Pōtē that was surveyed in 1883 on instructions from Māori. Yet that boundary was not mentioned in the Waimarino block applications, nor shown on the sketch plan. Butler probably resisted using the Te Rohe Pōtē boundary because it excluded from the Waimarino block a valuable forest. The northern boundary of the block is shown in plans with a bulge that puts the forest inside the block.

The evidence indicates that the court received the sketch plan as if it were a faithful rendering of the extent of the claimants’ application, and based on reliable survey information. In fact, though, it was the work of the Crown; cobbled together in short order; prepared largely without the input of tangata whenua; and using incomplete survey data for a substantial part of the district.

With this inauspicious beginning, what happened next was important. Did the court require a proper survey, to ensure that the information in the sketch plan was reliable? And did the claimants have the opportunity to object if the land subject to investigation of title was other than they thought it was, or should have been?

(4) The Crown’s involvement in bringing the application

The Waimarino application was made at a time when the Crown wanted the court to determine titles to a number of large blocks that it was seeking to acquire. The Waimarino application form was almost certainly completed with the help of either or both of the Crown’s land purchase commissioners, McDonnell and Butler. It was one of a number of applications made to the court in the final months of 1885 and early 1886 that covered land in the upper Whanganui district. The route of the North Island main trunk railway would traverse many of these blocks, and the Native Land Alienation Restriction Act 1884 applied to them. Each application proceeded rapidly to hearing, and went through unopposed.

Although McDonnell and Butler were closely involved in the Waimarino application, and the application form was probably in Butler’s writing, it is unlikely that Butler’s was the major Crown influence, because he arrived in the area only at the end of December and the application was filed on 27 December.

As Crown land purchase commissioners, McDonnell and Butler certainly had ulterior motives when they assisted Te Rangihuatau and others to make their application, but it is hard to imagine that their interest in purchasing the land for the Crown was a secret – at least, not for those who were involved in preparing the application. Te Rangihuatau’s later comments in the Native Land Court about his agreeing to sell land in Waimarino on the basis that tangata whenua would keep Taumatamāhoe suggest that he knew all along where the application for title to Waimarino was heading. However, many northern Whanganui chiefs may not have known. As we have said, Native Minister Ballance told meetings at Kihikihi and Rānana the year before that the Crown did not wish to purchase anything beyond land for the train track and a
little extra for stations and cuttings. No officials had contradicted him publicly since then.

That Crown land purchase commissioners assisted and encouraged Māori to put their land into a process that would lead to Crown purchase is unsurprising. It is impossible now to know exactly how they carried out their functions, but we have seen no evidence that they acted covertly, or used coercion or bribery, for instance, up to this stage. Such conduct would clearly have overstepped the mark. However, provided that Māori understood what their job was, and provided that the land purchase commissioners acted in a way that was above board – and we have not seen evidence to the contrary as regards the Waimarino application – their assisting and encouraging did not stray beyond the bounds of propriety.

(5) The handling of the applications

Claimants alleged that, to advance its own interests, the Crown manipulated the court when it determined title of the Waimarino block. In fact, though, we were satisfied that the court decided when to hold title hearings, and they were usually triggered by an accumulation of applications relating to an area. In the case of Waimarino, the hearing followed receipt of Te Rangihuatau’s comprehensive application, which provided a basis for the court to inquire into all the interests of claimants in the district at once.

Although this modus operandi had the virtue of efficiency for the court, it had serious disadvantages for Māori. We have shown in the three previous chapters that many landowners were forced into unwanted title investigations when from one to three applicants initiated a court process, unwanted by the majority of those with interests in the block concerned. This was certainly the case with the Tūhua population of Waimarino and many others further south. It also meant that the earlier claimants for blocks within Waimarino, who might not have agreed with the new application, could be placed in the role of counterclaimants. Primary claimants were in the best position of knowledge about the process, as compared with others who might not be kept informed – especially if, as in the case of Waimarino, their applications were dismissed because the court regarded them as now effectively incorporated in Te Rangihuatau’s overarching application. An obvious weakness of this situation, especially for counterclaimants, was the poor provision for reconsideration of decisions, with no appeals and next to no access to rehearing.

Also adverse to tangata whenua was the fact that, in managing the Waimarino application, neither the court nor the Crown saw as its job the need to ensure that claimants in that district were not required concurrently to be present to assert their claims in other important title investigations. It was undoubtedly the case in Waimarino that some of those who needed to attend court at Wanganui could not, because the Waimarino hearings clashed with hearings for the Taupō-nui-a-Tia block and its many sub-divisions at Taupō. This came about because the Native Land Courts operated autonomously and heard claims as they accumulated. The Crown did take steps to address this, but Māori who found their rohe covered by two or more court districts struggled to attend all the sittings where their interests were at stake.

If the importance of Māori being able to attend all hearings they needed to attend to assert their land interests had been sufficiently prioritised, the system would have slowed down, and would have staggered the relevant title investigation processes. Both Crown and court were open to juggling fixtures to reduce the effects of clashes, but the process rolled on essentially with its eyes closed to the possible consequences. The general imperative to get titles determined and Māori land available for purchase was an overriding priority of the period.

(6) The effectiveness and legality of the notice

We commented above that neither the court nor the Crown saw it as their duty to manage the timetabling of the various applications to the court so as to ensure that all those with interests could attend sittings when they needed to. They recognised a certain level of duty, but far less than an absolute one. A concomitant duty, of course, was that notice was adequate to ensure that all those with
interests, or potential interests, knew when and where those interests would be before the court – and with sufficient lead time to enable them to get to where the hearing would take place, and to make the necessary arrangements to present their claim. Notice was another area where the Native Land Court and the legislation that underpinned it recognised a duty to inform the necessary parties, but the lengths to which the system went to ensure that notice was effective were limited. This was serious not only because, in the case of the Waimarino block, non-appearance at hearings almost always meant exclusion from ownership lists, but also because non-appearance as a consequence of failure of notice was generally not regarded as a proper basis for a re-hearing.

The area comprised in the Waimarino block was vast: it incorporated the land interests of about 40 hapū. The Native Land Court Act 1880 charged the chief judge of the court with the task of giving notice of title investigations ‘in such manner as appears to him best calculated to give proper publicity’ (section 20). In actuality, notice generally went no farther than publication in Kāhiti, and so it was here. Butler asserted later, when notice was under scrutiny, that copies of Kāhiti were sent upriver by messengers. The relevant Kāhiti came out on 21 January 1886. We do not know precisely when copies went up the river. It gave the hearing time and place as 22 February 1886 at Wanganui. The hearing actually got underway on 1 March. This meant there was at most five weeks for news of the hearing to filter out to tangata whenua throughout the district. Given the terrain in question, and the available means of communication, it is unsurprising that there were subsequently many complaints about failure of notice. Chief Judge Macdonald is recorded as having commented that ‘absence of persons was no ground for Rehearing and none for adjournment or reopening’. This was a surprising point of view for a chief judge, for good, effective notice is generally regarded as a prerequisite of fair process.

In our discussion, we quote examples in the evidence where notice failed and parties were unable to defend their interests as a result. It is most unlikely that all the instances of this were reported, though. This makes it difficult to assess the magnitude of the problem.

The Crown should have appreciated the fundamental importance of requiring good notice in circumstances where people’s property rights were to be transacted in court. Legislation should have spelled out the nature and extent of the notice required in situations like the Waimarino block title investigation, where many people’s interests and a huge area were before the court. To leave it to the chief judge’s discretion – and to leave the discretion so open – was to invite outcomes like that in the case of the Waimarino block. Allowing the court to give rough-and-ready notice was, we surmise, part of the flexibility of process that suited the Crown, whose interest was in getting land through the court quickly, so that the land had title, and the Crown could purchase it.

In the end, any determination of whether the Waimarino claim and the application process were prejudicial to Māori relies on a consideration of whether all Māori with interests were able to participate in the court hearing. For the court properly and fully to investigate the claimed ownership and the extent of the block, it had to be able to hear from all of those who were potentially entitled. The Waimarino application process failed to protect the rights of any Māori who had interests, or potential interests, but did not have a fair opportunity to attend. Denial of a fair opportunity may have arisen from any or all of the process deficiencies discussed in this section.

13.5 Determination of Interests

13.5.1 Introduction

As we show below, the Native Land Court at Wanganui determined title of the Waimarino block in four days of hearing that occurred over two weeks in early March 1886. The judges hearing the case were EW Puckey and Laughlin O’Brien, and the assessor, Paraki Te Waru. There were three objections to Te Rangihuhutarangi’s claim; each objector claimed part of the block through different ancestors. The rights of various groups were debated in court, and lists of owners were prepared and then amended.
outside the court during the hearing days. Butler aided in the preparation of ownership lists. On 18 March, the court awarded the block to those listed. Issue of the certificate of title had to wait until the court received a certified survey plan of the block.

The Tribunal’s purpose is to make findings about whether the Crown’s actions were consistent with Treaty principles. Constitutionally, the courts are not part of the Crown. That is why we have no jurisdiction to critique the decisions of the Native Land Court regarding the Waimarino – or any other – block, nor to make our own different assessments of how it should have decided the ownership of the block. Nevertheless, we received evidence that many customary owners were omitted as owners. To the extent that this occurred, or might have occurred, as a result of poor process or decisions under the purview of the court, we make no findings. However, we can see whether interest-holders lost out in the court process because of matters within the Crown’s realm – like the court’s structure and organisation, or other elements derived from Crown policy or legislation.

Claimants in this inquiry submitted that many of the customary owners of the Waimarino block were left out of the title because they did not, or could not attend the hearing to assert their interests. The lack of opposition led the court to award the block to Te Rangihuatau and those listed on his December 1885 application, and to others whom Te Rangihuatau accepted into the claim.²²⁵

Claimants tendered three main reasons why customary owners who should have numbered among the owners on the title did not: they did not attend the hearings because they did not receive adequate notice;²²⁶ they were unable to attend because of concurrent or anticipated sittings of the court elsewhere;²²⁷ and the court process was insufficiently rigorous, awarding title to 450,000 acres after a hearing that occupied only four days, with all the evidence of ownership presented on the first day.²²⁸ Claimants criticised the involvement of the Crown’s purchase agent, Butler, in completing the lists of minors and their trustees, in anticipation of purchasing those interests.²²⁹

The Crown contended that many of the claimants’ criticisms of the court’s process for hearing the Waimarino application were overstated, and really related more to the purchase of the block. The Crown asserted that there was evidence of substantial support among Whanganui Māori for the court’s determining title to the Waimarino block.²³⁰ It described the court as ‘flexible in the conduct of the hearing’, and said it ‘provided three separate opportunities for counterclaims to identify themselves and take part in the case’.²³¹

The Crown acknowledged that the Waimarino case ran at the same time as subdivision hearings at Taupō, but submitted that the majority of these Taupō cases did not involve Whanganui interests. It pointed to Māori with rights in both the Waimarino and Taupō-nui-a-tia blocks who attended hearings at Wanganui and Taupō.²³²

13.5.2 The court’s hearing of the Waimarino application

The Waimarino block hearing began on 1 March 1886. Te Rangihuatau, on his own behalf, and on behalf of those who supported his application, sought a determination of exclusive ownership of the block on the basis of descent from the ancestor Tamakana, continuous occupation, and conquest (by which he meant the defence of the land from enemies). He stated that ‘no other ancestor besides Tamakana had any right on this land’. He said that he knew the land; it belonged to him. He could point out the boundaries, and ‘the lines are correctly given in our claim.’ Te Rangihuatau also named Ōruapuku, Kawautahi, and Mangapapa blocks (and their related applications to the court) as falling within the boundaries of the Waimarino block.²³³

(1) The advantage of being the applicant

The way the hearing proceeded demonstrated the advantage of being the applicant. The Native Land Act 1880 gave the applicant – in this case Te Rangihuatau – the floor. According to the minutes of the case, Te Rangihuatau stated that ‘no other ancestor besides Tamakana had any right on this land’;²³⁴ and certified that the description and the map and the boundaries of the land were correct – although in fact none of these assertions was any more than approximately true. Absent objectors only had a right to request that the successful applicant – and Te
Rangihuatau seems to have been recognised as such from the outset – include them in the lists of owners, under the ancestor or ancestors named for the block. The claimants were correct when they argued that the title investigation actually began and ended on one day – 1 March 1886. Three objectors appeared, Te Rangihuatau agreed to include them in his application (as we outline shortly), and that ended the matter. The court adjourned to allow the list of names to be prepared. Its ‘investigation’ into the ownership of this vast area of land was over. Dr Pickens agreed with this analysis:

These agreements ended any immediate contest over the block and the case was adjourned, pending the presentation of names for the title. The Court had not been required to take evidence or reach a decision as to the ownership of a block. However, when Dr Pickens said that the court was not required to take evidence, he was incorrect. The court did hear evidence – that of Te Rangihuatau, asserting his complete ownership under the tupuna Tamakana. It is true that his statements were summary, but they were evidence, and the court accepted it unquestioningly. Its approach may have been influenced, as Bennion suggested in submission, by Te Rangihuatau’s appearance before the same court just six days earlier to assert ownership of the Taumatamahoe block under the name of the same ancestor. There, the court called for objections, none was forthcoming, and in effect the title investigation was over in just minutes.

(2) Te Rangihuatau includes objectors in his application
In the case of Waimarino, though, there were objectors who challenged Te Rangihuatau’s assertion of rights. Taiwiri Cribb wanted her rights recognised as a descendant of Tūkoio, a son of Tamahaki: neither of these ancestors were descendants of Tamakana. Kiritāhanga and Pata Hineuru both sought recognition of their rights as descendants of the ancestor Tamawhata. Te Rangihuatau agreed to include these three objectors in his application, and accepted that Tūkoio had a claim in a small area around Tieke. When he did this, Te Rangihuatau removed the obstacles to his claim, the court accepted it, and adjourned to await the ownership lists.

(3) The court cuts out objectors’ land on Ruapehu
More objectors came forward when the hearing resumed on 13 March. Kiritāhanga claimed an area between the Mākotuku and Mangawhero Streams. Mārama Tinirau asked that her land, seemingly adjacent to that of Te Kiritāhanga, also be excluded from the Waimarino block. Te Rangihuatau rose to their challenge, saying that ‘the survey was careful not to include the land upon which the rights of these people rest’. The court proceeded to hear the evidence of Kiritāhanga and Mārama Tinirau, and that of ‘Tareti Wairama’ (or ‘Tareti Te Wairama’), for land between the Mangaturuturu and Mangawhero Streams on the slopes of Ruapehu. The court minutes noted that an area of 18,535 acres was cut out for Kiritāhanga, and 14,977 acres for Tareti Wairama. A future court would determine the ownership of these areas.

On 13 March, the court began considering the lists of owners and hearing objections to the names included. As the lead claimant, Te Rangihuatau could either consent or object to those listed as owners. Then on 15 March, the court turned its attention to further lists. Tohiora ‘Hirata’ (Pirato?) asked for the list for Ngāti Waewae and Ngāti Hinekohara to be returned so that changes could be made. Dr Pickens noted that Tohiora was a chief of the Tūhua district and that his appearance (possibly belated) was significant. Dr Pickens was drawing our attention to the fact that there was at least one Tūhua chief at the hearing. However, we doubt whether the presence of Tohiora did indicate representation of northern interests. He may have connections with Tūhua, but he was of Ngāti Tamakehu, who were mainly southern Waimarino people.

(4) The court cuts out land for Ngāti Pare
Te Rangihuatau objected to a number of names on the Ngāti Pare list. According to Marr this resulted in the court hearing two separate claims to land within the Waimarino block. The first was a case that Pāoro Tūtawahā conducted for Ngāti Pare. In response to the evidence presented to the court Te Rangihuatau agreed that an area
in the south-west of the block (later quantified as 2,309 acres) should be cut out for Ngāti Pare. Title to this area would be determined at a separate hearing.\footnote{247}

\section*{(5) Paiura Te Rangikātatu’s objection fails}
Paiura Te Rangikātatu made a similar claim for Ngāti ‘Kaponga’ (or Kaponga, Ngāti Te Kaponga, or Takaponga). He claimed Mangapāpapa (near Mātaiwhetū), Hemotuke pā, and other places along the western reaches of the Whanganui River south of Kirikiriroa, for Ngāti Kaponga and Ngāti Hinewai.\footnote{248} Te Rangihuatau objected to this claim, saying that Paiura’s evidence was false. According to Te Rangihuatau, if Ngāti Kaponga had any rights they were at Rangataua, and that the people who really had rights were of Ngāti Taumatamāhoe, one of whose young men was called Kaponga.\footnote{249} Te Rangihuatau’s implication seems to have been that this man’s name had been ‘borrowed’ by these counterclaimants. The judge pronounced that Paiura’s case had failed, but gave no reason. Dr Pickens suggested that the questions that the judges and assessor asked revealed weaknesses in the evidence given.\footnote{250} The judges also struck off the list some names to which Hāmuera Kaioroto objected.\footnote{251}

In all, objections resulted in three areas totalling 35,811 acres being cut out of the Waimarino block, reducing it from an estimated 490,000 acres to 454,189 acres.\footnote{252} On 16 March 1886, the court released its final title decision. The names of 1,000 people were to be entered on a certificate of title for the Waimarino block as soon as a proper survey of the land had been made.\footnote{253}

\section*{(6) The court amends the ownership list}
On 18 March 1886, although judgment had been given and an order made two days earlier, the judge allowed the reinstatement of the names of six children who were previously struck out. The names had been proposed on 15 March, but the matter was adjourned on that day and reopened on 16 March, when the conductor was absent. Judge O’Brien explained:

If the Court reopened the case the claimants may apply for rehearing if these [children] should come to be admitted, on the ground that [the Court] having made its order it was only competent to be reviewed, altered or amended under an order for rehearing.\footnote{254}

However, contradicting itself, the court also said that the list could be re-opened with the consent of those in whose favour the order had been made. Since there were no objections from those owners present, the court inserted the children’s names on 18 March 1886.\footnote{255} The following year, the ownership list was altered again: names were removed after they were found to relate to an owner already listed (we discuss this process below in relation to Crown purchasing). These changes reduced the number of listed owners to 921.\footnote{256}

\section{13.5.3 Deficiencies and responsibility for them}
Our task is to assess the acts and omissions of the Crown. We have explained why it is not part of our function to review the work of the Native Land Court. Even if we could, we could not do it well 140 years after the fact, and we make no findings about the claimants’ criticisms of the conduct of the hearing. However, we consider that it is part of our function to inquire into what happened and why, not for the purpose of making findings about what the court did or did not do, but to ascertain whether acts or omissions of the Crown contributed to negative outcomes in ways that were inconsistent with the principles of the Treaty.

\section{(1) How the evidence was tested}
The Native Land Court’s process for determining title to Māori land was the means that the law dictated for converting customary land title to one that was redefined and registered in the colony’s legal system. As well as being a core part of their identity in their own culture, land was the chief asset of Māori people in the new dispensation. From any standpoint, it was vital that the process of converting their traditional land interests into a legal title was robust and fair.

We have described the Native Land Court’s investigation of title for the Waimarino block. The primary evidence – that of Te Rangihuatau representing the
applicants – does not seem to have been tested at all. Bennion’s submission for the claimants depicted Butler as complicit in working with Te Rangihuatau to secure a title for Tamakana although he was ‘well aware of the hapu divisions in the area’.257 Marr wrote in her report:

Although direct evidence is lacking for Waimarino, circumstantial evidence suggests that having decided to purchase the block, officials such as Butler took a considerable interest in managing the claim for investigation and persuading communities to cooperate over this.258

But should not the court, acting independently from the Crown, have inquired into Te Rangihuatau’s statements to satisfy itself that they were true?

(2) What the law said about establishing ownership
Having satisfied itself that the boundaries had been marked out and the plan was correct, the Native Land Court Act 1880 directed the court to proceed to ascertain, by such evidence as it shall think fit . . . the title of the applicant and of other Natives to the land, whether appearing in Court or not.

24. On every such investigation it shall be lawful for the Court to decide that the title of the applicant or any other Natives to the land or any part thereof, according to Native custom or usage, has been proved, or to dismiss the case, or to make any other order or give such judgment as the Court may think fit.

25. If the Court is satisfied as to the title of the applicants or of any other Natives to the land, or any part thereof, it shall order the names of those so entitled to be placed on the register as owners, and a certificate of title to issue.259

Section 56 provided:

It shall be lawful for the Court, in carrying into effect this Act, to record in its proceedings any arrangements voluntarily come to amongst the Natives themselves, and to give effect to such arrangements in the determination of any case between the same parties.

Then section 6 of the Native Land Laws Amendment Act 1883 added this gloss to sections 23 and 56 of the 1880 Act:

The Court may adjourn the hearing of any case from time to time and from place to place; and it shall be a duty of the Court, by the best ways and means, without reference to legal formalities, to ascertain and determine the ownership of land held by Natives under their customs and usages, or any other title.

It is immediately apparent that these provisions left the conduct of the hearing almost entirely to the discretion of the court. The court often took a large and liberal approach to what proof of custom or usage required. In the National Park inquiry, counsel for the claimants had put to Dr Pickens, historian witness for the Crown, the proposition that applicants and the Crown were well aware that, when objections were called for and none appeared, the court was likely to vest the land in the persons that the applicants named.260 Dr Pickens agreed, and in response to a question from the Tribunal, said that the court viewed silence as consent in these circumstances.261 That did not matter in this case though, he said, because there were objectors that were heard.262 We find it difficult to agree, because the court at no stage tested Te Rangihuatau’s statements of primary right – and yet they quickly became the court’s position on the disposition of rights in the block, against which all others had to argue.

The weakness in the court’s never putting Te Rangihuatau’s primary assertions under any scrutiny was revealed by subsequent developments – not least that it became obvious that important witnesses were absent from the court. At the Native Affairs Committee’s investigation on 14 July 1886 Butler admitted that Tōpia Tūroa had perhaps more interest in the block than anyone (see section 13.8.5).263 However, Tōpia had made no appearance at court during the hearing, and the court determined ownership in his absence, without taking into account the interest...
holders in the block whom he represented. On 15 March, Te Keepa asked for another adjournment until 6 April ‘as [illegible] and many other Natives would be engaged in preparing for the big Native Meeting to be held on the 18th March.’ Wīari Tōpia, son of Tōpia Tūroa, chimed in to ask the court to adjourn for two months if it granted any adjournment, ‘as there is great trouble and work amongst the Natives, and we require a long time to gather in our crops.’ The question of adjournment was stood over until the next day, and Te Rangihuatau handed in more lists of names. Various objections were voiced. Then, the minutes noted: ‘In reply to the Court Rangihuatau stated that Tamakana was the ancestor for the whole block and no one in Court objected to this ancestor.’

And so the process rolled on. If the minutes are anything to go by, there was at no stage any inquiry into whose interests might be compromised if the court did not adjourn, and it did not return to the issue the next day as promised. There was no adjournment, and instead the court pressed on to issue title. It thus determined rights in hundreds of thousands of acres without inquiry as to whether all the relevant parties were present, and on the basis of very little evidence contested only by a few objectors, and then only as to details and in relation to small areas.

(3) The Crown’s responsibility for the title investigation

Criticism of the Crown must be limited to the legislative framework within which the court was operating. The court in this case ran what can at best be described as a loose process. It had insufficient regard to the gravity of its task, and accordingly to the necessity to test evidence in a way that ensured a proper standard of proof before it. But as we have stressed, our job does not entail judging the court.

We can say, though, that the 1880 Act, as amended, gave the court too much discretion. Section 24 allowed the court to decide that Te Rangihuatau had proved that he had title to the Waimarino block ‘according to Native custom or usage’, even though it simply did not put him to the proof. Moreover, there were no other legally qualified persons present to keep the court on track. Section 4 of the 1883 amendment Act specifically banned lawyers from acting in title determinations: ‘No person shall in any case be permitted to appear in Court by or to have the assistance therein of any counsel, solicitor, agent, or other representative.’

However, nor did the Act prescribe a shortcut process of the kind that this court operated. It would have been equally possible for a court to take an entirely more rigorous view of what proof of custom and usage entailed for all claimants, including the main applicant. That too would have complied with the law. The problem was that it was up to the court to determine all of the key matters as it saw fit. This court was far too easily satisfied, and indeed exercised its discretion so liberally that it arguably failed to fulfil even the loose requirements specified. Most seriously, though, there was no real recourse. Parties were without counsel; there was no right of appeal; and rehearings occurred only rarely. In the case of Waimarino, the chief judge consistently exercised his discretion against rehearing any of the court’s decisions.

Absence of access to redress was the main failure for which the Crown was directly responsible, and we explore it further at the end of the chapter.

(4) Did Butler’s actions constitute Crown breaches?

Arguing for Crown culpability, the claimants consistently criticised the role that Butler played. Suffice to say here that, as regards the hearing at least, we do not consider that his role as purchase officer for the Crown could reasonably be conceived as one that involved a duty to put the court on notice about shortcomings in the evidence or the process. It is true that he knew the deficiencies of the sketch map, and would have known that the applicant, Te Rangihuatau would be presenting the sketch map to the court. But Butler was not an officer of the court. He did what anyone would have expected a land purchase officer to do: facilitate the Crown’s purchase of the land. That said, his action would have been wrongful if he had deliberately misled the court in its title determination. We saw no evidence of that.

It might be contended that, given the Crown’s guarantees in the Treaty, it should have ensured that there was
present in court an officer whose job it was to ensure that everything was above board, and that fair process was followed – a kind of amicus curiae (person who advises the judge, especially on the rights of persons not represented). In an earlier period, courts had available to them district court officers whose role was to establish the nature of customary interests in an area. This role was abolished in the 1870s, removing a potentially important resource (see chapter 10). Such an officer would presumably have been able to ensure that those whose interests needed to be before the court were before the court, or if interest-holders could not attend that the court knew who was not present and what interests they claimed. This would have ensured that the court was fully informed about and could properly address the situation of absent interest-holders.

The problem of unfamiliarity with court processes leading to loss of interests – like the situation of Te Rangipuhia, which we describe next – could also have been managed.

Butler, however, was a Crown officer of an entirely different kind.

The situation of Te Rangipuhia relates to the role that Butler played outside the court in the preparation of ownership lists. Te Rangipuhia, representing the interests of Ngāti Hāua of the Tūhaua district, withdrew an ownership list after others questioned the right of some of his people to be on the title. The argument went that Butler knew, as Te Rangipuhia probably did not, that if he did not make his bid for inclusion on the title then and there, he and his people would probably miss out altogether. That was, in fact, what happened. Butler did not advise Te Rangipuhia not to withdraw his list, and did not inform the court of the existence of the Ngāti Hāua list. It seems likely that the court knew nothing of it.

We doubt whether Butler can be much criticised for saying nothing when Te Rangipuhia withdrew his list of names and the rights of many Ngāti Hāua with it. Unfortunate though it was, it was not Butler’s but the court’s job to find out about and fully ventilate the issue of who should be on the title. A conscientious Crown land purchase officer might have felt it his duty to advise Te Rangipuhia not to withdraw his list, or to inform the court. Butler was evidently not such a person. However, we think it is the wrong approach to make Butler a scapegoat for what were essentially failings in the court process.

As a kind of caveat, though, we should note that, in this inquiry, the Crown conceded that where it legislated for itself a privileged position as purchaser – as it was in Waimarino, having excluded other parties through proclamations – it had to comply with a higher standard of conduct. On that basis, it could be argued that Butler, as the Crown’s representative on the ground, should have assumed the role of honest broker and champion of good process. Clearly, he did not, and at the time was probably not aware that he was expected to. In this scenario, it was the Crown that was at fault for not ensuring that its representatives understood how scrupulous they needed to be.

(5) Other legal requirements

We have discussed the legal requirements set out in the Native Land Court Act 1880 as amended by section 17 of the Native Land Laws Amendment Act 1883. We observed that the 1883 Act watered down the requirement for land to be fully described and mapped at the stage when an application for title determination was lodged. There remained obligations for the court to fulfil when it came to investigate title, though. At the sitting, it had to first require to be satisfied that the boundaries of the land have been marked out, if a plan has been deposited, that it is correct, and that the rules in respect of surveys have been complied with.

About the legal requirements, and the court’s role, the claimants said in submission that the 1883 Act’s amendment of the requirement to mark out the boundaries on the ground ‘by stakes or otherwise’ to a requirement just to mark them out, meant that ‘the requirement on the court to be satisfied that the land had been adequately described became extremely important’. As to the use of sketch plans, counsel for claimants made these comments:

Dr Pickens refers to evidence that the Native Land Court had proceeded for some time on the basis of sketch plans without legal authority. He does not make it clear how the
1883 amendment specifically remedied that . . . except to state that by 1886 the law had been changed to allow for the procedure which the court took in the Waimarino case. Even allowing that that was the case, as will be seen, the Waimarino application and court ruling were highly questionable and of dubious legality in a number of respects in any event.273

The record of what happened at the title investigation hearing is not verbatim. It is a synopsis in English of events that were played out in Māori. However, going by the minutes – the only record that exists – we get the flavour of what happened at the hearing. Fairly brief interaction between the court and various Māori spokespeople was interspersed with frequent adjournments at which Māori sorted out between themselves outside the court matters like whose names would go on the lists, and which objections would proceed and which would be withdrawn. It appears that Butler was present, although the minutes record neither his attendance nor any input. There is no recorded discussion about whether the boundaries had actually been marked out, nor about the correctness or otherwise of the sketch plan that was apparently handed up – for the purposes of the legislation, ‘deposited’ – in court on the first day of the hearing. There was no mention of the ‘rules in respect of surveys’; nor whether they had been complied with.

We have seen that section 23 of the Native Land Court Act 1880 provided for facts like the boundaries of the land having been marked out, and the correctness of the plan, to be established ‘to the satisfaction of the court’. There is no evidence that the court inquired into ‘such facts’, and it is impossible to know whether, or how, it established them to its satisfaction.

As we have observed, the court established the primary right of Te Rangihuatua on day one of five days of hearing, and heard few objections. Te Rangihuatua accommodated some of them, and for others who objected the court agreed to cut out some land, even though he disagreed.

On the morning of 16 March, the fifth day on which the court sat on the Waimarino block, it heard the last part of Ngāti Kaponga’s objection. After Te Rangihuatua denounced the evidence of Ngāti Kaponga’s spokesperson, Paiura Rangikātatu, as ‘utterly false’,274 the court proclaimed that it was ‘unanimously of opinion that the claim of Paiura Rangikatatu on behalf of N Kaponga is bad and therefore the List for the Hapu cannot be received by the Court’. The court gave no reasons. After it dismissed Ngāti Kaponga’s objection, two names were called, but ‘no one being present to support the names, – they being objected to by Hamuera Kaioroto – they were struck off the List’.275

The minute-taker then tallied the areas that had been cut out in response to objections, and estimated the ‘Total Estimated Area’ of the block as now 454,189 acres. The minutes noted ‘Lists of Names Read & Passed’, and then stated:

It was ordered that the names narrated of [sic] pages 295, 296, 297, 298, 299, 300 on to 310 be entered in a Certificate of Title to issue for Waimarino Block containing by estimate 454,189 acres so soon as a proper survey of the land has been made. Land Inalienable.276

(6) What should have happened after title issued

Once title was issued in circumstances where no survey had been done, the Native Land Court Act 1880 directed the court to proceed stepwise:

- First, the court had to require a survey to be made ‘and a sufficient plan and description to be deposited in Court’.277
- Once these requirements had been complied with, it was the duty of the Court to give notice, in such manner as it may think best adapted to attract the attention of all persons whom it may concern, that the plan is ready for inspection at a place to be named in such notice.278
- Anybody wanting to object to the boundaries shown on the plan had to give notice to the court, stating the grounds of objection.279
- On receiving notice, the court would adjust the boundaries according to the rights ‘of the several parties interested’ – and ‘for such purpose shall have and may exercise all the powers vested in the Court’.280
The Waimarino Purchase

If there were no objections, or if 'objection is made and not substantiated', one of the judges would sign the plan and deposit it in the court as a record.281

The land shown in the plan would afterwards 'be deemed to represent the land in respect of which the order had been made at the original hearing'.282

Once the time for an application for a rehearing expired, or a rehearing was applied for and refused, the court would issue a certificate of title reflecting the order made at the original hearing.283

The court would then proceed to order 'divisions' (partitions) if it thought fit.284

(7) What happened

The court's reference to the certificate of title issuing as soon as the survey had been made implies that the court had directed a survey, although the minutes do not record this explicitly. However, rather than the block then shifting into a phase of non-activity while survey was undertaken and the actual dimension and location of the block was ascertained, Butler apparently advanced the first payment to purchase on 20 March, four days after the court listed the owners.285

On 12 April, James MacKenzie wrote to the surveyor John Annabell about the survey work in prospect:

Re Waimarino a/c the work is to be done by the Wellington Staff[,] I understand Court has made certain orders, but I have not seen sketch plans since [illegible] left here[?] I notice however that there is a very large encroachment on the Aotea Block in the King Country and if it can be arranged that there is no overlap it will simplify survey very much.286

There were more communications between various survey officials and surveyors in the next few days, and at the same time, historian Andrew Joel reported to us, Butler was buying shares.287

About this process, Cathy Marr said in evidence:

Most of the Crown purchase of Waimarino took place before any kind of proper survey was completed. This left owners without even the protection of being sure what land was involved and reliant on Butler’s assurances of what the purchase would mean. As will be seen, in the northern Tuhua part of the block, substantial sections of communities and their leadership remained convinced that the sketch survey was a mistake and would be corrected by the ‘proper’ survey so the block would not intrude on the land they believed was already protected by agreement with the Government, within the Rohe Potae external boundary. They had good reason to hold this view. They had been promised consultation over their concerns, the government had promised to undertake negotiations in good faith, and it was usual practice for boundaries to be adjusted to take account of other block boundaries. In other cases, communities clearly refused to help surveyors, as will be seen. They may have hoped that if they did not cooperate the surveys could not intrude into their areas, but as with the sketch survey, Maori cooperation was not essential to have a ‘proper’ survey completed. Even as communities waited for the ‘proper’ survey to correct the mistakes they believed had been made, Butler was technically purchasing the land from under them. By the time the survey was completed, it was already far too late.288

More will be said about the Crown’s purchase of the block, but for now the point is to observe that the court process was not allowed to run its course through to certificate of title based on proper survey. Rather, the purchase process began before the interests that were purchased had been properly defined. By the time the survey was completed, most of the interests in the land were sold.

(8) The proper process

Marr’s evidence discussed the plans that were before the court. She considered that the sketch plan produced for the title investigation, ML772, was updated by ML776, which showed considerably more detail and revised the acreage from 490,000 in ML772 to 455,000.289

Once the new plan based on survey was in, the court should have proceeded (as described above) to advertise that the plan was ready for inspection at a given place, and objections would then have been received and ruled on and boundaries adjusted where necessary.

In submission, Bennion gave examples of the usual
kinds of notice that the court would have published in the *Gazette* or *Kāhiti*, often in both English and Māori:

Notice of Time and Place for Inspecting Plan after Interlocutory Order.

**MUHUNOA** No 1, **MUHUNOA** No 1A, **MUHUNOA** No 3A, **MUHUNOA** No 3B Blocks.
Native Land Court Office, Auckland, 16th March, 1882.

**WHEREAS** at a Court held at Otaki, on the 26th day of September and the 15th day of October, 1881, orders were made respecting the aforesaid blocks of land, that the names of . . . should be registered as the owners thereof, and that certificates of their title thereto should be made and issued when a proper survey should be made: Now notice is hereby given that the plan of such survey will be deposited for inspection at the Courthouse of the Resident Magistrate, Otaki, on the 4th day of April, 1882, and seven following days.

If any person is desirous of making objections to the boundaries of the said blocks as defined by the said plan, he must give notice thereof to me, stating the grounds of his objection. All such objections must be made to me before the 12th day of April 1882.

FD FENTON,
Chief Judge

This is what a notice of hearing of objections looked like (this one was for other blocks in the Whanganui district):

**Oahurangi** and **Parapara** No 2 Blocks.
Native Land Court Office, Wellington, 4th February, 1895.

**NOTICE** is hereby given that the Native Land Court sitting at Whanganui, on the 21st day of February, 1895, and following days, will deal with the objections lodged with the Registrar of the Native Land Court at Wellington, regarding the plan of the above-named blocks of land.

H Dunbar Johnson, Registrar.

No such notices were issued, and no such procedure was followed, in the case of the Waimarino block.

The Crown said in submission, ‘The evidence is unclear as to whether or not that provision was complied with in relation to Waimarino.’ It added:

the Crown was able to purchase interests under an interlocutory order but the Court was not free to make any partition order in favour of the Crown until such time as the certified plan of the block was made available to all interested parties.

It seems to us that if the usual process had been followed, there would be evidence of it in the form of the kinds of notices quoted above.

(9) **The Crown’s role**

The court simply did not comply with the law. If it had conscientiously gone through the steps laid out in the Native Land Court Act 1880, it is unlikely that things would have unfolded as they did. Apart from anything else, the process would have slowed down. If the court had required the boundaries to be marked on the ground and a full survey completed, together with hearings of objections to the plan and alteration of boundaries before it issued title, and if it had declined to contemplate partition until all that was settled, what a different story it might have been.

The court was not part of the executive, and the Crown was not responsible for the court’s failings. It did, though, design and pass into legislation a system that provided little scope for others to revisit poor court decisions in an objective and expert manner, and we discuss that significant failure at the end of this chapter.

However, claimants said that the Crown was implicated in other ways:

The Crown directly benefited from this process [the court’s acceptance of Te Rangihuatau’s evidence, and the inadequate description and marking of the boundaries] by controlling the boundary setting process for the block, and utilising the Court system to get the maximum gain for its expenditure
of purchase money. Both before and after the initial hearing and interlocutory order, the Crown was purchasing interests knowing that the block boundaries had been inadequately described. These were not small discrepancies but large ones affecting tens of thousands of acres. This demonstrated that the Crown was not interested in protecting rights, but in securing purchase arrangements most suitable to it.\textsuperscript{293}

It is of course true that in hastening to purchase land in the block, the Crown did not wait for uncertainties about the boundaries to be sorted out. That ran the risk that people’s interests would be wrongly included or excluded. It also made it more likely that the whole thing was just messy – which is how it turned out, as we shall see. This denied the Māori parties certainty, which is an important characteristic of fair transactions.

The Crown’s submissions on Wairarapa were briefer and less comprehensive than the claimants’. As regards the hearing, the Crown mainly defended the court’s approach, claiming that Dr Pickens’s evidence demonstrated that ‘the Court was flexible in the conduct of the hearing, and that this was typical of the way it operated.’\textsuperscript{294} It also asked us to note ‘as was often the case, that the Court minutes are sparse.’\textsuperscript{295} Counsel did not indicate what we should take from the sparseness of the minutes, but presumably he was inviting us to infer that they did not record everything that happened in court. Of course, we cannot know what they did not say. The record that they provide is the only one we have. Any minute-taker of even moderate competence would have tried to put down everything that seemed important or contentious.

\textbf{13.5.4 Conclusion}

The court approached the Wairarapa hearing in the manner it approached other hearings. It accepted what the lead applicant said, took his lead on the ownership lists, and accepted the lists presented following out of court meetings. Names were added or struck out after debate in open court.

However, individuals, whānau, and entire hapū could be excluded from ownership if they were unaware that the hearing was taking place, or if they were otherwise unable to attend or have others present their case, or if they did not know about or understand the court’s procedures.

The evidence indicates that many Māori with customary rights were probably excluded from ownership of the Wairarapa block. The court process that failed to provide for their interests favoured those who made or supported the application. It gave the applicant primacy, and did not direct how and to what extent the court should test the evidence advanced in support of that application. Moreover, as the applicant whose claim the court accepted, Te Rangihauatau was able to raise objections to ownership lists proposed by others. The system also favoured claimants in attendance over those unable to attend, whether through ignorance or inability. In relation to the Wairarapa block, absence from court resulted from a combination of factors: lack of notice; insufficient lead time to make arrangements to get there; other commitments, including other court hearings; and from the belief of some that prior agreements with the Crown protected their interests.

The Native Land Court Act 1880, as amended by the 1883 Act, provided a framework which, if followed by judicial officers exercising their discretion scrupulously and conscientiously, would have sufficed to safeguard the interests of those affected by its determination of title in important respects. In particular, the boundaries of the block would have been marked on the ground, and there would have been an accurate plan. If those requirements had not been met, the hearing would have been adjourned until they had been. This would have alleviated many of the problems of a summary process that was over before many of those whose interests were before the court knew that it was happening. It would probably have allowed those affected by concurrent hearings to get to court at future sittings.

However, we see in the case of the Wairarapa block a court process that did not properly protect interest-holders’ rights. Some of the failings of the process had to do with non-compliance with the terms of the Act, for which the only remedy was rehearing, review, or appeal. But other failings arose from the extent of the discretion that the legislation reposed in the judicial officers.
Legislation should have been more prescriptive in situations where parties were unrepresented by counsel, where the court was deciding on such important rights, and where there was effectively no review or appeal.

In summary, then, the legislation that enacted the Native Land Court’s process for determining title to Māori land failed to protect the interests of owners of customary land because it did not dictate:

› inquiry into whether all, or at least the main, relevant interests were represented in court;
› inquiry into, or taking account of, the interests of those who were not present at the hearing;
› adjournment when it became evident that important interest-holders were absent;
› rigorous testing of the evidence of all those making claims, including applicants, even where no or few objectors were present;
› proper proof that the land comprised in the block was clearly and unambiguously described – preferably by survey and mapping – before the hearing commenced;
› a clear requirement for a better visual representation of the land before the court than a sketch plan;
› the ability of all claimants to question the ownership lists, with no primary position for the applicant in this regard;
› expertise in local customary rights on the bench, so that among the judges was a person or persons who knew already who the main interest-holders were, or were likely to be; and
› provision of reasons for admitting or excluding claimants from the ownership lists.

Nor did the legislation preclude the Crown’s purchase of interests in the block until after the survey was complete, mapped, and notified, and interest-holders’ objections were addressed.

Instead, the Native Land Court Act 1880, as amended by the Native Land Laws Amendment Act 1883, gave the court too much loosely directed discretion. This could perhaps have been justified if the parties had been legally represented and were able easily to access a review of decisions that erred or that did not comply with the legislation. As it was, there was no such provision. Māori like these, whose title was determined in circumstances where the ‘application and court ruling were highly questionable and of dubious legality’, simply had no recourse (see section 13.8).

### 13.6 The Crown’s Purchase

#### 13.6.1 Introduction

Butler recorded that between March 1886 and March 1887 the Crown purchased the interests of 821 of the 921 owners of Waimarino. Joel calculated that the price the Crown paid for these interests was £35,805, with the eventual total expenditure, including payments to chiefs for assistance, agents’ commissions, and travel costs, coming to about £45,000. In this section, we examine how the Crown acquired the interests of so many owners of the Waimarino block (including minors) in so short a time. We look particularly at the terms of the purchase, the tactics that the Crown used to secure interests, and how it bought interests from minors.

#### 13.6.2 What the claimants said

The claimants submitted that the Crown’s purchase of the Waimarino block was directed from the highest level of government and was carried out in the face of Māori opposition. Ballance and Lewis were both involved: one was the Native Minister at the time, the other was under-secretary of both the Native Affairs and Land Purchase Departments. The claimants did accept that some Māori wished to sell some of their interests. They argued, however, that significant parts of the block might not have been sold had the Crown listened to the pleas of various rangatira who sought subdivisions or partitions, and appropriate valuations of the different parts of the block. They also challenged the legality of the Waimarino purchase deed. Owners were unaware of both the overall price paid for the land and the rationale for payment that they received.

Regarding the purchase, the claimants submitted that:

› it was contrary to equity and good conscience, since officials misled the vendors on the law about subdivisions;
The Waimarino Purchase

- it contravened trusts, in that payments were made to ostensible trustees for minors’ interests before those trustees were appointed;
- the court process for examining the sale of minors’ interests was not followed;
- parties did not necessarily understand the effect of the transaction; and
- no process was put in place for determining whether Māori vendors had sufficient other land for their support.\(^{303}\)

13.6.3 What the Crown said

As we noted earlier in this chapter, as regards its purchase of the Waimarino block, the Crown conceded that:

- It did not ensure that it paid a fair price for the land and its resources. At the price paid, the purchase did not live up to the standards of good faith and fair dealing that found expression in the Treaty of Waitangi and thus breached the Treaty and its principles.\(^{304}\)
- Its purchase of the Waimarino block failed to meet the standards of reasonableness and fair dealing that found expression in the Treaty of Waitangi and thereby breached the Treaty and its principles.\(^{305}\)

In relation to the second concession, the Crown identified the tactics that did not meet the standards of reasonableness and fair dealing as:

- discouraging and holding back owners’ applications to partition the block and define individual interests, instead pressing ahead with its purchase;
- purchasing shares based on the Crown’s own assessment of the relative shares of the owners;
- failing to provide full information to owners on how it arrived at the price; and
- allocating fewer reserves to sellers than the deed appears to have contemplated.\(^{306}\)

These concessions were helpful, and they informed our analysis of the Waimarino purchase. However, the Crown also said that its concessions should not be taken as a condemnation of the Waimarino purchase in its entirety. It did not consider that it acted in bad faith. Rather, it paid a substantial sum of money to persons who were willing to sell their interests.\(^{307}\)

13.6.4 The law relevant to the Crown’s purchase

The Crown purchased individual interests in the Waimarino block under the provisions introduced by the Native Land Act 1873. As we explained in chapter 10, the previous system restricted to 10 the names permitted on a title, and thereby limited the ability of Māori to transfer their customary interests into ownership of land that passed through the Native Land Court. The new system ensured that all those whom the court determined to have interests in land would be included as owners on the title. However, each held their interests as individuals, and this enabled them to sell their share of the land without reference to other owners (see sections 10.5.3(2), 10.6.4).

When the Native Land Court ordered that the names read out in court on 16 March 1886 should be entered into a certificate of title for the Waimarino block to be issued ‘so soon as a proper survey of the land has been made’,\(^{308}\) it was in effect signalling its provisional certificate of title. The court would not issue its final certificate of title ‘in pursuance of the order of the Court made at the original hearing’ until after it had gone through the process of commissioning and receiving the survey, giving notice that the plan was ready for inspection, taking objections (if any), and finally settling the plan. It also had to wait for the expiry of the three-month period during which parties could apply for a rehearing.\(^{309}\) Those whose names the court entered on the provisional certificate of title each got an ownership interest in the whole of the block. There was no particular piece of the block to which any was entitled, and all shares were equal until the court determined the relative interests of each listed owner. If owners wished to utilise any part of the block as individuals or hapū, first they had to have their relative interests determined, and their portion of the block partitioned out from the remainder.

Contrary to the intention of the legislation, the Crown’s purchase agent, Butler, began purchasing individual interests before either of these steps was taken.

(1) Legislation privileges the Crown

The other piece of legislation relevant to Butler’s purchase activities was the Native Land Alienation Restriction Act

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\(^{303}\) 13.6.4(1)
1884. This Act prohibited private dealings over many millions of acres, including the Waimarino block, along the route of the North Island main trunk railway. The Crown already had a right of pre-emption over a vast area that included the Waimarino block (as it came to be known), but this Act extended that area. For the recognised owners of the Waimarino block, this meant that the Crown remained the only potential purchaser of their land.

(2) The Crown exempt from provisions to protect Māori
By 1886, when Butler began purchasing, a number of provisions had been introduced for the protection of Māori land owners. Over time, however, the Crown was exempted from these protective provisions. For example, the court could restrict alienation to lease for 21 years — but this provision did not apply to the Crown. Likewise, private purchasers could purchase land held under a memorial of ownership only if the owners were unanimously in favour — but the Crown could purchase individual interests without reference to the community of owners (see section 10.6.4(4)). Similarly, restrictions on the ability of any party other than the Māori owners to apply to partition land (introduced in 1873, abandoned in 1878, and then re-introduced in 1882) did not apply to the Crown. This meant that private purchasers could not initiate the partitioning out of interests they had bought, whereas the Crown had standing in the court to apply for partitions and for other purposes.310

The Native Land Laws Amendment Act 1883 stipulated that it was unlawful to negotiate for the purchase, lease, exchange, or occupation of Māori land until 40 days after the title to land had been ascertained (section 7). In submission, the claimants commented:

This was on its face a very strong injunction against dealing in this ‘cooling off’ period. In the case of Waimarino, whose title was determined on the 16 March 1886, and whose final rehearing was dealt with in February 1887, private negotiations would not have been permitted to commence before that time.311

The claimants went on to observe:

Section 13 provided that ‘Nothing in this Act hereinbefore contained shall affect or apply to the Crown . . .’ However, that did not rule out the making of the notice required by section 7 [of the day when dealings in the land would cease to be prohibited], it just provided a Crown ability to take action despite the notice.312

We consider the use of the word ‘just’ in this paragraph extremely inapposite, because exempting the Crown from the prohibition on dealing within the 40 days in fact rendered the critical ‘cooling off’ provision absolutely useless in the case of Waimarino: the application to the land there of the Native Land Alienation Restriction Act 1884 made the Crown the only party in the picture. In the case of the Waimarino block, this permitted conduct that was exploitative.

The Crown was also exempted from the work of trust commissioners whose job it was to ensure the fairness of transactions concerning Māori land, including the price paid.313

13.6.5 The Aramoho hui
Another important piece of the background against which the Crown was setting about its purchase of the Waimarino block was the hui that took place at Aramoho.

When, during the Native Land Court’s hearing of the Waimarino block title determination, Te Keepa asked the court on 15 March to adjourn until 6 April, the minutes say that he gave the reason that ‘many . . . Natives would be engaged in preparing for the big Native Meeting to be held on the 18th March.’314 Sure enough, that hui – held at Aramoho – got underway on 18 March, and lasted just over a week. There is no official record, but the Wanganui Herald reported that many prominent rangatirata from around the country attended, including Wi Pere, Te Puke Te Ao, Rēnata Kawepō, Ngātai Te Mamaku, Te Keepa Te Rangihiiwinui, Hōri Rōpiha, Takarangi Mete Kingi, Pōari Kuramate, Aropeta Haeretuterangi, and Tōpia Tūroa.315 (It therefore seems likely that Tōpia Tūroa was in the vicinity when the Native Land Court was sitting on Waimarino, but he did not attend court. The reasons are unknown.)

The hui canvassed native land law changes, reform of
the Native Land Court, and the role of native committees. Many expressed concern about the Native Land Court’s operations, and the hui called nearly unanimously for its operations to be suspended. The idea of transferring its functions to native committees won considerable support.\textsuperscript{316}

Native Minister Ballance was in Wanganui for most of the period when the hui was taking place. He met privately with Ngātai Te Mamaku of Ngāti Hāua, but no record of that meeting exists.\textsuperscript{317} Ballance went to Aramoho on 26 March, the last day of the hui. Among the many topics he addressed was the Crown’s approach to purchasing Māori land. According to the \textit{Wanganui Herald}, Ballance told the hui that he knew Māori had been plundered in the past, and was determined to stop land sharks. Henceforth, he said, the land purchasing system would be characterised by ‘fair’ dealing. Māori would share in the expected benefits, and would be afforded assistance and protection: the Government was committed to their having enough land for their ‘comfortable’ support.\textsuperscript{318} The Waimarino purchase would be the first test of this new Crown approach.

Coincidently, while the hui was expressing general disapproval of Māori land policy of the day, and Ballance was reassuring the large gathering of influential Māori, the Crown was commencing its negotiations to buy the Waimarino block.

13.6.6 The terms of the purchase
The two headline terms of the purchase of the Waimarino block were the price, and the reserves.

The word ‘reserves’ refers broadly to the amount of land in the block that would remain in Māori hands. It was used loosely to refer to two categories of land that were in reality quite different – and in this section we are talking of the latter one.

Reserves were of two kinds. First, there was land that was not really reserve land at all. It was the land that Māori owned and did not sell to the Crown. The land comprised in these interests became known as non-seller reserves.

Then there was the land that the Crown set aside from its purchases in the block. This was land to be set aside as reserves for Māori who had sold their interests to the Crown. These became known as seller reserves, and it was those that were specifically part of the terms of purchase.

(1) Setting the price
We have talked about how the Crown wanted to purchase as much of the Waimarino block as it could as quickly as possible, in order to use the land for the North Island main trunk railway, and to open up the region to settlers.

(a) Officials communicate about the price: Butler and the Native Under-Secretary, Lewis, communicated about the projected cost to the Crown. On 10 April 1886, Butler sought the permission of Native Minister Ballance to begin purchasing the Waimarino block. In a telegram to Lewis, he suggested that the block (estimated at that time to be 450,000 acres) could be purchased for a total cost of £70,000 (3s 6d per acre). Māori would receive £50,000; a further £10,000 would be needed to pay for the services of chiefs, and to cover expenses. The remaining £10,000 was made up of £7,000 in write-offs of payments made in previous years on land wholly or partly within the boundaries of the Waimarino block, and the cost of commission for purchase agent John Stevens, employed to assist Butler. For the expenditure of £70,000, Butler reckoned the Crown could purchase 400,000 acres, with 50,000 acres to go to Māori as reserves.\textsuperscript{319}

Unsurprisingly – any informed observer of the time would have considered Butler’s projection a very good deal for the Crown – Lewis responded to Butler with alacrity, saying that Ballance had approved the purchase of the Waimarino block on the terms proposed, and Butler should ‘proceed with all speed’ to buy the block. Lewis then contacted the Land Purchase Office in Wellington to tell them that Butler needed an initial advance of £15,000, and a purchase deed.\textsuperscript{320}

(b) Māori had no input: The means of establishing a purchase price employed for the Waimarino block was standard before 1905. Māori had no input. Butler’s estimate came entirely from his own impression of what Māori would accept; it did not reflect a valuation of the land and its resources. He regarded it as his job to get the best
deal he could for the Crown. In this, he was considerably assisted by the fact that the Crown had set up for itself a purchasing environment in which it could – and had – excluded all other potential purchasers. Eliminating competition is a classic means of ensuring a low price.

(c) Was the price fair?: When Butler, Lewis, and Ballance were conferring in various combinations about what the Crown should spend on buying the Waimarino block, there was no system for valuing Māori land. Not until the Native Land Purchases and Acquisition Act 1893 was one contemplated, and it was not until 1905 that the Government put a valuation system in place. During our inquiry the Crown accepted that as a privileged purchaser of Māori land, it had a duty to pay a fair price. Its duty, though, did not extend to 'an obligation to ensure competitive valuation'. In many cases there was no market for the land the Crown purchased; it bought land 'that would have been of little or no interest to anyone else'. It was the Crown's land purchase officials – like Butler in the case of Waimarino – who provided valuations for land the Crown wanted to buy. The Crown told us that officials did not set prices arbitrarily, but tried to make them 'reflect the quality of the particular land purchased'.

It is impossible now to say with certainty what would have been a fair price for the Waimarino block, for there is a dearth of information for discerning value at the time. However, one factor that points to the insufficiency of the price is the value of the timber resource on the block. We have noted that the Crown knew about the valuable timber well before the court determined title (see section 13.3.4(5)). It received confirmation in February 1887, when it was setting about the purchase of the block. John Rochfort, the surveyor who had explored the central route for the main trunk railway, sent through information on the block such as known villages, natural features, and the suitability of land for settlement. He reported that the timber in the north of the block was likely valuable enough to 'repay the total cost of the purchase from the Natives'. What this meant was that the value of the timber alone would reimburse the Crown for the purchase price. In light of this, the Crown was plainly right to concede before us that the price it paid for the block was not fair.

Although Butler suggested £50,000 as the figure he believed Māori would accept for selling the whole of the Waimarino block, when Ballance gave him the go-ahead, £50,000 became the upper limit of what the Crown's purchase agents were permitted to pay. When Butler received the purchase deed he requested, he found that it contained a total minimum purchase price of £35,000. This conveyed to him and those assisting him that the approved price range was £35,000 to £50,000 – or 1s 9d to 2s 6d per acre.

(d) Butler settles on a minimum price: Butler settled on the figure of £35 as the minimum price that he would pay for an individual's share in the Waimarino block. He indicated how he adopted this figure when he later gave evidence to a Native Affairs Committee inquiry into a petition complaining about the Crown's purchase of the Waimarino block (we discuss this and other petitions below). On the issue of relative shares and fixing a minimum price per share, Butler stated:

the interests of the different Maoris were not necessarily equal under the award of the Court. I therefore had to fix the minimum share for those who had not so large an interest as some of the principal owners. After making careful inquiry and seeing that the nominal price of the land expressed in the deed was £35,000, I fixed the price at £35 each.

He paid £35 to those 'who were not in occupation of the land or in the district' and had 'only a nominal interest in the land'. He did not say what his 'careful inquiry' entailed, and the committee did not probe why Butler regarded £35 as an adequate minimum payment.

Butler may well simply have divided the 'nominal price of the land' (£35,000) by the estimated number of owners (1,000) to come up with a notional minimum payment. He would thus ensure that the Crown did not end up...
paying less than the minimum price guaranteed to Māori in the deed.

Marr, though, suggested that Butler arrived at £35 as a minimum payment by first settling on 400 acres as the notional amount belonging to each listed owner, given that the Crown was seeking to secure 400,000 acres, and there were 1,000 owners. If Butler took his original estimated 3s 6d per acre price, halved this to get 1s 9d per acre, and then multiplied 1s 9d by 400, he would get to £35.\(^{329}\) We have no evidence that indicates which hypothesis is more likely.

(e) A range of payments: Those who signed the purchase deeds were paid between £35 and £170 for their interests – although at the time the interests were undivided equal shares in the block.

Joel recorded that 430 owners were paid the minimum £35, of whom more than half were minors. Butler
claimed that all those who were paid the minimum were not resident on the block, but that is not clear from the records. Agents paid most to those whom Butler considered to have greater interests – especially those actually living on the best land. Tōpia Tūroa, who received £165, and Tohiora Pirato (who got £170) received the highest payments: Butler considered that they not only owned more of the block, but also that Tōpia was the man with the greatest mana there.

According to Joel, Te Rangihuatua received £61 10s for his interests in the block. This would indicate that Butler did not regard Te Rangihuatua as one of those whose interest or mana in the block was of the first order. In fact, 48 Waimarino owners received more than he did. However, as we discuss below, Te Rangihuatua also received a payment of £100 for assisting Butler.

(2) Reserves

As with the price, the Crown sought no input from Māori when it decided on the area to be set aside from the Waimarino purchase as reserves.

We discussed in chapter 12 how the Crown purchased Māori land without coordination, plan, or system. The Crown actually made a submission in which it said as much. Denying bad faith in its purchase of Māori land, it argued that it ‘blundered ahead without clearly understanding what the consequences might be.’ A feature of this conduct was its failure to ascertain Māori need for land, or to provide for it. The Waimarino purchase exemplified just such failure.

Butler proposed reserving 50,000 acres for 1,000 recognised owners. Marr suggested that Butler might have derived this figure – 50 acres per owner – from the Native Land Act 1873, which provided for a minimum of 50 acres to be set aside as a reserve for the support and maintenance of every Māori man, woman, or child. Marr characterised this requirement as a generalisation intended only to ensure that Māori did not become entirely landless.

However Butler arrived at the 50,000-acre figure for reserves, that figure – like his suggested purchase price – was quickly transmuted into a maximum. This too was confirmed in the deed sent to Butler. We return to the issue of the Waimarino reserves below.

13.6.7 Dividing up the land, and relative interests

We have seen that the Crown began paying for interests in the Waimarino block on 20 March 1886, four days after the Native Land Court determined its title, before the survey had begun and long before a final certificate could be issued. It kept buying until the court hearing to partition the block in March and April 1887. Over this (approximately) 12-month period the Crown purchased the interests of a large majority of the listed owners. Exactly how many is unclear. Butler calculated that the Crown bought the interests of 821 of 921 individual owners. Joel calculated that the Crown secured the interests of 808 of 908 individual owners. In both calculations, 100 owners did not sell to the Crown.

This activity was contrary to the intention of the legislation. After it determined title, the court was supposed to convene hearings to determine owners’ relative interests, and to convert their inchoate interests over the whole of the block into ownership of specified parts of it.

(1) The Crown stymies partition of the block

In our inquiry, historians Marr and Hayes agreed that Butler was keen for owners’ applications for partition to be deferred until the Crown had completed its purchasing operations. In March and April 1886, just after it determined title, the court received at least 6 applications to subdivide. On 10 April 1886, Butler warned Lewis that if the court proceeded to hear the applications, ‘considerable time must elapse’ before purchasing could begin.

The court could not hear applications until notice was published in the Gazette or Kāhiti. In July 1886, Lewis explained to the Native Affairs Committee why the Government chose not to gazette the applications to partition:

When the block was through the court, it was considered unnecessary, as the Government wished to acquire a considerable area of it, to put the natives to the expense of a subdivision. The Government decided to purchase the whole of the
land that had been passed through the Court making considerable reserves for natives.\textsuperscript{340}

It does not appear to have occurred to Lewis that Waimarino owners might not have wanted to sell. Nor, it seems, did the Crown see anything amiss in interfering with what Hayes characterised before us as the ‘absolute right’ of Māori to apply for a partition of their land.\textsuperscript{341}

\textbf{(2) Māori protest in vain}

Whanganui Māori did see something amiss, though. On 31 May 1886, a group of leading chiefs wrote to Ballance asking that he direct the Waimarino block to be subdivided as they wished. They also complained that, without subdivisions, they could not be sure what land Butler was purchasing. If he was purchasing their land it was wrong, because they did not want to sell.\textsuperscript{342} On 27 June 1886, the chief Paiaka Te Pikikōtuku, representing, he said, the people of Manganui-a-te-ao, Tūhua, and Taumarunui, followed up with a petition to Māori Members of Parliament Te Puke Te Ao and Wī Pere. They all wanted Butler to ‘be removed from here Whanganui together with his proceedings, because our applications for sub-divisions and for claims were not adjudicated upon’.\textsuperscript{343} Two days later, on 29 June, signing himself Hoani Paiaka Te Pikikōtuku, he wrote again to the premier asking him to ensure that the Waimarino block was subdivided.\textsuperscript{344} In May 1887 he wrote to Ballance and Lewis protesting various aspects of the Waimarino purchase process, and again sought proper partition and determination of relative interests.\textsuperscript{345} None of these protests was to any avail.

No partitions meant that the Crown’s purchase agents could keep pursuing individual interests. It also left those purchase agents to make off-the-cuff determinations of the relative interests of owners. This was decision-making that the law reserved to the Native Land Court; it involved assessing the relative interests of all the owners and awarding them lesser or greater shares accordingly. Some might be considered primary owners, whereas others’ interests might be very minor. Those with greater interests received more when land was partitioned out from the principal block, and a larger share of the proceeds from any sale.

\textbf{(3) When partition applications could have been heard}

It was not argued before us, but there is a question as to whether in fact the Native Land Court could have proceeded to hear owners’ partition applications straight away, even if the Crown had not acted to prevent that happening.

If the court had proceeded to hear owners’ partition applications when it received them and had proceeded to apportion relative interests before proper survey, it would have been running the same risks as the Crown ran when it negotiated to purchase interests in a block the boundaries of which were unconfirmed. Without survey, nothing was certain.

It is not entirely clear whether the court’s issue of a provisional certificate of title for the block would have been a sufficient basis for it to embark on partition. Section 33 of the Native Land Court Act 1880 provided for the court to issue a certificate of title after the period for a rehearing had expired, and section 34 then said:

\begin{quote}
    The Court may, if it think fit, order one or more divisions to be made in such manner as the Court thinks fit, and in such cases shall place separately on the register the names of the owners of each division, and issue certificates accordingly.
\end{quote}

Then section 43, under the heading ‘Division of Native Land’, provided:

\begin{quote}
    If any Native who is interested in any Native land comprised in a certificate of title issued under this Act makes application to the Court to divide the land or any part thereof in order that he may hold his share or interest therein in severalty, the Court shall deal with the case as nearly as conveniently may be in accordance with the provisions of this Act and the practice of the Court in respect of original applications for the investigation of titles.
\end{quote}

After partition, the court could allot the applicant a certificate of title for the partitioned land (section 44).

Because section 26 authorised the court to issue a certificate of title subject to survey, it did in fact issue a certificate of title. The Act did not call it a provisional
Nevertheless, the certificate was provisional until the steps prescribed for survey were taken. The final certificate issued once the rehearing period expired was the real one. The Act does not explicitly require the survey to be completed and the final certificate issued before the court moves to consider partition, so arguably the court could have embarked on partition before the final certificate was issued. There would be contrary arguments too, based on the order of the sections – which indicate that the final certificate should come first – and the obvious potential complications of proceeding to partition when the boundaries of the block remain unconfirmed by survey. Practically speaking – and in order to protect the interests of the customary owners of the land – neither partition nor sale should have occurred before the block was fully surveyed and mapped. Both listed owners and owners whose interests were inadvertently included needed the chance to object if the mapped area differed from understandings when title was determined.

In fact, because the court was prepared to recognise interests purchased in a block that had not been properly surveyed, it would probably also have regarded itself as competent to determine partition applications before survey was completed and the final certificate issued. Clearly, the Government apprehended that the court would do this, and that is why it felt the need to stand in the way of the owners' partition applications proceeding to hearing.

(4) What should have happened?

Even if the legislation did not lay it out in so many words, its spirit and intent, and the provisions referred to, strongly indicated that a process to undertake the survey of the block, and to confirm the contents of a plan, was a necessary precondition to issuing a certificate of title and all other irrevocable dealings with the block. It is absolutely apparent that, in order to be robust and fair and transparent, the process needed to proceed stepwise. This would certainly have taken more time, but it would have put the owners and their communities in the positions of knowledge that would have enabled their making properly informed decisions about their land.

These actions should have happened sequentially:

- the court determines title;
- the land is surveyed;
- the court makes the plan available for inspection, hears any objections, and confirms the plan;
- the court issues the certificate of title;
- the period for rehearing expires;
- the court determines relative interests in the block and divides interests into sections on the ground according to the survey and plan; and
- leases or purchases commence.

(5) Butler determines relative shares

What happened, though, is that, without the benefit of survey, Butler and his colleagues went into the field to commence buying interests. Butler effectively put himself in the place of the court when he unilaterally determined the relative interests of the Waimarino owners.

The way he went about it was highly reminiscent of the process that Donald McLean embarked on nearly 40 years earlier, when he completed the purchase of the Whanganui block. McLean also took it upon himself to determine who were the primary owners, and who had lesser or peripheral rights – but a major difference was that at that time there was no Native Land Court with exclusive jurisdiction to determine these matters. In fact that court was brought in partly in response to the problems associated with McLean's style of purchasing. When the Crown stood in the way of the court deciding relative interests in the process of partitioning the Waimarino block, it subverted the process that Parliament had fixed upon and passed into legislation in 1865.

(6) Owners dislike Butler's methods

Waimarino owners protested. In June 1886 Aropeta Hareretūterangi of Ngāti Rangi complained that Butler had offered him only £35 for his interests in Waimarino. He objected to there being no subdivision process, for he was sure this would have yielded him a much larger share. He also accused Butler of paying some groups of owners more than others; Tōpia Tūroa had wanted Butler to issue
the purchase money to the chiefs for them to distribute, but Butler had refused.\(^\text{346}\)

As we outlined earlier, the Crown conceded that it discouraged owners’ applications to partition individual interests in the Waimarino block, which meant that the court did not determine relative interests. It conceded that it purchased interests based on the Crown’s own assessment of relative shares. These were two of the factors that the Crown said failed to meet standards of reasonableness and fair dealing. We agree.

13.6.8 Were Waimarino owners willing sellers?

The native land laws allowed the Crown to pursue the interests of individuals without communal meetings of owners or broad-based support for land purchases. As we discussed in section 10.6.4, the Native Land Act 1873 introduced the system where all those whom the court deemed to have rights in land were listed as individuals on a memorial of ownership. While this did not preclude Māori acting communally, communal action was much less likely. The communal property was now divided between individuals, each of whom was free to deal with his or her property separately from co-owners. Traditional leaders were powerless to prevent this from happening.

Until interests were partitioned from the principal block, interest-holders could not know which part of the block they owned. Each owned a share in the whole block, not a particular piece of land. This operated as a subtle way of promoting sale, because only through further surveys and court hearings could owners of shares in the block secure their own piece. Individual owners thus faced the choice of incurring further expense and trouble to commission a survey and return to court for partition orders, or immediate payment for the sale of their interests. The Crown was further aided because it had standing to approach the court directly to partition out interests it had bought. This ensured that opposition to a purchase, however significant, could not stop the Crown securing land piece by piece from willing individuals. When the Crown could see that no one else would sell, it could apply to the court to partition out the interests it had acquired.

1) Some were willing

There is no doubt that some listed owners were prepared to sell their interests in the Waimarino block to the Crown. Te Rangihuatau, for one, appears to have applied for title determination with this very purpose in mind. We have talked about how, in March 1889, he protested the Crown’s decision to purchase the Taumatamāhoe block because although he had intended the Waimarino block to be sold, Taumatamāhoe was intended to be ‘reserved for the benefit of the future Māori race’.\(^\text{347}\) Perhaps those who claimed alongside Te Rangihuatau in the title determination were of the same mind. However, Te Rangihuatau was just one of many chiefs of equal or greater rank with rights to parts of the block, and his influence was in the Manganuia-te-ao area. There is no evidence of what leaders from other parts intended.

2) Motivations to sell

A number of factors encouraged Waimarino owners to sell their interests.

It is difficult to know to what extent Waimarino owners were influenced by the various statements that Native Minister Ballance made in their district about the benefits that Māori could anticipate from the railway.

Marr suggested that debt was a motivating factor. We have already discussed the debts that Māori incurred as a result of engaging with the court process (see section 11.7).\(^\text{348}\) They arose from paying for lodging and food at Wanganui, for manaakitanga (providing hospitality), and for court fees. Debt inclined people to sell their interests.

Marr also suggested that some people might have been attempting tactical sales, selling land they had been awarded in blocks or places they no longer occupied, in order to invest in improvements in their places of residence.\(^\text{349}\)

Another feature was that for many Whanganui Māori, this was the first time they had something to sell (their interests in Waimarino). Offers of cash in return for a signature must have looked tempting. Some Whanganui leaders tried to insist that before any land was sold, the block should be subdivided and relative interests
determined. But when the Crown stymied subdivisions while it pursued the purchase of interests, traditional leaders had no means of preventing individuals from selling.

The chief Wiremu Kiriwehi Te Matotoru articulated the problems facing rangatira when he appeared before the Native Affairs Committee:

a great number of the natives sold their shares and we said that it would be useless to try and do anything seeing that so many people wished to draw money. On this account we gave up our original idea of having the land subdivided. Seeing that the people kept pouring in to get their money we felt there was no use to stand out for a higher price.\textsuperscript{350}

According to Kiriwehi, rangatira sought to hold back the flood of sales until there was a rational plan. They were thwarted by the power that the native land laws regime put into the hands of individuals, and by the Crown’s determination to purchase interests come what may.

(3) Expressions of dismay
Protests in the years following indicate that there certainly were chiefs who did not like what was going on, and would have preferred not to sell.

On 8 May 1886, Tūhaia and 39 others from Taumarunui complained to the Native Minister that

the proceeding of Mr Butler in advancing moneys upon lands the title to which have been recognised [by the court] is very wrong. This proceeding is productive of evil consequence, that is, trouble both to the owners and the land.

These Māori asked Ballance not to listen to the representation of one person but to that of the whole people.\textsuperscript{351}

On 9 December 1886, Te Pēhi complained about people being paid for shares in land said to be Waimarino. He said that the money might be for their land, but it was not for ‘my Waimarino’ – in other words, he understood ‘Waimarino’ to refer to land other than what was being sold. He opposed the sale because ‘God does not create land for me twice’.\textsuperscript{352}

Protests continued after the court partitioned out the Crown’s interests. In August 1887, the chief Tūao Ihimaera wrote to Under-Secretary Lewis to insist that the sale was ‘not proposed by my people but by other people, that is, by the people of Tieke who are not living here to give evidence of their rights to make the sale’. He asked that the court’s decision to partition the block not be given effect.\textsuperscript{353} Tūao’s letter suggested that there was a geographical split between those who wanted to sell and those who did not, with those based in Tūhua and the north generally opposing sale. Sellers were concentrated in the south of the block. The ‘people of Tieke’ proposing the sale were probably Te Rangihuatau and supporters.

The Crown was at no stage deterred by these expressions of dismay.

13.6.9 The agents’ modus operandi
This was how the Crown went about purchasing the Waimarino block. Butler as Crown land purchase commissioner, John Stevens as the private agent under contract to the Crown, and Lewis as Under-Secretary of the Native Department did most of the buying. Land purchase agents Thomas McDonnell, W H Grace, and G T Wilkinson occasionally assisted.\textsuperscript{354}

(1) Purchase agents eager to buy
We have said that the Crown began making advance payments to individuals a few days after the provisional title determination.

On 20 March 1886, Butler advanced £10 each to Te Peehi Te Opetini and Hāmuera Kaio Rotu. This was an instalment or part-payment, for the same individuals were paid more later.\textsuperscript{355} On 22 April, Butler and Stevens acquired the interests of approximately 66 individual owners at Wanganui. They acquired a further 110 interests that month, and 162 more in May.\textsuperscript{356}

Butler and Stevens undertook various purchasing trips upriver, and by August 1886 they had acquired a total of 654 signatures. Butler also arranged for a representative, Garland Woon, to keep buying up interests at Wanganui while he was away, using a second purchase deed. Woon purchased the interests of 32 owners in August and September 1886.\textsuperscript{357} The Crown’s purchasing activities
slowed from September 1886. Most of the remaining owners were spread throughout the central North Island, with some as far away as the South Island. Collecting these signatures posed new challenges. Two further deeds were created to give Crown agents the scope to travel separately. WH Grace collected 38 signatures in Taupō and Alexandra between October 1886 and March 1887. Five signatures were entered on the fourth deed on trips to the Bay of Plenty and the Rohe Pōtae. The multiplicity of deeds did lead to some mistakes. In one case, a purchase agent bought the interest of a minor directly from that minor after another purchase agent had already acquired his interest.

The Crown's agents exploited every opportunity to collect signatures from individuals. They attended tangihanga (funerals) and sessions of the Native Land Court around the country. Lewis telegraphed Butler on 2 November 1886 to ask him if many Waimarino grantees would attend the tangi for Te Puke Te Ao (the Member of the House of Representatives for Western Māori) at Ōtaki. Lewis thought it might be worthwhile to attend. Records confirm that Lewis went to Ōtaki for the tangi on 4 November 1886, but it is unclear whether he managed to acquire any interests there. Grace attended Taupō-nui-a-tia land court sittings. He bought Waimarino interests at Taupō in late November and December 1886, and in January 1887. In August 1886, Butler told Lewis that he expected between 50 and 100 Waimarino grantees to attend the Ōtorohanga court. He considered that 'it is absolutely necessary that an effort should be made to get their signatures without delay otherwise they will disperse & cause a great deal of extra trouble & expense.' Joel concluded that 'on the evidence of Butler's recommendation concerning the tactics to be used in Wanganui while he and Stevens were away in August and September [1886], Land Purchase Officers did actively try to persuade grantees to sell at Native Land Court hearings.'

(2) Agents conceal the true price
There was little or no explanation of the Crown's terms of purchase for the Waimarino block. Crown purchase agents refused to articulate a price per acre. As Joel wrote in his report, the price that the Crown was willing to pay per acre was an important piece of information. It allowed Māori to compare the Crown's prices for different blocks of land, large or small. The rate per acre was a familiar measure; Māori negotiated on that basis through the 1870s and 1880s. Hayes told us that the rate per acre was the measure that both the Crown and Māori used when transacting land as far back as the 1840s, when Māori would stipulate an acreage rate for unsurveyed land. This helped to ensure that Māori were not underpaid when surveys post-sale revealed a block to be larger than estimated, because they would still be paid the per-acre price. As Joel put it,

It is difficult to think of any reason for not informing Waimarino grantees of the acreage rate that does not relate to protecting the interests of the Crown or providing a negotiating advantage to the Government.

Joel suggested that Butler might have been concerned about the accuracy of the estimates of the extent of the Waimarino block. If a per-acre rate were struck, the Crown could end up having to make large additional payments to Māori if the survey revealed the block to be larger than thought. Other possible motivations that Joel suggested were that Butler wanted to avoid owners claiming payments based on their own assessment of the number of acres comprised in their share; or he might have thought that an overall price of £50,000 with a guaranteed minimum payment of £35 was a simple formula that would be more attractive to Māori.

Whatever the reasoning, not using an acreage rate proved to be an excellent tool for enabling the Crown to keep the price low. Adhering to maximum and minimum total payments gave certainty as to overall cost that would not have been possible if the Crown had agreed to pay on a per-acre basis for land in an unsurveyed block. It also gave the purchase agents more scope to acquire interests for lump sum payments at the lower end of the range.

The Crown was keenly aware of the vast savings that could be made by paying a few pennies less per acre. In March 1886, Lewis informed Ballance that blocks the
Crown planned to purchase in the Taupō district were ‘so large that a few pence per acre difference in the price means several thousands of pounds.’ In the case of the Waimarino block, the difference between the maximum total payment (£50,000) and the minimum total payment (£35,000) worked out to pennies per acre: 2s 6d per acre as against 1s 9d per acre. A saving of even one penny per acre off the maximum price saved the Crown £1,666 over the 400,000 acres it sought to acquire (450,000 acres less 50,000 acres of reserves).

For the Crown, then, avoidance of the per-acre paradigm when dealing with Māori was entirely to its advantage. It effectively concealed how low the true price was.

For the Māori owners, though, payments that bore no relation to acreage meant that they had no idea how much of the block the Crown had purchased. While they could compare the different payments they received based upon Butler’s determination of their relative interests, they could never be certain how much land the payments related to. When they were paid, they really had no way of knowing what was in the bargain, so how could they argue relativities or really negotiate at all? Nor could they know how much of the block the Crown would claim when it applied for a partition of its interests.

In 1886 – the year in which the Crown’s agents were relentlessly pursuing interests in Waimarino – the Native Affairs Committee looked into Māori protests about the agents’ refusal to supply a price per acre for the Waimarino block. Wiremu Kiriwehi told the committee that ‘people sold their interests without knowing the price per acre’. He added that he had asked Butler to inform them of the price per acre, but was told the block was not being purchased at an acreage rate and that the total price was £50,000. This indicates that Butler was both concealing the price per acre and deliberately inflating the total price – which was not £50,000, but somewhere between £35,000 and £50,000.

(3) The Crown’s price does not reflect the true acreage

Another area of uncertainty was the actual size of the Waimarino block. When the Crown began purchasing,

there was no proper survey. In July 1886, Te Keepa Tahu Kumutia told the Native Affairs Committee that the block had not been properly surveyed; he believed that it contained many more acres than estimated. That was a clear reason why, he said, a per-acre rate was required. Yet the Crown set its maximum price without knowing the actual extent of the block. On this point, historian Robert Hayes told us:

While it is true that the area may have been less than the estimate and therefore to the Crown’s cost, the area may also have been larger with Māori suffering the loss. A fair Crown having regard to the interests of the sellers would have provided a mechanism for adjusting the price paid once the acreage had been accurately ascertained. The Native Land Court regime intended for such precision.

In Hayes’s view, fair dealing meant that the Crown had to deploy a mechanism that ensured that the sum it paid to Māori reflected the number of acres purchased. We can only agree. Sadly, though, such a mechanism was entirely absent.

The Crown’s failure to set a price for the Waimarino block that related to the true extent of the land again mirrors its purchase of the Whanganui block. It will be recalled that Spain recommended that the Crown paid £1,000 compensation for 40,000 acres of land. Yet, the Crown surveyed the boundaries of a much larger block (approximately 89,000 acres) while continuing to represent its purchase as the completion of Spain’s recommendations. This deliberate deception deprived Māori of tens of thousands of acres, and of proper compensation (see chapter 7). Similarly, in acquiring the Waimarino block, the Crown arrived at a price without reference to the true acreage, and refused to consider a per-acre rate that would have ensured that Māori owners were paid for every acre bought.

During the Whanganui purchase, the Crown’s purchase agent (McLean) insisted that Māori understood and had committed to the terms of purchase that Spain laid out, though he knew that the surveyed block included many
more acres than the 40,000 Spain had talked about. Butler pursued a similar tactic in his purchase of the Waimarino block, advancing the position that the purchase price for the block was £50,000 while in fact pursuing the Crown’s minimum £35,000 price. Both Butler and Lewis told the Native Affairs Committee in July 1886 that the final price for Waimarino would be somewhere between £35,000 and £50,000. Yet, the Māori witnesses all reported that Butler had told them that the purchase price was £50,000. Butler concealed from Māori the fact that the price might be as much as £15,000 less, even though it appears that his basic payment for individual interests (£35) was predicated on achieving the £35,000 minimum.

(4) **Butler misleads owners about reserves**

The Crown also failed to lay out clearly the terms upon which it would establish reserves for those who sold their interests.

We have seen that when Butler initially outlined his plan for the purchase of the Waimarino block, he suggested 50,000 acres in reserves for Māori. He assumed that the Crown would purchase the entire block, and sought no input from Māori. There is no evidence that he or anyone looked closely at the nature of the block, or the needs of its owners and their communities. He probably estimated 50 acres per owner for the approximately 1,000 owners in the list. But when the purchase deed came through, Butler’s suggestion had become a maximum: no more than 50,000 acres would be reserved for Māori. As with the purchase price, the only flexibility was for the Crown’s agents to negotiate an outcome that was below the maximum.

It appears that Butler told Māori that reserves would comprise 50,000 acres. Wiremu Kiriwehi told the Native Affairs Committee that Butler said that they would get 50,000 acres, that they would include the ‘all the best portions’ of land, and that it would be for Māori to select the areas they wanted. Butler did not dispute this evidence. The Waimarino purchase deed, however, not only stated 50,000 acres as a maximum, but the selection was to be agreed between the Crown and ‘a representative Chief of each hapu’. Thus, the deed neither guaranteed 50,000 acres, nor the right for Māori to determine where they would be located. In fact, it was Butler rather than Māori who was to make the critical decisions about for whom, how much, and what land was reserved.

(5) **The Crown’s inducements**

Crown purchase agents made advance and special payments to some rangatira for their assistance in securing the sale of ownership interests to the Crown.

We discussed the use of these tactics in chapter 12. The Crown used advance payments as a means of committing community leaders to sell prior to any community consideration. Special payments often took the form of stand alone fees for assistance that were separate from moneys advanced for the ownership interests of rangatira. Special payments could also involve individuals receiving a bigger share of the total purchase moneys than their ownership interests entitled them to. These remunerations were to induce rangatira to use their influence or authority for the benefit of the Crown. Rangatira thus induced might be called upon to identify grantees and willing sellers, nominate trustees for minors among the owners, draw up ownership lists, and support the Crown’s applications for partitions. We concluded, like other Tribunals, that payments of this kind cut across customary decision-making. They were not tika (in accordance with customary law), because big decisions affecting interests in land should first entail hapū, and even iwi, meeting to debate and arrive at a consensus on the issue (see section 12.4).

On 20 April, Butler reached an agreement with Tōpia Tūroa whereby the rangatira would receive a handsome payment of £1,000 in exchange for guiding Butler and Stevens to various kāinga to acquire interests. The £1,000 was on top of any payment Tūroa received for his interests in the block. Marr told us that in 1899 Tūroa sought payment of the £1,000 for what she called ‘his critical early cooperation over purchasing in the block’. Butler, however, claimed that Tūroa was not entitled to any of the promised payment: he in fact obstructed the land purchase officers and did not carry out his part of the agreement.
appears that Butler made a similar arrangement with Te Rangihuatau, which the Land Purchase Department's account books recorded as a payment to him of £100 for his assistance with the purchase of the Waimarino block between 20 April and 31 October 1886. This payment was distinct from the £11 10s and £52 he received in April 1886 for his Waimarino interests.

Butler entered into a written agreement with Ngāpaki Pukahika [Pukehika], Pōtatau Te Kauhi, and Ani Mohoao under which they were to share a payment of £100 if they supported Butler in his purchase of the block. Payment was to be made after all the signatures had been collected on the purchase deed. All three sold their ownership interests on 28 April 1886, the day they signed the agreement with Butler. This agreement did not come to light until 1899, when Ngāpaki Pukahika, Pōtatau Te Kauhi, and Ani Mohoao asked for the agreed payment. According to Marr, its terms were vague, and included a promise to name the three as owners in any reserve they had rights in – which of course gave them nothing extra. In any event, Butler refused to pay, because the three had been ‘no help whatsoever’.

Sometimes Butler offered rangatira awards of land for their assistance. On 8 September 1886, he signed a written agreement that promised the Taupō rangatira Taiamai Te Huri and Hokopakake awards of 500 acres in return for their ‘continuous assistance’ in furthering the Waimarino purchase. The land was to come from the Crown’s purchases, rather than from the 50,000 acres of reserves. Butler later told Lewis that he had felt compelled to enter into this arrangement after a week of fruitless negotiations. The two rangatira sold their interests to Butler on the same day the agreement was signed, and 60 to 70 additional signatures were obtained in the following 24 hours. What these chiefs did to assist is unclear. However, they did not get the promised reserves of 500 acres. Less than a year after the agreement was signed, Butler was suggesting to Lewis that the reserves could be substituted for a cash payment. Taiamai Te Huri and Hokopakake, however, rebuffed offers of cash in lieu. In 1890, it was reported that Hokopakake would accept £250 in lieu of the reserve, but the Crown rejected this offer. In 1894, the pair petitioned Parliament for fulfilment of their deal with Butler. In August of that year, Hokopakake accepted £125 in lieu of the reserve. Taiamai continued to hold out. In the end, he died before the matter was settled, and in 1913 the £125 was paid to his heirs.

These examples show Butler as willing to enter into agreements involving cash and land to further his purchase efforts. Inducing chiefs to persuade interest-holders to part with their interests was an activity entirely outside any Māori notion of tikanga, which would have dictated chiefs leading community debate about decisions to sell land. The Crown steered Māori away from traditional practices with advance payments, extra payments, and special arrangements for additional land. Butler’s refusal to honour some of the agreements must have been all the more galling to rangatira who had walked the Crown’s path rather than their own.

**13.6.10 The purchase of minors’ interests**

Of the 921 confirmed owners of the Waimarino block, 262 (28.44 per cent) were minors. Between April 1886 and March 1887, the Crown purchased the interests of 248 (94.7 per cent) of those minors, primarily from those whom the court recommended as trustees to watch over their interests.

**(1) The parties’ submissions**

Claimant counsel submitted that the Crown was improperly involved in the selection of trustees, colluding in the appointment of people whom it thought likely to sell. Moreover, the Crown acquired the interests of many (if not most) minors illegally, by buying their interests from persons not formally confirmed as trustees.

The Crown denied any involvement of its officials in the selection of trustees for the interests of minors. It maintained that it was the applicants for title determination who selected the names on the ownership list and the trustees were drawn from that list. The court confirmed the list without the Crown’s influence or involvement. The Crown also submitted that, at law, it was the trustees
How Did the Law Regulate Minors’ Interests in Land?

Minors lack legal capacity and their property rights are always vulnerable.

When the native land legislation established a regime for creating transferable legal interests in land, an immediate issue was what would happen when children were declared owners of land interests.

The Maori Real Estate Management Act 1867 provided for the appointment of trustees to manage the real estate of minors, and put appointment in the hands of the governor in council. When trustees were appointed by order in council, those trustees could lease minors’ land, but could not sell it (section 3).

The Native Land Act 1873, as we have seen, empowered the Native Land Court to list on a memorial of ownership for each block of land the names of all those who owned interests in it. When the court listed a minor’s name, it was required to note that person’s age, and send a copy of the memorial of ownership to the governor, to be dealt with in accordance with the Maori Real Estate Management Act 1867. A properly appointed trustee could now consent to sales, and receive the proceeds for the benefit of the minor, ‘as nearly as possible in the manner provided by’ the Maori Real Estate Management Act 1867 (sections 54 and 55).

The Maori Real Estate Management Act Amendment Act 1877 enabled trustees to sell and dispose of minors’ interests in real estate to the Crown on such terms as they saw fit. It was still the governor who appointed minors’ trustees, but now only on the recommendation of a judge (section 2). Court consent was required for the sale or partition of a minor’s interests (section 6).

The Native Land Act Amendment Act 1878 (No 2) extended trustees’ powers by authorising them to sell a minor’s interests to private persons in the same manner as to the Crown (section 8).

The Native Land Laws Amendment Act 1883 made monies from sale of minors’ land interests payable to the Public Trustee (section 14).

The Native Land Court Act 1886 came into force on 1 October 1886. It was a consolidating Act, repealing the Acts of 1883, 1867, and 1877 (see section 115) and enacting new provisions that did not materially change the law for dealing with minors’ interests.

Thus we see a legislative scheme in which the capacity of trustees to act on behalf of minors gradually expanded during this period, in conformity with the policy trend of making it easier to acquire Māori land. Nevertheless, there were express requirements for how trustees were to be appointed, and, after the 1883 Act, control through the Public Trustee of money belonging to minors.

and not the Crown who owed duties of protection to the minors; the Crown’s duty was to pay for the interests it acquired, and it did.\textsuperscript{385}

\textbf{(2) The law regarding interests of minors}

When the Crown was purchasing ownership interests in the Waimarino block – from April 1886 to March 1887 – the law allowed for the interests of minors (those under the age of 21) to be vested in trustees appointed by the governor in council. The Maori Real Estate Management Act 1867 afforded trustees the powers of ownership over the interests vested in them, unless the order in council appointing them stated otherwise. Their powers did not include the power to alienate land vested in them.\textsuperscript{386} The
Maori Real Estate Management Act Amendment Act 1877 afforded trustees the power to sell the land interests to the Crown, but only to complete active negotiations for which payments had been made. In all other cases the restrictions of the 1867 Act continued. The Native Land Act Amendment Act 1878 (No 2) allowed trustees the same power to deal with private persons as they had with the Crown. The Native Land Laws Amendment Act 1883 repealed the retrospective provision of the 1877 legislation. The Act enabled both the Crown and private parties to enter into new purchase negotiations with trustees. The Act also stipulated that moneys received by trustees from the lease or sale of minors’ interests were to be paid to the Public Trustee.

(3) The Crown’s involvement in appointing trustees
Joel calculated that the court recommended trustees for all of the 262 minors on the Waimarino ownership list. On 21 April 1886, Judge O’Brien recommended trustees for 208 minors, a number which falls to 197 when duplicates and cancelled recommendations are taken into account. A further 51 recommendations were made in May and June 1886. Very few recommendations were made after this point, the last being made in March 1887. It is not clear who nominated many of these trustees to the court. Generally speaking, Māori would nominate trustees as part of the process of organising ownership lists. In the case of Waimarino, however, it was Butler on 21 April and 1 May 1886 and Stevens on 4 May 1886 who presented the lists of trustees. Whether they did so at other times is not clear, as the court records often do not record who presented the lists of nominated trustees.

(4) Involvement of Crown purchase agents suspect
There was nothing in law that prohibited the agents nominating trustees in court. However, a trustee for a minor is a responsible person whose defining duty is to act in the interests of somebody who cannot, because of age, represent his or her own interests. For that reason, a trustee must be independent, so that the minor’s – and no one else’s – interests remain first and foremost.

The involvement of Crown purchase agents in the appointment of trustees for minors should immediately have been suspect, because their only interest in the process was to facilitate the Crown’s purchase of Māori land. Marr characterised the court’s preparedness to recommend Crown purchase agents’ nominees as minors’ trustees as ‘another weakness in the Land Court process’. Why the court would have gone along with such a practice is unexplained.

Butler also appears to have misled parties to prevent the partition of the Waimarino block and secure the interests of minors. Wiremu Kiriwhi, in his evidence to the Native Affairs Committee, stated that Butler had advised some Waimarino owners that subdivision surveys could not be completed until a list of minors was compiled so that the court could appoint trustees. The owners then decided, according to Kiriwhi, to defer subdivision surveys and pursued instead the appointment of trustees. Joel said that Butler instigated the preparation of trustee lists because he needed to have trustees appointed if he was to purchase the interests of minors.

Marr suggested that the Crown’s agents wanted as trustees people who were owners in the block in order to reduce the numbers of people they had to deal with to effect purchases. It would have been of particular assistance to the Crown if, as Marr suggested, Butler convinced those whom he knew to cooperate with the Crown to be trustees. Joel confirmed that of the 125 trustees recommended (and later appointed) as trustees, 97 were also owners in the Waimarino block. Those 97 were trustees for the interests of 225 minors. Both Marr and Joel noted that it was likely that a majority of trustees nominated were relatives of the minors whose interests they were to look after, which was entirely to be expected.

(5) Crown agents’ interventions
We know of instances where the Crown’s officials took measures to bring about the appointment as trustees of particular people whom they knew favoured sale.

Hōhepa Taurerewa was appointed on 21 April 1886 as trustee for Tira Korohke, a boy of 10, as well as for a number of other minors’ interests. He was known as a non-seller. Four months later, Hēni Rākau asked the court...
to make Hira Hinekura trustee for Tira Koroheke. She stated that Koroheke was a girl and her granddaughter, and lived with Hira Hinekura. Hēni Rākau claimed that it was Stevens who had recommended to the court that Hira Hinekura be made the trustee. On 9 August 1886, the court recommended that Hira Hinekura be made trustee and cancelled its previous recommendation of Hōhepa Taurerewa. That same day, Stevens purchased Tira Koroheke's ownership interest from Hira Hinekura. In 1898, 12 years after these events, the chief judge of the Native Land Court received a petition alleging fraud in relation to the sale of Tira Koroheke's interest. The court found that Tira Koroheke, a male, had suffered the loss of his interests as a result of his name being altered on fraudulent evidence. Tira Koroheke was granted 175 acres of land adjacent to the Waimarino 4 block as compensation. Crown officials believed that Stevens was a victim of the fraud in giving his recommendation to the court. Stevens also played a key role in the appointment of Te Maari Matuaahu as trustee for her brother, Te Wharerangi Matuaahu. On 25 October 1886, both Te Maari and Te Wharerangi succeeded to the interests in the Waimarino block of their deceased brother, Hēnare Matuaahu. The following day, Te Maari applied to the court to be made trustee for Te Wharerangi, whom she claimed was deaf, dumb, and a minor. Stevens gave evidence in support, and said that the poor health of Te Wharerangi's current trustee, his father, made him unfit to act. Stevens claimed to know the whole family, and attested that Te Wharerangi's interests would not suffer as a result of Te Maari's trusteeship. The court recommended the appointment of Te Maari as trustee for Te Wharerangi. The next day, either Butler or Stevens purchased the interests of Te Maari and her brother. Joel noted that the court appears to have relied on Stevens's evidence that Te Wharerangi's interests would not be detrimentally affected if Te Maari were appointed, which 'does not reflect well on the independence of the Court.'

As to the benefits to the Crown of purchase agents meddling in matters of trusteeship, Marr gave us an example that demonstrated the efficiency of reposing trust duties in those who were also owners. In April 1886, Butler dealt with five owners who sold not only their own interests but those of the 26 minors for whom they were trustees. Over a 10-day period that same month, Butler acquired 165 ownership interests, including those of adults and minors. In May 1886 Butler purchased the interests of 73 minors. Joel’s research revealed that in at least 16 cases one adult Waimarino owner was recommended as the trustee for five or more minors’ interests. When Joel gave evidence before us he accepted the proposition that, given the involvement of Butler and Stevens in presenting the applications nominating trustees, there had to be ‘a grave concern about the integrity of that process.’

(6) The Crown overrides formal legal process
The recommendation of a judge of the Native Land Court did not complete the appointment of trustees. The governor in council had to approve the recommendation and appoint the trustee. The governor did not approve most of the Waimarino minors’ trustee recommendations until March 1887. The Crown purchased minors’ interests before then from persons who were not yet formally appointed as trustees.

Under-Secretary Lewis understood this. On 5 June 1886, Lewis asked Judge O’Brien to authorise payments to several recommended trustees in blocks including Waimarino. He stated:

The Government of course takes any risk consequent upon informalities of any kind whatever – such for instance as the anticipation of the Order in Council confirming the appointment of the Trustees or any other proceeding considered necessary to bring the purchase of the land to the very earliest possible conclusion.

Lewis was asking the court to bypass the process that Parliament had prescribed in law – an extraordinary proposition for a Crown official to put to a judge. The persons Lewis wanted the court to pay were simply not trustees until the governor appointed them to the role. The reasonable expectation that the recommended trustees would be appointed did not alter the legal situation, and the Crown should not have bought interests from persons who were
not yet trustees and therefore lacked legal capacity to sell the minors’ property. On 21 April 1886, the Crown actually bought a minor’s interests on the very day that the first trustees were recommended for appointment. At other times, agents did not wait for the court’s recommendation, and purchased in anticipation of both the court’s recommending a trustee and the Governor’s approving and appointing him.

The Crown’s submission about legal responsibility falling on trustees was true in theory – but these minors’ representatives had not yet been appointed as trustees. Only the Governor in Council could appoint trustees on the recommendation of the court, and only the Crown could formally gazette them. Until these steps were completed, no one had legal capacity to sell the interests of a minor. Although the Crown knew this, it pressed on regardless – hoping that ‘any risk consequent upon informalities of any kind whatever’ would not count against it. The risk actually fell not on the Crown or on the court, but on the minors, whose interests the Crown bought and the trustees sold without legal sanction.

This riding roughshod over due process was another manifestation of the Crown’s undue haste to purchase the Waimarino block. If cutting corners and manipulating situations was what it took to purchase more interests more quickly, then that is what Butler and his colleagues would do – even when the hapless sellers were children. Lewis’s communication to the court quoted above is interesting, because it shows that the higher echelons of the Crown were complicit in this approach.

13.6.11 Owners try to halt the Crown’s partition
Waimarino owners’ applications to partition out their interests were eventually gazetted – but only after an application from the Crown to partition out the interests it had acquired.

At court on 10 February 1887, the owners asked to withdraw their applications. The court records do not record the reasons given. The court announced that the Crown’s application had been notified, and would ‘in all probability’ proceed. Two days later, on 12 February, Paiaka Te Pāponga, Te Pikikōtuku Pākoro, Ngātai Te Mamaku, Te Tarapounanamu, and many others wrote to Ballance and Vogel about withdrawing their applications. They advised that they had withdrawn them to allow for the block to be ‘dealt with in a clear manner’. Their action was not motivated by ‘antagonistic or objectionable feelings’, and ‘the whole of the people feel convinced that this is the proper course.’ They invited Ballance to come to Wanganui to join us in dealing with your claim respecting Waimarino, since all the people are here in town, so that light may shine forth upon both the Maories [sic] and Europeans ([so that] both races may thoroughly understand) for although there are crooked parts in the affair we still look to you to straighten them.

The request for Ballance to meet with Waimarino Māori to address the Crown’s interests in the block was probably their attempt to get the Crown’s partition application off the court’s agenda. They wanted to meet face to face with the Crown over its rights in the block rather than see the court decide what land the Crown had bought and what remained to them. They looked to Ballance to straighten out the ‘crooked parts in the affair’.

Again, though, their efforts to stand in the way of the Crown’s intentions came to naught. Ballance was reportedly very busy and could not travel to Wanganui immediately. He eventually arrived on 1 April 1887, but by that time the court was hearing the Crown’s partition application. Of course, had it wished, the Crown could have used its powers under the native land laws to prevent the court from hearing the application so that it could meet first with Waimarino Māori. It was not so inclined.

13.6.12 Conclusions
By early 1887, the Crown had bought up about 90 per cent of the ownership interests in the Waimarino block – including almost 95 per cent of minors’ interests. Most purchases were in the few months immediately following the court’s title determination.

In order for purchases to proceed so quickly, there must
have been an element of willingness to sell. However, there was a range of other pressing factors that played an important – although actually immeasurable – part. We go through them by way of concluding this section.

In combination, the factors lend the sense that the Crown created an environment in which alienation of interests had about it a kind of inevitability. For an owner to sell land interests under such circumstances lacks, we think, the element of free will usually comprised in the idea of ‘willingness’. Rather, sale looks more like reluctant acceptance of a route not exactly favoured, but resolved upon because other routes were few and very difficult to travel, and because many others had also been persuaded to abandon the possibility of pursuing alternatives.

Each Waimarino owner obtained by way of title an undivided and unquantified interest in a vast area of land. This title was of no immediate use to them. They knew neither the size nor location of their share. The Crown aggressively pursued purchase of individual owners’ interests by all means at its disposal. It went so far as to offer money and land to procure the influence of rangatira to persuade reluctant sellers to get on board. At the same time, it quite wrongfully blocked the process by which owners could apply to the court to subdivide the land – the only means by which they could quantify and locate their interests. Owners had to do that in order to use the land themselves, and in order to gain a clear sense of what land the Crown had bought and was buying.

At every stage, the Crown’s practices undermined the integrity of traditional leadership and ousted practices of community debate. Each individual owner was at liberty to sell his or her interests to the Crown without reference to traditional leaders or the community. Chiefs and hapū were disempowered as the Crown bought the land from under them before anyone really had a chance to realise what was happening.

If the court had conscientiously followed all the steps that the legislation laid out for determination of title – requiring proper proof of title, and evidence that boundaries had been marked and that survey information confirmed the sketch plan it relied on – the whole process would have slowed down. There would have been a much longer deliberative period in which all the interest-holders would have had the opportunity to get to court to confirm both the boundaries of the block and their interests in it. But the legislation afforded the court too much discretion, so that if the judges on the day were not doing their job properly, interest-holders lost out – for there was neither an opportunity to be legally represented, nor a readily available review or appeal mechanism.

And then if the Crown had properly waited for the court to proceed through all the legislated steps before it rushed in to purchase – surely a prudent and fair precaution at least to make sure that the land in the title was properly defined before it bought any interests – that too would have rescued the process from the hazards of undue haste.

The Crown’s haste also adversely influenced the purchase of minors’ interests. The Crown overrode the formal process for appointment of minors’ trustees in order to acquire minors’ interests from persons who did not as yet have legal capacity to deal with those interests.

Nor could the owners of the Waimarino block (whether or not they wanted to sell) be certain of the terms of purchase. Butler and the other purchase agents promoted the figure of £50,000 as the purchase price, while working to purchase the block for as little as £35,000. Māori thus believed they were receiving a share of £50,000, when in fact many payments were premised on the minimum price of £35,000. Similarly, the 50,000 acres of reserves that Crown agents promoted was actually stated in the purchase deed not as a guarantee but as a maximum.

The Crown conceded that when it discouraged partitions, purchased shares based on its own rather than the court’s determination of relative interests, and failed to inform owners fully about price, it did not meet the high standard expected of it as a privileged purchaser of Māori land. It also conceded that its purchase fell below ‘the standards of reasonableness and fair dealing that found expression in the Treaty of Waitangi and was a breach of the Treaty of Waitangi and its principles’.410 We note the Crown’s further concession that the combined effect of its
aggressive purchase tactics with the payment of advances and the abuse of its monopoly powers meant that it failed actively to protect interests of particular groups in land they wished to retain.\footnote{411}

Our inquiry into the Waimarino purchase shows that the Crown’s concessions should have gone further.

It made no concessions about its inappropriate subordination of rangatira to further its purchase aims. If owners were reluctant to sell, the Crown should have accepted that choice. Rangatira who yielded to the Crown’s offers must bear some of the responsibility, but the Crown was entirely wrong to enter into such conduct. It corrupted traditional leadership structures in an environment where the native land laws had already undermined leaders’ positions. Moreover, it is an axiom of article 2 that the Crown would only purchase land that rangatira freely wanted to sell.

Nor did the Crown’s concessions venture into the area of minors’ interests. When it bought minors’ interests from persons whom the governor in council had not yet appointed as trustees, it subverted the process enshrined in law for protection of minors. The Crown actively engaged in this conduct to ministerial levels, simply because it was unwilling to delay its frantic purchase of the land interests even of children. Its actions were plainly wrong, and the Crown should freely have conceded as much.

\subsection*{13.7 Dividing up the Land}

\subsubsection*{13.7.1 Introduction}

On 17 August 1886, while still purchasing ownership interests in Waimarino, the Crown applied to the Native Land Court to determine its interests in the Waimarino block. The application was notified in the \textit{Gazette} on 23 December 1886, and a hearing was set down for 24 January 1887. Delays meant that the hearing eventually opened on 30 March 1887.\footnote{412}

By the time of the hearing, the Crown had purchased the interests of all but 101 owners,\footnote{413} but no one knew which parts of the block had been sold and which would remain to those who had not sold. The process of determining the Crown’s interests offered Waimarino owners their first opportunity to ascertain what land the Crown claimed to have purchased.

At the hearing, the court awarded to those who had not sold their interests a total of 41,000 acres in seven blocks, in which the court awarded individuals shares of between 10 and 400 acres each. To the Crown went the remaining 417,500 acres. Out of this came 33,140 acres of reserves for those who had sold. The court awarded 50 acres each to about half of those included in the ownership. Others received less, sometimes as little as 10 acres.\footnote{414}

In this section, we inquire into the division of the Waimarino block: the process by which the court determined individual shares in the blocks that were not sold, and also shares in the reserves for those who had sold. We look into the role that the Crown’s land purchase officials played.

\subsubsection*{13.7.2 What the claimants said}

The claimants submitted that the Crown manipulated the partition process. It held back the owners’ partition applications to allow its purchasing to commence and continue for months without the interruption of further court hearings. The owners’ applications were therefore delayed, and were gazetted for hearing only after the Crown’s application was notified. The action of some to withdraw their applications was, the claimants argued, evidence of their recognition that the Crown had purchased so many interests that partition hearings would be to little purpose.\footnote{415}

The claimants also contended that the hearing to determine the Crown’s interests should not have proceeded before a proper survey plan of the block had been produced, and objections received and addressed. Such a process was anticipated when the court proceeded with its title determination based on the sketch map then available. Although the law required a proper survey plan open to objection and alteration before the court issued a certificate of title, no such process was undertaken for the Waimarino block. The court also displayed bias and bullied Waimarino owners.\footnote{416}

Nor did the Crown wait until the court dealt with applications to rehear the title of the Waimarino block. The
claimants submitted that even if the native land laws then in place allowed this, it was nevertheless reprehensible behaviour on the part of the Crown.\textsuperscript{417} Claimant groups also alleged that the Crown and the Native Land Court colluded to pre-determine the areas set aside as non-seller blocks and seller reserves. The judges in the partition case showed an unusual degree of bias toward Crown witnesses, perfunctorily dismissed the evidence of others as unreliable or malicious, and threatened non-sellers with locating their reserves ‘on the precipices and pinnacles’.\textsuperscript{418}

\textbf{13.7.3 What the Crown said}
The Crown accepted that it had not wanted other partition applications concerning the Waimarino block to be heard while purchasing was continuing. It submitted that it was understandable for the Crown to have taken this stance because of the unnecessary extra costs for Māori if partition hearings had proceeded.\textsuperscript{419} The Crown rejected the claim that it was reprehensible for the Crown to seek partition of the block before a proper survey and examination process were undertaken. It argued that the law in force allowed for partition hearings to proceed on a sketch map, and there was no objection to this at the time or in subsequent petitions. In the Crown’s view the substance of complaints from Māori at the time was ‘principally about unequal treatment of owners, payments to the wrong people, and failure to identify the correct owners’ – especially that particular individuals should have been paid more. The Crown accepted that there was no justification for its unresponsiveness to Māori requests for information about how it determined the price for the Waimarino block.\textsuperscript{420}

\textbf{13.7.4 Survey of the block}
By the time the hearing to determine the Crown’s interests in the Waimarino block commenced at Wanganui on 30 March 1887, there was at last an approved survey plan before the court.

On 1 April 1886, directly after the court finished determining title, Under-Secretary Lewis commissioned the work to complete the survey. Three survey parties arrived later that month.\textsuperscript{421} The surveyors were under strict instructions to do the work with the ‘greatest expedition’ because the Native Minister and the Government were ‘anxious to complete the purchase’.\textsuperscript{422}

(1) \textit{Grassroots Māori opposition to survey}
They soon encountered Māori opposition. On 15 June 1886, the surveyor Annabell wrote to Chief Surveyor Marchant that he had not been able to achieve much ‘owing to native opposition’.\textsuperscript{423} The following month another surveyor, Wilson, reported that a person named ‘Tapa’ had ‘entirely misdirected’ his assistant.\textsuperscript{424} A surveyor called Thorpe was responsible for the southern boundary. He declared in October 1886 that the two Māori guiding his work were no help at all. They could not show him anything, and when they did the places they gave did not agree with the previous sketch map. He added that he had drawn the boundary as ‘firm lines between the points fixed – from Okahurea to Tawhiwhinui – in case it should be necessary to adopt these as boundary instead of the indefinite ridge’. Butler was reportedly satisfied with this.\textsuperscript{425} Annabell reported that same month that boundary lines were being plotted using data from trigonometrical surveys, and that Butler believed this would be sufficient for the hearing.\textsuperscript{426}

The hearing to determine the Crown’s interests was supposed to commence on 24 January 1887. However, rough sketches of the western boundary and the interior of the block were still being submitted to Marchant in mid-January. On 19 January, Thorpe reported that Māori refused to accompany him as guides and that as a result his plan lacked Māori place names.\textsuperscript{427} Marchant was also unsure whether the 88,000 acres of the Aotea or King Country block were still to be considered part of the Waimarino block. Assistant Surveyor General S Percy Smith replied on 18 January 1887 that they were.\textsuperscript{428} Chief Surveyor Marchant certified his approval of the plan of the block (ML 776) on 20 January 1887. The court postponed the start of the hearing until 30 March and it appears that work on the plan was ongoing in the interim. Thorpe was certainly still sending tracings of the
Waimarino boundary on 27 January, a week after the plan was approved. In any case, the new plan included a revised acreage for the block of 458,500 acres.  

(2) What was the legal situation re the survey plan?  
As we saw in the previous section, the Native Land Court Act 1880 spelled out the requirements for owners to inspect and object to the survey plan. After hearing any objections, the court would adjust the plan if necessary.  

‘The land delineated by the plan so settled’ then became the land in respect of which the court had made the order at the original hearing, and the court issued a certificate of title in those terms once the period for applying for a rehearing expired.  

The Native Land Court Act 1886 repealed the 1880 Act. The new Act gave the Native Land Court even more discretion as to what it might think fit for the purposes of investigating title, and made no provision for Māori to
inspect and object to survey plans at any stage. It did state, however, that the court had discretion to decide whether any ‘incompleted procedure’ would continue under the terms of the new Act or the Act under which it was initiated.\textsuperscript{434}

Was the court’s issue of the certificate of title to the Waimarino block an ‘incompleted procedure’? It is arguable, however, the court had issued a provisional certificate, and the process that sections 27 to 33 of the 1880 Act prescribed was in train. It is difficult to frame a logical argument for the court to exercise jurisdiction under the new Act to make its orders final when it had conducted the whole title investigation under the 1880 Act.

There is no evidence that owners in the Waimarino block were ever given notice that the survey plan was ready for inspection, or that they could object to the boundaries depicted. The land comprised in the significant overlap between the Rohe Pōtae and Waimarino blocks (approximately 88,000 acres) was simply confirmed as part of the Waimarino block. It is unclear under what legislation the court purported to be acting at any stage.

13.7.5 Reducing the number of owners

The native Land Court’s interlocutory order of 16 March 1886 listed 1,005 owners in the Waimarino block. Five names were added two days later, and Tōpine Te Mamaku’s name was also added at some point. On 21 April, Hoani Paiaka advised the court that nine of the names on the list were actually the names of land areas in the block. They were removed. Then, on 7 May 1886, five names were added, bringing the number of owners to 1,006.\textsuperscript{435}

At some point after the court determined title on 16 March, Butler set about identifying what he considered to be duplicates in the list of owners. To assist him, he employed Wiremu Kiriwehi.\textsuperscript{436}

(1) ‘Duplicates’ in the owners’ list

When Butler opened the case to determine the Crown’s interests on 30 March 1887, he informed the court that 85 of the 1,006 names were duplicates. The duplicate names were not recorded in the court minute book, but they were written down in the Crown’s land purchase account book for the Waimarino block. Joel gave evidence that the so-called duplicate names were actually examples of the same person being included more than once under different names. There were three cases of a single person being included under three different names. However, the three were paid only once; they did not receive additional payments under their aliases. As Joel noted, this suggests that purchase agents probably picked up these duplicate or alternative names during the purchase process. There were at least eight cases, though, where purchase agents paid the same person more than once, recording each payment under a different name. Butler did not pick these up until after the court defined the Crown’s interest.\textsuperscript{437}

(2) Butler and others wrongly delete list’s ‘duplicates’

We regard Butler’s alteration of the Waimarino ownership list – and the court’s complicity in it – with concern. The process of naming interest-holders for the title occurred under the auspices of the court; the court accepted the names, and made its order accordingly. The names given were arrived at through consensus in meetings outside court. The gathered interest-holders recognised that the same person could derive multiple interests in multiple places through different ancestry. The person might give a name in respect of his interests in one place that reflected his ties to the ancestor relevant there; in another place, another name might be relevant. Te Rangihuaatau, for example, could legitimately be included in an ownership list for both Ngāti Maringi and Ngāti Tamahaki. He might also be listed as Ngāti Tamakana, Ngāti Taipoto, and probably in other hapū as well. It was completely legitimate for this multiplicity of rights to be reflected by inclusion in multiple ownership lists. It was also legitimate for individuals to be paid accordingly. They were not selling one interest, but multiple interests. They might sell some, and retain others. These were not matters for Butler to decide.

In cutting out ‘duplicates’, Crown officials and officers of the Native Land Court were trying to produce simplicity out of complexity. More seriously, in denying that people could have sets of rights under different hapū names, or from various lines of descent from both parents and grandparents, they were subverting an aspect of tikanga.
13.7.6 Determining the Crown’s interests

As stated, Waimarino owners made a number of applications to partition out their interests after the court determined title. The Crown discouraged these applications, and held them back, in order to pursue its purchase programme unhindered.

The court issued a certificate of title for the Waimarino block on 16 March 1886, but it was provisional until an approved survey plan was produced to the court, and the court went through the process of notice, inspection, and objections that the Act prescribed. But after the survey plan was certified on 20 January 1887, no process of notice, inspection, and objections ensued, as far as anyone has been able to ascertain. It is unclear why. It appears to have been entirely bypassed. The hearing to determine the Crown’s interest opened on 30 March 1887.

Chief Judge Macdonald, Judge Puckey, and Assessor Paraki Te Waru heard the case. Butler announced that the Crown had purchased the interests of all but 101 owners, and presented a list of all those who had not sold, arranged by hapū. He produced the deeds of sale, and asked the court to award to the Crown the shares of all those who had sold their interests.

Māori opposed the Crown’s claim from the outset. Tōpia Tūroa stated: ‘I do not know where the interests of those whose shares Mr Butler’s claim rest upon the land [sic].’ Tūroa asked the court to adjourn so that he could talk with Butler outside court. As we have seen, out-of-court discussions were sometimes a means for Māori to resolve issues in their own way during court hearings that were an expression of a different cultural paradigm (see section 11.6.2). Butler did not want this, and opposed adjournment: he had opened a prima facie case for the Crown and it was for the non-sellers to prove their claim. The court accepted the purchase deeds as evidence, declared the case opened, and then adjourned until the following day.

Tōpia Tūroa met with Butler before the case resumed. He outlined the boundaries of the area that Māori were willing to see awarded to the Crown. Butler rejected this overture. Tūroa later told the court that as Butler would not consent to take what he offered, ‘nothing was finished’.

(1) The case of those who had not sold

The court heard the cases of Waimarino owners who had not sold to the Crown on 31 March and 1 April 1887. Of the 101 owners who had not sold their interests to the Crown, only three – Tarihira Kereti, Taitua Te Uhi, and Tārewa Heremaia – were present in court.

Tarihira Kereti stated that she was unable to call any witnesses or point to the boundaries of the land her people claimed as they had all returned home.

Taitua Te Uhi claimed a portion of the block for Ngāti Hinewai, and another for Ngāti Hinewai, Ngāti Reremai, and Ngāti Hāuaroa. Te Rangipuhia of Ngāti Hāua (the rangatira who mistakenly withdrew a list of proposed Ngāti Hāua owners at the title determination) gave evidence in support of Taitua Te Uhi’s claim. He gave boundaries for land in the west and centre of the block that he said Ngāti Hāuaroa and Ngāti Reremai owned, and also claimed that Ngāti Hāua owned land at Whātangata and Mangapūrua. He named six kāinga in the block that Taituha, Tānoa, and Tūao owned. When Butler cross-examined him, he said that 100 other people had interests in the areas belonging to Taituha and Tānoa Te Uhi, and to Tūao.

Pōari Kuramate conducted Tārewa Heremaia’s case. Hakiha Tāwhiao gave evidence for her, stating that he knew her, and that her proper hapū was Ngāti Hāua. He said that Tārewa claimed the same land that Te Rangipuhia had described, for her claim was the same as Taituha Te Uhi’s. An attempt to call elders as witnesses in support of Heremaia’s claim failed as, according to Kuramate, ‘all her old people have gone home’.

The court heard that another owner who had not sold her interests, Māta Īhaka, could not prosecute her case as she was ill at Pūtiki. Her husband, Īhaka Te Iringa, could not point out her claim or its boundaries.

(2) The Crown’s case

Butler conducted the Crown’s case, and Te Rangihuatatau was his principal witness. Te Rangihuatatau briefly described the membership of his hapū Ngāti Marangi and the boundaries of their land interests. He gave the names of three chiefs more important than himself,
Te Oro, Matuaahu, and Te Kurukaanga (the informal minutes included Te Pikikōtuku).448 He said he had an ancestral right at ‘Waimarino proper’ under the ancestor Tamakana, and acknowledged that Tōpia Tūroa also had a claim there. The boundaries he claimed did not cover the whole of the block, but Te Rangihuatua confirmed that he had told Stevens and Butler that he was ‘the principal man there’. When the chief judge questioned him on this point, Te Rangihuatua explained that he did so because Butler was ‘paying money to men as chiefs on that portion [Waimarino proper], so as I felt disgusted and said I was the principal man there’. Yet, he maintained that his statement was correct. Before receiving payment, he was ‘the principal man there’.449 Te Rangihuatua then gave the names of various individuals with details of their claims, and named various hapū and the areas where their rights were concentrated.450

Te Wārahi Panikena, Tūtua (or Tūtawa), and Wiremu Kiriwehi also gave evidence for the Crown. They described the rights of various hapū within the Waimarino block, including Ngāti Maringi, Ngāti Kahukurapango, Ngāti Ngaronoa, Ngāti Wairehe, Ngāti Poumua, and others and gave place names associated with their claims.451 Te Rangihuatua stated that none of the hapū had claims covering the whole of the block.452 Tōpia Tūroa was then called as a Crown witness. He stated that he did ‘not know the lands of [Ngāti] Tukaiora, they own the whole of this block’. The court then adjourned.453

(3) Support for the Crown’s case lacking
Marr’s evidence discussed how Tōpia Tūroa and another leader made at least three efforts ‘to engage the Government in constructive negotiation to reach a more reasonable agreement’ on which parts of the Waimarino block would go to the Crown. She described the general perception that ‘the tactics employed had not been “straight” and that the whole matter required discussion and negotiation to achieve a more equitable resolution’.454 Hayes considered that,

In proceeding to purchase before the relativity of shares had been ascertained by the Court, in seeking to determine relativity of interests itself, in making special arrangements and in discouraging a partition of the block amongst the interested hapū (as some had contemplated), the Crown contributed to the inevitable matrix that ensued.455

That ‘matrix’ involved widespread dissatisfaction and anger about the approach of Butler and the other Crown agents to buying the interests of Waimarino owners, with few willing to give evidence in support of the Crown’s case.

Butler probably felt that he had to justify himself. He later alleged that many of the owners who sold to the Crown were involved in a conspiracy to defraud the Government by repudiating what they had sold and magnifying the rights of non-sellers. Butler claimed that Tōpia Tūroa encouraged false evidence, and used ‘every means in his power to intimidate those who were inclined to speak the truth’. Butler even alleged that Tūroa assaulted a witness ‘who gave straightforward evidence’. He said that Te Rangihuatua was initially inclined to side with Tūroa, but then chose to provide valuable assistance to the Crown’s case, and encouraged others to do so as well.456

(4) Te Rangihuatua’s written statement
Butler arranged for Te Rangihuatua to sign a written statement of evidence on the rights of certain hapū in the Waimarino block. Marr suggested that Butler was trying to protect Te Rangihuatua from possible intimidation or general criticism, because Butler submitted the statement to the court and Te Rangihuatua did not have to present the evidence in person. It appears that Butler handed up the statement on 2 April (a Saturday), for court commenced at 10 am and then quickly adjourned until Monday 4 April. When the case reopened on the Monday, Te Rangihuatua appeared to give more oral evidence, but little of it was new. The court then read out the statement he had signed on 2 April, saying that he had taken an oath as to its correctness. Taitua Te Uhi was given an opportunity to question Te Rangihuatua on the statement, but he declined.457 The statement was not included in the minutes of the hearing, and it seems to have been lost.

For the court to accept this written statement as
evidence was unusual. Marr told us that the court’s usual practice was to require witnesses to attend, give evidence in person, and respond to cross-examination. It is unclear why it departed from this practice here. It was within the court’s power to employ ‘what it may deem the best ways and means, and without reference to or being bound by legal formalities, to decide the various matters submitted to its jurisdiction.’ But given that it relied on Te Rangihuatu’s statement, and attached importance to others not questioning it, its unusual presentation raises questions that are not answered by the reason that the court gave when it gave judgment (see section 13.7.6(5)).

Butler then gave evidence on who had and who had not sold to the Crown. When he opened his case, those who had not sold numbered 101, but now there were 100 names. The missing name was that of Māta Īhaka, the person who was too ill to come to court to present her case. On 4 April, she accepted Butler’s offer of £100 for her interests. Butler’s list of those who had sold to the Crown named 821 owners.

(5) **The court’s decision**
The court delivered its decision on 5 April 1887. It noted that only three non-sellers were present at the hearing, and commented that Taituha Te Uhi’s evidence was ‘not of a satisfactory nature’. It did not explain how it came to this view.

The court took an even dimmer view of the evidence of witnesses who had sold their interests. Apart from Wiremu Kiriwhi, they were ‘very reluctant in giving reliable evidence’, to an extent that soon convinced the court that ‘there was a wide spread conspiracy to defeat the application of the Crown in which the sellers both chiefs and people were implicated’:

It has not been our bad fortune on any previous occasion to find a whole people and their chief take up so reprehensible a position as that assumed by the sellers of Waimarino. They appear to have banded themselves together to give false evidence before the Court in fact to use the words of the Maori proverb, they have gone back and swallowed their own spittle.

<table>
<thead>
<tr>
<th>Hapū</th>
<th>Non-sellers</th>
<th>Area (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ngāti Ātamira</td>
<td>8</td>
<td>1,800</td>
</tr>
<tr>
<td>Ngāti Hinekura</td>
<td>8</td>
<td>3,640</td>
</tr>
<tr>
<td>Ngāti Hinekowhara</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td>Ngāti Hinewai (1)</td>
<td>3</td>
<td>30</td>
</tr>
<tr>
<td>Ngāti Hinewai (2)</td>
<td>3</td>
<td>1,350</td>
</tr>
<tr>
<td>Ngāti Kahukurapane</td>
<td>2</td>
<td>900</td>
</tr>
<tr>
<td>Ngāti Kahukurapango</td>
<td>3</td>
<td>1,350</td>
</tr>
<tr>
<td>Ngāti Kuratangiwharau</td>
<td>3</td>
<td>1,350</td>
</tr>
<tr>
<td>Ngāti Maringi</td>
<td>5</td>
<td>2,250</td>
</tr>
<tr>
<td>Ngāti Matakaha</td>
<td>9</td>
<td>4,050</td>
</tr>
<tr>
<td>Ngāti Ngaronoa</td>
<td>2</td>
<td>900</td>
</tr>
<tr>
<td>Ngāti Pare</td>
<td>5</td>
<td>2,250</td>
</tr>
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<tr>
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<td>3</td>
<td>1,500</td>
</tr>
<tr>
<td>Ngāti Tamahuatahi</td>
<td>1</td>
<td>300</td>
</tr>
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<td>Ngāti Tamakana</td>
<td>5</td>
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</tr>
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</tr>
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<td>1,350</td>
</tr>
<tr>
<td>Ngāti Te Wairehu</td>
<td>5</td>
<td>2,250</td>
</tr>
</tbody>
</table>

It was the opposition manifested by ‘Major Topia’ (Tōpia Tūroa) that led the court to accept into evidence the written statement of Te Rangihuatu.

The court awarded the 100 non-sellers 41,000 acres; the area that comprised the rest of the block it awarded to the Crown.

Having addressed the Crown’s application to define its interests, the court decided to move on to define the relative interests of those hapū represented in the list of those who had not sold their interests (see table 13.1).

The court also awarded 950 acres to Tārewa Heremaia and Te Moana. The awards to the hapū listed in the table above, plus the award to Tārewa Heremaia and Te Moana, amounted to 40,800 acres. In addition, the court awarded 200 acres for urupā or wāhi tapu reserves. About these
200 acres in non-seller block 3, the minute book for the Whanganui court recorded ‘Erua nga wahi tapu ara Kouhau & Takimikimi’ (There are two wāhi tapu, namely Kouhau & Takimikimi). Judge Puckey noted simply that the 200 acres were for burial grounds. Table 13.1 shows that there was some correlation between the number of members in each hapū that did not sell interests and the amount of land assigned to that hapū. The exceptions to this were the 30-acre lots allocated to Ngāti Hinewai and Ngāti Hinekowhara. In each of these cases, the award equated to an average award of 10 acres per person. These two hapū had whakapapa connections with Ngāti Tūwharetoa. For this reason, or perhaps because Butler may have been following the assertion of Te Rangihuatia that they had little claim, they were awarded little land in Waimarino (see section 2.4.3). For other hapū, the allowance ranged from an average of 300 acres each (Ngāti Tamahuatahi) to 500 acres each (Ngāti Ruakōpiri).

On 6 April 1887, the court awarded the Crown its 417,500 acres as the Waimarino 1 block. The awards to those who did not sell were partitioned into 7 blocks named Waimarino 2 through to Waimarino 8. The title orders were incomplete, however, with a survey of each block required to complete them.

(6) The court’s awards to those who did not sell
Table 13.2 shows that the average award per owner varied greatly between hapū: some got 10 acres; 225 acres was quite common; and members of one hapū received as much as 500 acres.

(a) How the court decided on non-seller block locations: The court appears to have pencilled in the locations of non-seller blocks on the survey plan of the Waimarino block. Clayworth’s evidence shows that some were located along the Whanganui, Manganui-a-te-ao, and Whakapapa Rivers, and others were on the proposed line of the railway and main trunk road. Marr informed us that the locations ‘reflected traditional settlement areas of importance and the importance of waterways to traditional food sources and means of transport’. But, she said, when the court located all the interests of those who did not sell in just seven portions of the block, it ‘inevitably excluded many areas that were traditionally important that owners did not want sold’.

We do not know how the court decided either the relative interests of those who did not sell, or the location of their blocks. Some claimants, relying on the work of historian Peter Clayworth, submitted that the court determined the area and location of the non-seller blocks entirely on Butler’s advice. However, Clayworth provided no evidence to support this thesis.

(b) The court probably followed Butler’s suggestions: Marr told us that the court minutes contained no explanation of how the court determined acreage or location, but surmised that the court probably decided on the basis of what Butler told it, and ‘possibly partly on evidence submitted’. Although ‘there is no record of how Butler decided on his recommendations’, Marr speculated that he ‘followed to some extent the locations provided in evidence and his own knowledge of where various people lived’. As to the area to be allocated to each of those who did not sell their interests to the Crown, Marr said that Butler assigned them each 400 acres. We outlined her calculation earlier in relation to how Butler set the minimum payment for ownership interests: Butler divided the 400,000 acres he thought the Crown would secure by the estimated number of owners (1,000) to get to a notional interest of 400 acres per owner. For the 101 owners who did not sell, a notional interest of 400 acres resulted in an award of 40,400 acres. Marr suggested that a further non-seller share of 400 acres was added to this figure, bringing the total to 40,800 acres, the amount the court awarded to non-sellers.

(c) Marr’s hypothesis for Butler’s scheme: Marr is a reliable witness whose speculations we do not dismiss lightly, but some immediate questions spring to mind. Why would Butler not have set the notional interest for each of the 1,000 owners at 450 acres rather than 400 acres when the estimated area of the block was 450,000 acres? For each interest the Crown purchased, it kept 400 acres and allocated 50 acres as reserves. On this basis, surely each
owner who did not sell would get a notional 450 acres? Only by this calculation would the combined area of land awarded to the Crown, land returned as reserves to those who sold, and land retained by those who did not sell amount to the total estimated area of the block. We therefore doubt Marr's hypothesis, for if Butler had approached the allocations as she suggested, the 100 non-sellers would have received 45,000 acres.

Secondly, the block survey was completed two months before the partition case, and according to the survey the block comprised 458,500 acres. In addition, the number of owners reduced from 1,000 to 921 by the time the court

Table 13.2: Waimarino block – non-seller awards

<table>
<thead>
<tr>
<th>Block</th>
<th>Area (acres)</th>
<th>Owners</th>
<th>Hapū</th>
<th>Number of owners</th>
<th>Average award per owner (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waimarino 2</td>
<td>3,640</td>
<td>8</td>
<td>Ngāti Hinekura</td>
<td>8</td>
<td>455</td>
</tr>
<tr>
<td>Waimarino 3</td>
<td>18,350</td>
<td>50</td>
<td>Ngāti Marangi</td>
<td>5</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kahukurapango</td>
<td>3</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tamahuatahi</td>
<td>1</td>
<td>300</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kuratangiwharau</td>
<td>3</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kahukurapane</td>
<td>2</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Te Wairehu</td>
<td>5</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ātamira</td>
<td>4</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Pare</td>
<td>5</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tamakana</td>
<td>5</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tūkiaora</td>
<td>9</td>
<td>350</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tūmānuka</td>
<td>3</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ruakōpiri</td>
<td>3</td>
<td>250*</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ngaronoa</td>
<td>2</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Wāhi Tapu</td>
<td></td>
<td>200</td>
</tr>
<tr>
<td>Waimarino 4</td>
<td>3,450</td>
<td>15</td>
<td>Ngāti Marangi</td>
<td>5</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kahukurapango</td>
<td>3</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ātamira</td>
<td>4</td>
<td>225</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ruakōpiri</td>
<td>3</td>
<td>250*</td>
</tr>
<tr>
<td>Waimarino 5</td>
<td>13,200</td>
<td>31</td>
<td>Ngāti Matakaha</td>
<td>9</td>
<td>450</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Poumua</td>
<td>6</td>
<td>400</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tauengaarero</td>
<td>16</td>
<td>421.9</td>
</tr>
<tr>
<td>Waimarino 6</td>
<td>1,350</td>
<td>3</td>
<td>Ngāti Hinewai</td>
<td>3</td>
<td>450</td>
</tr>
<tr>
<td>Waimarino 7</td>
<td>950</td>
<td>2</td>
<td>Tārewa Heremaia and Te Moana</td>
<td></td>
<td>475</td>
</tr>
<tr>
<td>Waimarino 8</td>
<td>60</td>
<td>6</td>
<td>Ngāti Hinewai</td>
<td>3</td>
<td>10</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Hinekowhara</td>
<td>3</td>
<td>10</td>
</tr>
</tbody>
</table>

* The three Ngāti Ruakōpiri non-sellers received 250 acres each in both Waimarino 3 and Waimarino 4 – a total award of 500 acres each.
heard the Crown’s application. Butler knew this. Why would he proceed on the basis of a notional interest when there was now a verified acreage to work with?

Thirdly, table 13.2 shows that the average award varied greatly between hapū. The actual awards do not look as though they arose from a notional equal allocation.

(d) The court had to rely on available evidence: In her evidence, Marr posited that Butler decided the areas to be awarded to those who did not sell, and the court simply went along with him. This could have been what happened, but we do not know that it was that simple.

The situation was that the court had to make its decision about the relative interests of hapū, and hapū members, and the size and location of the areas they would retain, on the basis of the evidence before it. It relied heavily on Butler’s evidence, and on the evidence of those who supported him, because it did not regard much of the other evidence as reliable. Only three of 101 (later 100) of those who did not sell attended the hearing, and the court discounted the evidence of one of them. Marr considered that the group who did not sell effectively boycotted the court hearing. We have explained earlier that they were expecting a different hearing in Ōtorohanga (see section 13.4.3(5)). As it turned out, the hearing went ahead in their absence. The court was also unsympathetic when some among those who had sold their interests tried to persuade the court to let them negotiate with the Crown outside the court. The court saw this as a conspiracy to deny the Crown its rightful award, and it discounted their evidence. This left only the evidence of Butler, Te Rangihuatau, Te Warahi Panikena, Tūtawa (or Tūtawa), and Wiremu Kiriwhi Te Matotoru.

(7) Non-attendance at court fatal
The court’s hearing to define the Crown’s interests in the Waimarino block illustrates one of the most serious flaws in the native land laws regime. It was another example of the court’s processes unfairly favouring the party that applied to the court – in this case the Crown. The Crown could apply for a definition of its rights at any time. Applicants wanting to have the court determine interests did not have to represent a majority of those with interests in the land concerned. Nor did applicants have to rely on interested parties’ attendance at court to progress their claims. Hearings took place regardless of whether or not interested parties were present in court. Non-attendance for any reason could lead to the loss of ownership rights. Chief Judge Macdonald dismissed applications to rehear the Waimarino title determination case because ‘absence of persons was no ground for Rehearing and none for adjournment or reopening’. The same applied to the court’s determination of the Crown’s interests: the non-attendance of almost all those who had not sold their interests in the Waimarino block was no reason to halt the case. Rather, the native land laws compelled the court to press on, because the application had been gazetted, and the applicant (the Crown) wanted the case to proceed. Those not in court were deemed to have accepted the consequences of their non-attendance. The court expressed this very view when it announced its awards to the Crown and non-sellers, stating that it would be ‘the non-sellers own fault’ if the court chose to locate their blocks ‘on the precipices and pinnacles’.

(8) The court determines relative interests of non-sellers
When it heard the Crown’s application to determine its interests in the Waimarino block, the court of its own motion moved to define the relative interests of owners in the block who had not sold their interests. It had no authority to do this. Hayes told us that because the Crown had applied to the court to partition out the interests it had acquired, the court could only ‘partition out (by location) the interests it awarded to the Crown’. The residue of the block should have remained intact and the relative interests of those who had not sold should have remained undefined until such time as they applied to the court for definition. It is unclear why the court felt that it could define and partition interests when it had before it no application to do this, and when of course no application had been gazetted.

Again, the court slipped effortlessly into a process that was unfair to Māori interest-holders, and they had no means of calling it to account.
Map 13.3: Non-seller blocks, seller reserves, and the Kaitieke and Tawatā (Tawhatā) reserves
13.7.7 Implementing the court’s decision
Once the court had determined the relative shares of the Crown and the non-selling owners, the exact location of each group’s land, and the sellers’ reserves, was determined solely by Butler. The Crown’s share was named Waimarino 1, and would be the biggest single block purchased by the Crown in our inquiry district. The 1848 Wanganui purchase, as a point of comparison, was around one-fifth of the size of Waimarino 1.

(1) Establishing the reserves for those who had sold
The court’s decision regarding the interests of the Crown and non-sellers in the Waimarino block was the start of a process which sought to define these interests on the ground and also set aside reserves for those who had sold their interests.

The size and location of the seller reserves was a matter of concern for Tōpia Tūroa. On 6 April, before the court announced its partition of the block between the Crown and the non-sellers, Tūroa raised the issue of the promised 50,000-acre reserve for sellers. He asked the court to read out the deed and the list of sellers and requested information about the 50,000 acres. The court replied that the seller reserves were ‘quite distinct’ from the non-seller blocks and ‘a matter of arrangement between the Government and the sellers’ in which the court had ‘nothing to do at present’.

As discussed, the Waimarino deed specified that the Crown would set aside land ‘not succeeding [sic] in the aggregate 50,000 acres’. There were to be ‘good and effectual grants’ in localities agreed between the Crown agent and ‘a representative Chief of each hapu’.

Because the court defined the Crown’s entitlement in the block, and also the interests of those who had not sold (although without survey), the sellers could now seek the promised reserves.

The reserves for those who had sold their interests were to be taken from the 417,500 acres awarded to the Crown as the Waimarino 1 block. Identifying and agreeing on reserves for 821 Māori from a number of hapū and over the enormous area of the Waimarino block promised to be a sizeable task. Yet, on 8 July 1887, a bare three months after the court defined interests in the block, Butler was able to report that he had created six seller reserves (Waimarino A to Waimarino F – see table 13.3) with a total estimated acreage of 33,245 acres (later said to be 33,140 acres).

Butler told Lewis that it was ‘probable that there may be

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Table 13.3: Waimarino block – seller reserves

<table>
<thead>
<tr>
<th>Reserve</th>
<th>Area (acres)</th>
<th>Owners</th>
<th>Hapū included</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waimarino A</td>
<td>14,900</td>
<td>366</td>
<td>Ngāti Ātamira, Ngāti Kahukurapane, Ngāti Kawai, Ngāti Kuratangiwharau, Ngāti Maringi, Ngāti Ngaronoa, Ngāti Pare, Ngāti Pou, Ngāti Rangi, Ngāti Ruakōpiri, Ngāti Tamahuatahi, Ngāti Tamakana, Ngāti Tara, Ngāti Tūkaiora, Ngāti Tūmānuka, Ngāti Wairehe, and Ngāti Whā-ki-te-rangi</td>
</tr>
<tr>
<td>Waimarino B</td>
<td>9,320</td>
<td>199</td>
<td>Ngāti Hinekura, Ngāti Matakaha, and Ngāti Tauengaaro</td>
</tr>
<tr>
<td>Waimarino C</td>
<td>3,130</td>
<td>61</td>
<td>Ngāti Hinewai, Ngāti Whati</td>
</tr>
<tr>
<td>Waimarino D</td>
<td>1,440</td>
<td>44</td>
<td>Ngāti Tūkaiora</td>
</tr>
<tr>
<td>Waimarino E</td>
<td>4,035</td>
<td>99</td>
<td>Ngāti Maringi and Ngāti Kahukurapango</td>
</tr>
<tr>
<td>Waimarino F</td>
<td>420</td>
<td>42</td>
<td>Ngāti Hinewai, Ngāti Hinekōhara, and Ngāti Waewae</td>
</tr>
</tbody>
</table>
individual objections to some of the reserves’ but he did not think such protests would have merit as ‘the claims of all owners have been fairly and carefully considered’. On 30 July 1887, Lewis recommended to Ballance that Butler’s plan be approved and that the reserves should be surveyed as soon as possible. This would allow the boundaries of the Crown’s land to be clearly identified. Lewis further recommended that the Forests Department be requested to take immediate steps to protect the valuable forests on the Crown portion of the block. Ballance gave his approval on 1 August 1887.

(2) Butler’s plan for reserves
Marr and Hayes agreed that Butler saw himself as having the final say on all matters concerning the reserves, from the entitlement of each hapū to the location and size of each reserve. Butler’s report to Lewis reflected this. It stated that Butler had sent a list of grantees to the department ‘together with the areas to which I consider they are entitled’. As to minors, Butler noted that rangatira had suggested that most of their interests could be accommodated by increasing the awards to their parents. But Butler said ‘I did not see my way to agree.’

The location of seller reserves was a matter that Butler felt the Crown should control completely, to the extent of altering unilaterally the terms of agreements about what land would be reserved. Butler expressed this view in a report to Lewis of 30 July 1887 that addressed the protests of five people of Ngāti Kahukurapango regarding the location of their reserves. Butler had signed an agreement with five members of that hapū on 8 September 1886 that reserved for them and another individual (a minor) 50 acres each. These areas would be set aside as two reserves measuring 200 and 100 acres respectively in ‘any particular spot they may desire’ in the land awarded to the Crown. However, Butler then included them with all of Ngāti Kahukurapango in the Waimarino reserve, assigning the adults 50 acres each, but only 25 acres for the interests of the minor. He told Lewis that he had ‘forgotten the existence of the agreement’, and that it appeared to him that the group should be satisfied with their inclusion in the hapū reserve, which happened to be located on that part of the block where the hapū had interests. He called this ‘a concession on the part of the Crown’, although actually it was a requirement of the deed. Butler now saw the situation as one where the Crown owned Waimarino, and Māori had no right to seek the reservation of ‘any particular portion of the block that they may desire to possess’.

Butler’s plan for the reserves proceeded on a formula of ‘50 acres each for the most important adult owners in the block with a proportionately smaller area for those holding lesser interests’. Owners ‘who were proved by evidence before the Court to have no real interest’ would get 10 acres each. Hayes and Marr agreed that this reference to owners whom the court confirmed as having ‘no real interest’ was an invention of Butler’s, because the court made no such finding. As for minors, Butler explained that those whose interests fell within ‘the poorer parts of the block’ received 50 acres each, while those with interests in more valuable areas received 25 acres each. Minors whose parents or trustees had retained their own interests received 20 acres each.

There is no evidence about how the Crown settled upon these formulae. The deed provided for the establishment of reserves not exceeding 50,000 acres. The Crown adopted this figure on the basis that there were 1,000 owners in a block then estimated at 450,000 acres. This equated to an average allocation per owner of 50 acres of reserve land, premised on the 1,000 owners getting 50,000 acres of reserves in total if they all sold their interests. In reality, each owner might receive more or less than 50 acres depending upon their relative interests, but maintaining an average award of 50 acres would have ensured that Māori received what they were promised. As it turned out, though, Butler’s formulae set 50 acres as the maximum grant, with many receiving far less. Waimarino owners who sold their interests would thus retain significantly less land than they had been led to believe.

(3) Should more land be reserved?
Butler realised that his formulae shortchanged Māori, and he was prepared to reserve more.

In his 30 July 1887 report on the protests of the five
Ngāti Kahukurapango people who did not receive the reserves they were promised, Butler expressed the view that changes could be made to his planned reserves to fulfil his agreement with them. The owners concerned could be permitted to survey out their reserves from 'the balance of the fifty thousand acres in terms of the agreement and after all other owners are satisfied.' He reminded Lewis that 'it will be necessary to fix the position of the remaining 16,000 odd acres which it was not considered necessary to do owing to a number of owners not having sold their interests.' In other words, Butler had not felt compelled to reserve the entire 50,000 acres because 100 owners did not sell to the Crown. His report makes clear that he believed that reserving 50,000 acres was part of the Waimarino purchase agreement, and was what Māori would probably expect.

The Native Department did not share Butler's view of the Crown's commitments. Patrick Sheridan or perhaps Lewis minuted on Butler's letter that 'There is no balance the area being reduced proportionately to interests unsold.' In other words the reserves established (Waimarino A to Waimarino F) were all that Māori were entitled to; it was permissible for the Crown to reduce the area in reserves in proportion to the number of owners who had not sold their interests. He was presumably relying on the language in the Waimarino purchase deed, where it said that owners who sold would receive up to 50,000 acres. In other words, 50,000 acres was a maximum, not a guarantee. The decision of 100 Waimarino owners not to sell their interests meant that the Crown acquired less land that it had expected, and allocating land to reserves also meant less for the Crown. Lewis attached no importance to the fact that the land purchase officers encouraged sale on the basis of 50,000 acres in reserves.

Happily, however, in our inquiry the Crown conceded that it failed to allocate reserves as Māori were entitled to expect.

(4) The Crown's unilateral reduction
The Crown seems to have introduced this idea that it could reduce the reserves to reflect the proportion of owners who actually sold only at this late stage. It was not prefigured when it was purchasing interests. No one seems to have even calculated what such a proportional reduction would amount to. Proceeding on the basis of 921 Waimarino owners and reserves of 50,000 acres, each owner would have got an average 54.3 acres of reserves. If the total area of reserves were reduced to reflect the 821 owners who actually sold, the figure became 44,580 acres of reserves – some 11,000 acres more than the area the Crown in fact reserved.

The evidence is that in their negotiations with Waimarino owners, the Crown's purchase agents consistently assured them that the Crown would reserve 50,000 acres for them. This was Kiriwehi's testimony, and he added that Butler said that the 50,000 acres would include 'all the best portions', which Māori could select. There was no explanation that reserving 50,000 acres was dependent upon the owners selling all their interests.

(5) Were the reserves sufficient?
Whether the reserves created were sufficient for Māori requirements is another question.

The claimants submitted that both the area of reserves actually created, and the 50,000 acres promised, were inadequate for Māori needs and aspirations. They highlighted the view of Cussen, one of the original surveyors, who opined that, given the poor quality of the land in the Waimarino block, an economically viable farm would need to comprise at least 1,000 acres.

We have mentioned the Crown's concession that, as established, reserves 'were less than what the deed appears to have contemplated.' However, the Crown rejected the claimants' views on their insufficiency. It relied on the view of historian Robert Hayes, who stated that reserves of 50 acres per person would have been more than adequate to meet the primary needs of Māori in a money economy.

What was the Crown's goal when establishing reserves for Māori who had sold their interests? Did it intend to set aside lands that would enable the economic development of Māori communities, or simply to provide enough for subsistence? The parties appear to have agreed that 1,000 acres were required for economically viable farming units in the Waimarino block in the 1880s. To create reserves
enough for owners to establish 1,000-acre farms would effectively have meant that Māori would retain all the land. Even then, it is not clear that farming would been viable in many parts of the block — as we discuss apropos ‘sufficiency’ in chapters 9 and 21.

The Crown’s aim was probably to create reserves that would suffice for subsistence. Fifty acres per person had become a kind of rule of thumb, legislated into the Native Land Act 1873 as the minimum required for the support and maintenance of Māori individuals. Butler’s explanation of his formulae makes no mention of how the land would be used, and therefore how much Māori required. Rather, he made his own assessment of the strength of each person’s interest in the block. Those deemed to have the strongest interest received 50 acres, with lesser interests receiving lesser grants. The number of acres granted therefore bore no relation to how much land the Waimarino owners who sold their interests actually required to support and maintain themselves.

(6) Surveying the non-seller blocks and seller reserves

By the end of July 1887, three months after the partition of the block, the location and size of both the blocks retained by those who had not sold, and the reserves for those who had, were confirmed. Lewis recommended to the Minister that the reserves should be surveyed immediately. Only then could the Crown establish the boundaries of its own award (Waimarino 1), and begin to utilise its resources and open the land to settlement. Lewis was particularly concerned about protecting the valuable forest resource.

It is strange that despite these early recommendations, surveys did not in fact occur for many years, leaving undefined the boundaries of both the non-seller blocks and seller reserves for nearly a decade. The court could not issue certificates of title until after survey. Certificates of title were eventually issued for the non-seller blocks about 1900.

In the intervening 13 years, Māori had no legal title and did not know exactly which areas would remain under their control and which would belong to the Crown. Officials and local communities were often unsure whether their kāinga were reserved. The Government suspected some communities of ‘shifting the positions of their Reserves’. By cultivating fresh areas they might assert control over areas that the Crown regarded as its own.

Survey work began in 1891. By the end of that year, the non-seller block Waimarino 3 and contiguous seller reserve Waimarino A (at the mouth of the Manganui-a-te-ao) were surveyed. Survey work on the reserves was frequently delayed because of uncertainty about their location, and because survey staff were unavailable. Periodically, the chief surveyor sent out from Wellington requests for information about the boundaries of both the non-seller blocks and the reserves. The response came back that there was no information other than the lines the court drew on the plan.

By December 1891, Waimarino Māori were protesting the lack of progress. The Crown was also anxious to see the surveys completed and titles finalised, especially when concerns were raised in 1892 about the negative impacts on broader Crown purchasing. Māori were said to view the continued delays in completing the surveys as broken promises, and were refusing to engage in other land sales. These concerns were voiced again the next year.

Surveying resumed in 1894, but the communities in the north and south of the block soon disrupted the survey work. The intervention of Native Minister James Carroll and officials saw the survey work resume. In 1895, survey work on two non-seller blocks in the Tūhua area was disrupted when Tūao and other chiefs wrote to the Native Minister protesting the survey of what they still called ‘Aotearoa’ rather than ‘Waimarino’. They insisted they had never accepted money for the land and proposed a division of ‘Aotearoa’, with 20,000 acres for the Crown and 20,000 for their people. Butler commented that they wanted more land for the non-sellers, but Carroll had explained to them that this could not be done. He had told the protestors that they had had ‘ample opportunity’ to assert their rights in the court.

Māori frustration about the whole process of defining reserves was reason enough to protest the survey — but had they known how the Crown was using survey to advance its interests against those of Māori, their misgivings would have been even greater.
Assistant Surveyor General Baker instructed the surveyor in this phase of the work to ensure that the areas designated for Māori contained 'as little of the Totara forest as possible'. They needed to retain only enough tōtara for their immediate needs, such as building canoes, and did not require commercially viable timber. Officials were concerned to protect the Crown's interests in as much as possible of the potentially valuable timber.

In the meantime, the Crown notified the reserves and non-seller blocks in the Gazette. The acreages set out in the Gazette notice differed from those given by Butler in 1887 (see tables 13.2, 13.3, and sections 13.7.6(6), 13.7.7(1)). The Waimarino A and Waimarino B reserves varied by 50 acres, and Waimarino D differed by 30 acres. Survey work was completed in 1896, but further delays meant that no progress was made on finalising the titles of the blocks.
concerned. Reviews of the survey plans were carried out in 1898 and remedial survey work undertaken to ensure that the surveyed extent of the reserves matched the figures gazetted the previous year. This remedial work was completed by 1899.\textsuperscript{510}

(7) Missing reserves and areas left out of non-seller blocks

The concentration of non-seller interests into just seven blocks and the restriction of seller reserves to just six areas was at odds with the diffuse nature of settlement across the Waimarino block, and ensured that many communities lost areas of importance. The communities affected were those at Kirikiriroa, Rurumaikatea, Kaitieke, Tawatā, Tieke, Kākahi, and Ngātokoērua. Some of these kāinga were located in the part of the Tūhua district that fell within the Waimarino block. It was this area that Ngāti Hāua had wanted set aside for non-sellers when they prevented survey work in 1895.

During our inquiry we directed the Crown to provide further information on why various important settlements were not included in the non-seller blocks or reserves.\textsuperscript{511} The Crown commissioned historian Bob Hayes to look into these matters.\textsuperscript{512}

(a) Hayes's report: Hayes pointed out that it was the Native Land Court's responsibility to set aside blocks for those who had not sold, and to make sure that their kāinga were located on those blocks. This task was made difficult by the absence from the court's hearing to determine the Crown's interest of most Māori who had not sold to the Crown. The court had to rely on the evidence of Crown witnesses to determine the size and location of the non-seller blocks.\textsuperscript{513}

It was a difficult situation. The absence from court of those who had not sold to the Crown frustrated and irritated the court. It suspected that the Waimarino people were trying to defeat the Crown's legitimate interests. The non-sellers, meanwhile, chose not to attend in the belief that their lands would eventually be heard in the Rohe Pōtae case (then working its way through the many subdivisions), to show their opposition to the purchase, and possibly also in the vain hope that their absence would somehow foil the Crown's application to get the court to define the extent of its acquisitions in the block. These circumstances had a number of consequences, which included a lack of evidence in court about where the non-sellers' kāinga were. There was also little detail as to kāinga on the survey plan, both because Māori disillusionment with the process meant that they did not cooperate with surveyors, and also the court did not follow the process prescribed in the Act that would have ensured that Māori had the opportunity to inspect and object to the plan. Thus, the court was often unaware of which sites it was including or excluding when entering the boundaries of non-seller blocks on the survey plan. The boundaries themselves generally ran in straight lines rather than conforming to customary or natural boundaries (other than major waterways). The court may have intended these to be indicative only, with amendment after survey. This did not occur.\textsuperscript{514}

Hayes also pointed out that the native land laws regime and the Waimarino purchase process cut across the complex layering of customary rights.\textsuperscript{515} We described in chapters 2 and 10 how Māori managed land occupation, resource use, and migration for the seasonal exploitation of particular resources through a balancing of rights. The native land laws regime cut across this system by creating exclusive and absolute rights to land. The Waimarino owners came from a number of communities whose rights were intermeshed. Through the purchase process, they became separated into the categories of sellers and non-sellers. This division became a physical reality through the process of identifying the non-seller blocks and establishing seller reserves. Members of the same communities found their ownership interests divided into different blocks of land. Some areas of importance to both sellers and non-sellers were located in either a non-seller block or a seller reserve. Some areas of importance were not included at all.

Hayes believed that this separation could have been avoided, but only if the Crown, sellers, and non-sellers had cooperated from the beginning of the purchase process. Together, they could have arranged to co-locate the interests that sellers retained with those of non-sellers and
We agree with Hayes that it is doubtful that the Crown would have gone along with an approach like this. For one thing, protecting all the kāinga and sites of importance would have entailed many more reserves, spread throughout the whole block. The Crown preferred to concentrate sellers’ interests in a few blocks, because this gave it untrammelled expanses of land. Butler was plainly of the view that the Crown could dictate to sellers where their reserves would be.

(b) Loss of some sites inevitable: We also believe that the realities of the land sale process would have necessitated the abandonment of some important sites. Land sold to the Crown was lost forever, along with the resources and important sites it contained. Whatever the extent of land that the Crown wished to acquire, Māori would have been forced to make tough decisions regarding what sites they wished to retain and which they were willing to lose. In the case of the Waimarino block, the Crown made these decisions for them.

A lack of clear and detailed evidence prevents us from reaching firm conclusions regarding the failure to reserve or partition out some of the specific sites that claimants identified. It is unclear, for example, whether Ngātokoērua was excluded from land partitioned as non-seller blocks. Some evidence suggests that it was included within the Waimarino 4 block, but this is inconclusive. As far as we know, Māori did not protest its exclusion until recently.

It also appears that a number of sites that were not within the blocks that the court awarded to those who did not sell, nor within the reserves for those who did sell, were associated with groups that Hayes identified as ‘non-owners’. We discussed earlier how a number of people with rights in the Waimarino block were excluded from ownership of the block. This resulted both from their absence from court (not knowing about the title hearing, or inability to attend), and because of unfamiliarity with court processes. It was this latter factor that saw Te Rangipuhia withdraw an entire list of Ngāti Hāua individuals seeking inclusion on the ownership list. It goes without saying that the court could not include the rights and kāinga of people who were not on the Waimarino ownership list in the non-seller blocks. Similarly, the Crown’s provision of reserves for sellers was a matter decided by the parties to the Waimarino purchase deed, though Butler felt the Crown could dictate matters. The plight of those left out of the ownership of the Waimarino block resulted from the court’s title determination, not the partition and reserve creation processes. We return to the matter of missing owners and their demand for reserves in the next section. First we consider two particular cases of missing reserves: Tieke and Kirikiriroa.

(8) Tieke

One of the kāinga that was not included in either a seller reserve or a non-seller block was Tieke. Tieke was a well populated settlement in the 1840s and 1850s. The population declined in the following decades, but it was the home of Te Rangihuatau and his people in 1886 when the court decided the title of the Waimarino blocks. The surveyor James Thorpe went to Tieke in January that year, hoping to recruit Te Rangihuatau to assist with the survey and local place names.

Crown officials were uncertain about the status of Tieke. In October 1887, the chief surveyor at Wellington, Marchant, was hampered in the task of defining the Crown award as he could not clearly identify the boundaries of the seller reserves. A list of reserves from this time shows that, at some stage, the Crown was going to reserve 300 acres at Tieke. It was crossed off the list, however, and Marchant’s written comments indicate uncertainty about whether the area was Māori land or part of the Crown award. On 29 November 1887, Marchant was informed that ‘the 300 acres at Te Miro and Tieke’ was part of the Crown award. This advice came from Crown officials relying on advice from Butler.

As Hayes pointed out, the classification of Tieke as Crown land did not mean that the land would not be reserved. The court had partitioned the Waimarino block between the Crown and those owners who had not sold their interests, thereby creating the Crown award (Waimarino 1) and the non-seller blocks. All of the seller reserves came from Waimarino 1. In 1887, the declaration that Tieke was Crown land served only to separate it from the
non-seller blocks. This was important, because Tieke was effectively surrounded by the non-seller block Waimarino 5, and thus cut off from the rest of Waimarino 1. Differentiating between non-seller land and Waimarino 1 was an important step in identifying areas to be set aside as seller reserves.

Unsurprisingly, since the non-seller block Waimarino 5 surrounded it, Māori continued to regard Tieke as Māori land. Te Rangihuatau and many others resided there. Premier Seddon and Native Minister Carroll even visited in March 1894 in response to Tōpia Tūroa’s invitation. Historian Dr Ashley Gould characterised this visit as significant: “Te Rangihuatau’s right of occupation was presumably recognised by the visitors as a Korero [discussion] was held at Tieke.” By this time, however, the land was not just Crown land, it had also been designated as an area for public use. In 1892, as part of the drive to preserve Whanganui River land as scenery, Tieke and its surrounds (shown to include 267 acres after survey) were proclaimed a public domain and placed under the control of the Wanganui River Trust (see section 16.3.3).

It was not until 1895 that Māori and Crown officials became aware that ambiguity attended the ownership of Tieke. That year, a surveyor went there to commence surveying urupā. Te Rangihuatau wrote to the Government and the Native Minister on 27 January 1895 to ask why surveyors had been sent. Te Rangihuatau maintained that he and his people withdrew Tieke from the Waimarino sale ‘before the Court and the man who bought it – Mr Butler’ because of the location there of ‘the great burial place of the old and young chiefs’. In fact Te Kurukaanga, the chief central to the New Zealand Company’s efforts to purchase Whanganui, was buried there. Te Rangihuatau described in his letter the boundaries of the area around Tieke that was withdrawn from the purchase, and named ‘Ngati Tuahuiti, Ngati Hiramai and Ngati Whakarua’ as the hapū living there. He claimed that the area was again set apart from the rest of the block during the partition hearing, and Native Minister Ballance also agreed to its withdrawal.

Te Rangihuatau was unambiguously of the view that Tieke had been withdrawn from sale and was to remain Māori land. It is unclear whether he would have appreciated that this meant that the land could not be reserved for Māori from the area purchased. Perhaps he hoped that the kāinga would be separated out as a non-seller block. Or, since he sought to remove the area from the sale during the Waimarino title hearing, he was possibly seeking to withdraw the area from the Waimarino block altogether so that it remained customary land. Whatever the mechanism, he was clear that Māori should own the land.

Te Rangihuatau’s letter was one of many protests the Crown received regarding the surveying of the Waimarino reserves. It led to a meeting in March 1895 between Te Rangihuatau, Native Minister Carroll, Sheridan of the Native Department, and Butler, who was by then a judge of the Native Land Court. No record exists of what was discussed or decided. A brief note that Sheridan wrote on a plan of the Waimarino 5 block in 1898 indicates that the meeting arrived at some kind of informal arrangement: it said that the 267 acres of Tieke and its surrounds were considered to be ‘Crown Lands which the natives are allowed to use and occupy without a title’. There are no other details – to indicate, for example, whether the occupation was to be temporary or permanent. It is clear, though, that the Crown intended that the land would remain Crown land. There were no further protests about Tieke following the meeting of March 1895, which seems to indicate that Te Rangihuatau and his people were satisfied with the outcome. Perhaps that was because they believed that they had secured what they wanted – Māori ownership of Tieke.

Kirikiriroa
Kirikiriroa is the name of a peninsula formed by a sharp bend in the Whanganui River. It is about eight miles upriver from the junction of the Whanganui and the Tāngarākau Rivers, opposite the Whitianga block. The kāinga was known to be occupied for many years prior to the title determination hearing for Waimarino, and was recorded as among the occupied settlements on the Whanganui River, along with Popotea, Tieke, Ītapu, Whakahoro, and other places. Pāora Hāitana, witness for the Tamahaki Society Incorporated, the Tamahaki Council of Hapū,
and the descendants of Uenuku Tūwharetoa (Wai 555 and 1224), gave evidence that Kirikiriroa was one of the largest marae on the river. It was regarded as the food bowl of the Whanganui River district, and was one of the strongholds of Tōpine Te Mamaku and Te Rangitewhana (or Te Rangingāwhana). Te Rangitewhana was one of the listed owners of the Waimarino block, and was later allocated 50 acres in Waimarino B reserve, located a long way south and downriver of Kirikiriroa.

Kirikiriroa was still occupied in 1892 when, like Tīeke, it was proclaimed as public domain as part of the pursuit of scenery preservation. People continued to live there, though; and in the late 1890s Kirikiriroa was described as a substantial village. By 1923, though, its many whare and cultivations had disappeared.

The failure of the Crown to reserve Kirikiriroa led to a raft of protests. In 1903, a group represented by ‘Koko Te Rangitewhena’ (probably Te Rangitewhana or a descendant) applied to have a reserve at Kirikiriroa. In 1904, Tahuoa Taipoto wrote to Gilbert Mair (as ‘Superintendent (Maori Councils)’) requesting that the kāinga and urupā at Kirikiriroa and other places be returned. He had been absent from the 1886 title hearing. Mair confirmed Taipoto’s absence from the title hearing, noted that he was a well known owner, and felt that some arrangement might be made for him when the Crown addressed the issue of ‘landless Waimarino people’. In 1906, ‘Aihia Terakei Waho’ (Aituā Tākerei Waho), and two women, ‘Maetu’ (Moetū Aituā) and Mere Tākerei, wrote to Carroll stating that an error had been made in the allocation of reserves. They had been included in reserves allotted to Māori of the Manganui-a-te-ao district rather than in a reserve for their ‘ancestral holding of “Kirikiriroa”’. Inquiries into this letter revealed only that Kirikiriroa had never been set aside as a reserve and that almost the entire area was now part of the Wanganui River Trust endowment.

In 1912, Ngārimu Te Roringa and Titī Tākerei, descendants of Te Rangitewhana, wrote to the Native Minister stating that they believed that Butler had reserved Kirikiriroa for Te Rangitewhana. They requested its return. Sheridan reported on this letter to say that the only reserves were those gazetted in 1895 plus Tawatā, a further reserve constituted in 1904. He then stated that the Crown had withheld from sale some sections of the Waimarino block ‘pending an inquiry, which has never taken place, as to whether the Natives who were residing on them should be allowed to continue to occupy them.’ In 1914, Rangi Whakahotu and others petitioned Parliament for the return of Kirikiriroa on the basis that Kirikiriroa had been wrongly included in the Crown’s area of Waimarino. The petition was referred to the Government for inquiry. Sheridan responded that ‘There is no obligation or promise that I am aware of in existence to return “Kirikiriroa” to the Natives.’ All reserves resulting from the Waimarino purchase were gazetted in 1895.

Māori clearly believed that Kirikiriroa should have been reserved from the land sold to the Crown, and that belief generated longstanding and ongoing protest regarding its exclusion. It is inexplicable why the Crown did not reserve the kāinga, despite its known use as an occupied village during the purchase process and for long afterwards. The fact that Māori were unaware that Kirikiriroa was not included in a reserve is indicative of the flaws in Butler’s methodology for setting aside seller reserves. At the very least, Māori should have known which areas Butler was setting aside. They very reasonably expected that a significant kāinga like Kirikiriroa would be reserved, and if any such were to be treated instead as Crown land, the Crown should have informed them, and explained why.

13.7.8 Conclusions on the dividing up of the block
The Crown’s application to the Native Land Court for the definition and partition of its interests in the Waimarino block was the first step in finalising its Waimarino purchase. In many ways, the hearing mirrored the purchase process in the disaffection, disharmony, and confusion it caused. The nearly total absence from the hearing by non-selling owners was an indictment both of the purchase process and of the Crown’s refusal to allow the court to determine the relative interests of hapū and individuals prior to purchasing. The refusal of a majority of those owners who sold their interests to support the Crown in the court further condemned the purchase process. It reflected frustration and distress, and then more
disaffection when the Crown refused to meet with them outside court to negotiate which parts of the block the Crown would own.

The native land laws allowed for the partition case to proceed despite the substantial opposition of both sellers and non-sellers. They allowed the Crown to apply to the court for definition and partition of its interests at any time it chose. Those who had not sold their interests in the block did not need to participate, even though their own interests were really being determined by default. The court relied on the Crown's evidence, and those who did not attend were seen as responsible for any loss they suffered as a result. Nor did the court see it as necessary to inquire into the refusal of most sellers to give evidence regarding the Crown's claim. The court was quick to characterise reluctant witnesses as unreliable people intent on frustrating the court process and the Crown's claim.

The court went beyond its powers when it moved in the same hearing to partition the interests of those who had not sold to the Crown into seven distinct blocks in which it determined the interests of each hapū. This was a process that the interest-holders should have initiated by their own application, followed by due notice.

By defining the interests of the non-sellers, the court enabled the Crown to set about establishing the reserves that the Waimarino purchase deed provided for those who sold to the Crown. The Crown's agent, Butler, established these reserves in a manner designed to advance the Crown's interests. He regarded himself as competent to determine their number, size, and location without Māori agreement or even input. The purchase deed stated that Māori would receive up to 50,000 acres of reserves. Butler and other purchase agents had assured Māori that they would get 50,000 acres. But the Crown reserved only 33,140 acres, and claimed that this was proportionate to the number of Waimarino owners who had sold their interests. In fact, a proportionate allocation of reserves would have resulted in reserves totalling 44,580 acres, although no one appears to have undertaken any calculation to justify a position that the Crown only came up with very late in the piece.

The size and location of reserves did not properly take into account the needs of Māori. Many Māori were allocated fewer than 50 acres, which on any view should have been an absolute minimum. The Crown conceded before us that: “The reserves allocated to sellers were less than what the deed appears to have contemplated.” In fact, whatever future the Crown foresaw for Māori, the reserves allocated here were inadequate. It is unlikely that the interests of Māori were much considered at all.

Rather, what the Crown did when it restricted the interests of those who had sold their interests to just six reserves was to secure its own interests in a large contiguous block that maximised its value and usefulness. It also ensured that a number of kāinga, wāhi tapu, and other areas of importance to Waimarino Māori were not reserved, against the wishes of many communities. Significant kāinga that were occupied at the time when the Waimarino purchase took place, and continued to be occupied in the following decades, were not included in reserves or non-seller blocks. It was the Crown's duty to identify and protect such sites, or to remedy any failure to do so.

13.8 What Remedies Were Available?

By the middle of 1887, little more than a year after the court’s Waimarino title determination decision, a majority of Waimarino Māori found their interests confined to seven non-seller blocks and six seller reserves. The Crown now owned 378,056 acres of the block (that is, 411,196 acres in Waimarino 1, less 33,140 acres of reserves).

This massive and speedy transfer of land out of the hands of its traditional owners was achieved through title determination, purchase, and partition processes that dissatisfied and angered people in the many affected communities. Some of what happened to them and their land was not according to law. Other actions breached undertakings or understandings that the Crown's agents made in their dealings with Māori. Sometimes people's rights or expectations were simply overlooked in the maelstrom of activity. In this section, we look at what Māori did to
protest what had happened and how it had happened, and their efforts to change it. We see what avenues were available for them to seek, and obtain, review and redress.

13.8.1 What the claimants said
The claimants submitted that when the Native Land Court determined the title of the land in the Waimarino block, there was no effective system for dealing with applications for rehearing. They pointed to the Tūranga Tribunal’s finding that,

while it was reasonable for the court to rely on lists provided by Maori themselves in awarding of title, the dangers of mistake or abuse meant that there had to be a guaranteed right of appeal or rehearing for all who claimed to have been left off by their relatives. The provisions in the Act for rehearing contained no such guarantee.\(^{542}\)

In regard to protests by Māori concerning the purchase of the Waimarino block, the claimants contended that the Crown failed to put in place independent and effective mechanisms ‘to remedy wrongful acts of the Crown and its agents’. When assessing Māori protests, the Crown tended to rely on the views of the very officials whose actions were the reason for those protests.\(^{543}\)

13.8.2 What the Crown said
The Crown acknowledged that ‘the lack of a Native Land Appellate Court before 1894 reduced the options of those refused a re-hearing by the Governor-in-Council before 1880 or the Chief Judge after 1880’.\(^{544}\) However, it contended that Waimarino Māori did use the option then available – application to the chief judge – and there is no evidence to show that the court acted inappropriately in dismissing those applications.\(^{545}\)

Regarding the Crown’s responses to Māori complaints about its purchase of Waimarino, it submitted that the substance of most of the complaints was the ‘unequal treatment of owners, payments to the wrong people, and failure to identify the correct owners’. In particular, many complained that they should have been paid more. The Crown accepted that it was unresponsive to Māori requests for information regarding the prices paid, and that there ‘does not seem to have been any justification for the failure to provide information’.\(^{546}\)

The Crown submitted that Māori could and did utilise petitions to Parliament as a means of seeking redress, and a commission of inquiry was established in response to these. It admitted that these were ‘somewhat blunt instruments’, but they were available.\(^{547}\)

13.8.3 Applications for rehearing
Between October 1886 and February 1887, the Native Land Court received five applications for the court to rehear the case to determine title to the Waimarino block.

The provisions regarding rehearing were set out in native land legislation from 1865. Between 1865 and 1880, it was the Governor in Council who decided whether a rehearing should be granted. From 1880 until 1894, the chief judge of the Native Land Court exercised this power. Before the introduction of the appellate court in 1894, very few applications for rehearing were granted (see section 11.8).

These were the persons who applied to the court for a rehearing of the Waimarino block title determination:

- Te Heuheu Tūkino;
- Neta Te Whero and others (concerning the Mangapapa district);
- Te Rangihuatua and one other;
- Matiaha Hurutara; and
- Ngātai Te Mamaku and others.

The court dismissed Te Heuheu Tūkino’s application on 6 October 1886. It dismissed Neta Te Whero’s two weeks later. It dismissed the three remaining applications on 1 February 1887. The dismissals were all notified in the Gazette,\(^{548}\) but little is known about why the applications were dismissed.

We have mentioned already how, during the hearing to determine the Crown’s interests in the Waimarino block, Hōri Pukehika asked the chief judge about the fate of one of the applications to rehear the title investigation made on behalf of persons excluded from ownership of the
block. Chief Judge Macdonald said that the original title claim had been proceeded with as it had been gazetted, notices “no doubt” sent to all, and all requirements of law fulfilled. The court thus had no option ‘but to accept the work of the Court upon the original investigation.”\textsuperscript{549} He observed that ‘absence of persons [from the title hearing] was no ground for Rehearing and none for adjournment or reopening.’\textsuperscript{550}

The Crown contended that there is no evidence to suggest that the chief judge’s dismissals of the applications to rehear the Waimarino block title determination were inappropriate. We can go as far as agreeing that there is nothing to suggest that they were other than legal. However, Chief Judge Macdonald’s articulation of the court’s position in response to Hōri Pukehika’s inquiry provides a glimmer of insight into his hard-line approach to revisiting decisions on title. Reflecting on the circumstances of the Waimarino title determination, we call to mind the problems of providing good notice to the far-flung and remote communities whose interests were comprised in the enormous block, the few weeks between formal notice and the commencement of the hearing, the difficulties posed by concurrent hearings, the important property rights that were before the court, the high likelihood that a good number of the true owners of those rights were absent, and the inability for parties to be legally represented. These are all, we think, good arguments for the proposition that a different approach to rehearing would have been more appropriate.

The problem really – as the Crown conceded – was that the review of first-instance decisions of the judges of the Native Land Court was completely discretionary. In 1886 and 1887, when representatives of the communities affected by the court’s dealings in the Waimarino block were seeking rehearings, they were entirely dependent on the chief judge taking a favourable view of their application. The legislation specified no criteria, nor indicated matters to take into account. The chief judge was not required to give reasons, and his decision was final.

We have only a small window into the chief judge’s views – his response to Hōri Pukehika – but, based on what he said on that one occasion, it comes as no surprise that he recommended no rehearings for Waimarino parties.

The Crown’s failure to afford Māori a system of land law that included an automatic right of appeal was contrary to its duty to actively protect Māori interests (see section 11.10.5). It was also contrary to its obligation (partly stemming from its undertakings in article 3 of the Treaty) to enable Māori to seek reasonable redress for grievances (see chapters 4 and 8).

\subsection*{13.8.4 Letters and petitions}

At more or less every stage of the court’s and the Crown’s dealings with the Waimarino block, Māori sent letters and petitions variously to the Government, the premier, and the Native Minister.

People excluded from ownership of the block sought inclusion. Both those included and those excluded from ownership of the block sent letters seeking information on what land the Crown intended to purchase. Many owners asked for the Crown to delay purchasing until they had partitioned the block. Then there were objections to the Crown’s purchase of the block, and complaints about its conduct in purchasing it. Other complaints were about the provision of reserves and the exclusion of districts from the Waimarino block.\textsuperscript{551}

In general terms, the Crown responded to letters of complaint by either refusing to accept them, or by insisting that those affected petition Parliament. Lewis did on occasion seek explanations from Butler, and his replies were incorporated in subsequent reports to Ministers, but Māori often received no reply from the Crown. Lewis recommended the Government to ignore complaints that alleged the impersonation of owners by others leading to the loss of ownership interests. Such complaints lacked merit unless the complainant provided clear proof of the alleged impersonation. This appears to have been a ‘flood-gates’ response: he was fearful of similar complaints and demands for payment.\textsuperscript{552}

The way complaints were handled gives the impression that, rather than properly addressing their substance, people were fobbed off, or told they should have voiced their complaint otherwise or elsewhere. For example, as
discussed below, Te Kere Ngātaiērua and Ngātī Tū protested against the court’s decision in the Waimarino case and pushed for inclusion on the title to the block on the basis that they were unaware that the court was determining title to the block. Lewis dismissed this protest on the grounds that Ngātī Tū could have pursued inclusion in the ownership of the Waimarino block by attending the hearing that determined the Crown’s interest. Yet, this was exactly the course pursued by Hōri Pukehika, outlined above, which saw the chief judge announce in court that Pukehika’s absence from the title hearing was not reason to rehear the case or reopen the list of owners. Why would the court have reached a different decision regarding the rights of Ngātī Tū had Te Kere and his people attended the partition case as Lewis had suggested?

By May 1886 Parliament had received three petitions from Māori protesting against aspects of the Waimarino purchase. The first of these led to a Native Affairs Committee inquiry discussed below. Māori continued to petition Parliament and Crown officials throughout the late 1800s about the court’s decision on the title of the Waimarino block and the Crown’s approach to purchasing ownership interests. In 1888, for example, Te Kere Ngātaiērua petitioned to protest the loss of interests. That same year a petitioner named Rangitutatangata complained that his ownership interest was sold and his name added to the deed without his consent.

Petitions did not yield good results, on the whole. The following two are typical.

(1) Te Hurinui Tūkapua’s petition
In 1896, Te Hurinui Tūkapua petitioned the Government to protest his name having been struck off the list of owners for the Waimarino block. He explained that no one had objected to his inclusion on the list in court, and the court had accepted it – as it accepted his mother’s and three younger brothers’ names. However, Butler struck out his name.

The petition was referred to Chief Judge Davy of the Native Land Court, who found that indeed Te Hurinui Tūkapua was once on one of the ownership lists for Waimarino, but his name was subsequently struck out for no reason that the judge could locate. He could not say whether Tūkapua should have been included as an owner. Davy’s report seems to have convinced Crown officials that Te Hurinui Tūkapua had good cause for complaint. However, as the Crown had bought most of the block, it was too late to reopen the issue of ownership.

(2) The petition of Kataraina Maihi and 18 others
Also in 1896, Kataraina Maihi and 18 others of Ngāti Hekeāwai petitioned the Government complaining that their names had been left off the title, even though their mothers, fathers, and some of their children were included. They blamed the person who conducted the case for their hapū. According to the petitioners, Tōpia Tūraoa and others had acknowledged that Ngāti Hekeāwai had interests in the block.

This petition too was referred to Chief Judge Davy, who responded that he could find no ownership list for a hapū named Ngāti Hekeāwai. The matter lapsed.

13.8.5 The Native Affairs Committee
Whanganui Māori sometimes appealed to the Māori Members of Parliament when seeking redress for Crown actions. There were only four Māori members, and their effectiveness was limited. They were all members of the Native Affairs Select Committee but there were outnumbered by Pākehā members.

Our panel of expert historians considered that there was insufficient evidence to come to general conclusions on the effectiveness of the Native Affairs Committee. In his report for our inquiry, Professor Alan Ward stated that appeals to the Native Affairs Committee were ‘hazardous’, and outcomes ‘capricious’. The committee’s ability to respond to Māori concerns was also limited by a ruling convention that it would not comment on matters of Government policy, and did not inquire into grievances that disputed judgments of the Native Land Court.

Nor could the Native Affairs Committee overturn the court’s or the chief judge’s decisions; it could only make recommendations to the Government. It generally referred petitions to the Crown for action on the events complained of. Thus, Lewis and Butler became the
primary source of information on the Waimarino block dealings. Their advice was of course self-justifying. As we demonstrate below, the Native Affairs Committee relied on what they said.

(1) The Native Affairs Committee inquiry 1886
As stated, Parliament received three petitions by the end of May of 1886 that raised concerns about aspects of the title determination process and the Crown’s purchase of owners’ interests in the block.

The first of these was from Himu Materoa and 69 others. It denounced the title determination process, criticising how most of Ngāti Hāua were excluded from the title, while others with relatively weak interests were included; the lack of a proper survey; the court’s refusal to adjourn to allow the ownership lists to be considered; and the court’s failure to determine the relative interests of owners. As to the purchase, it found fault with the arbitrary payments: hapū with large interests received the same as others with much lesser interests, and rangatira received no more than ‘common’ people. It complained that many owners wanted to subdivide the block prior to purchase, and it disapproved of both Butler’s refusal to give a price per acre for the block, and the speed with which he was buying up interests. The petitioners also felt that the area of reserves proposed in the deed (a maximum of 50,000 acres) was not enough.

Materoa gave evidence to the inquiry. When Wi Pere (Member for Eastern Māori) suggested to Materoa that the block should have been partitioned between hapū, Materoa agreed. He told the inquiry that outsiders had been included in the ownership lists, but without a partition it looked as though all parties had the same interests. Wiremu Kiriwehi gave similar evidence, attesting that if the block had been subdivided, his own hapū would have found to have a large interest. Te Pēhi Te Opetini testified that a partition of the block would have resulted in his receiving a larger payment than Kiriwehi as ‘I claim from my father as well as from my mother’.

The witnesses gave extensive evidence about both the title determination process in the court and the Crown’s purchase of the land. Wiremu Kiriwehi recounted how a number of people he considered to have no claim were allowed on to the ownership lists, and the court refused to allow further objections. He had also raised with Butler the insufficiency of the 50,000 acre reserve. Butler assured him that the reserve would include ‘all the best portions’ and that it would be for Māori to select the areas they wanted. Kiriwehi lamented how Butler began purchasing interests in the block immediately after the title determination. When they tried to insist that the block should be surveyed and partitioned first, Butler told them that no partition could take place until trustees had been appointed for minors. Purchasing continued, and the plan to partition the block was abandoned when it became clear that many had sold and many others intended to.

Te Keepa Tahu Kumutia complained that many owners sold their shares for £35 only to discover later that others had received £40 or £50.

Both Lewis and Butler gave evidence.

Lewis defended the Crown’s purchase and its forestalling the wish of many owners to partition the block. He said that as the Crown wished to purchase a considerable area of the block, it was unnecessary to put the owners to the expense of partition. He believed that the petition was the work of lawyers rather than of the owners.

Butler explained to the committee how he determined the relative interests of owners, paying £35 to those owners who lived outside the block. Those who received this level of payment were satisfied, he said. He paid more to those who occupied the land, and who lived on the best parts of the block. Butler also claimed that the terms of the deed had been carefully explained to each person who sold their interest. Regarding the exclusion of many Ngāti Hāua from the ownership lists, Butler stated that they had a minimal interest.

(2) The Native Affairs Committee’s decision
The Native Affairs Committee concluded that it did not need to make any recommendation to the Government as it considered that no real injustice had occurred. It accepted Butler’s argument that the Government had made a general arrangement to purchase the land and it was not considered necessary to put the owners to the
expense of dividing it. Butler had clearly explained to each seller when he or she signed the deed that the money covered all demands.\textsuperscript{576}

13.8.6 The protests of Te Kere Ngātaiērua
Te Kere Ngātaiērua of Ngāti Tū joined with Te Huiatahi of Ngāti Waewae to write to the Native Minister on 4 May 1887, a few weeks after the partition hearing, protesting the sale of their people’s land without their knowledge. They wrote on behalf of some 560 others of various hapū who had also lost their interests.\textsuperscript{577}

(1) Who was Te Kere Ngātaiērua?
Te Kere was a carver and healer. His people, Ngāti Tū, are kin to Ngāti Hāua. They held land, among other places, at Aorangi and down the Ōhūra River to its confluence with the Whanganui River.\textsuperscript{578} Te Kere became an influential leader and prophet in the Whanganui region and further afield. Disillusioned with war following conflict in the 1850s with Ngāti Hāua, he advocated peace at meetings with King Tāwhiao in the 1860s. From 1881, he became known for a philosophy of ‘no land-selling, no leasing, no debts to be incurred and no debts to be paid’.\textsuperscript{579} He also advocated boycotting the Native Land Court. During the 1880s, he was highly mobile, and a number of Ngāti Tū travelled with him. He spent most of the period from 1883 to 1885 at Waihī in Taupō. When the Waimarino case went through the court in 1886, he was living at Pirongia. In 1887, Butler reported that Te Kere would not allow his followers to attend the court and that he ‘intended to upset the proceedings’.\textsuperscript{580} In that same year, Te Kere went to Hawke’s Bay. Later he stayed for several years at Tokorangi on the Rangitikei River.\textsuperscript{581}

(2) The May 1887 letter
In his letter of May 1887, Te Kere Ngātaiērua stated that he did not receive notice of the Native Land Court hearings concerning the block. He listed many areas in the Waimarino block that his people had lost, including Mangatītī, Ruatītī, Riariaki, other areas between the Mangatītī and Mangapūrua Streams, and places to the east and north.\textsuperscript{582}

Lewis gave Ballance a short report on the letter, saying that Te Kere was seeking an interview with Ballance on the matters raised. Lewis believed that such an interview would have a good effect and please Te Kere. He was otherwise unsympathetic to the plight of Te Kere and his people, though, maintaining that they should have raised their points at the court sitting to determine the Crown’s interest. He said Te Kere had always opposed the Crown’s purchase. Some of his people had been included in the title, and were among the non-sellers. Lewis was of the view that no good could come of further investigation. Ballance met with Te Kere on 16 May 1887. What was said is unknown, but obviously it did not satisfy Te Kere, for he did not let the matter lie.\textsuperscript{583}

(3) The 1888 petition
Te Kere and his supporters petitioned Parliament in 1888, protesting against the sale of their land without their consent. The petition was referred to the Native Affairs Committee, but it made no recommendation.\textsuperscript{584}

(4) The 1890 appeal to Lewis
Te Kere and his supporters did not give up. They continued to pressure the Crown to recognise their rights.

In 1890, Te Kere sent Lewis a list of individuals whose names he wanted added to the ownership lists for the Waimarino, Rētāruke, Kirikau, Ōpatu, and Maraekōwhai blocks. The 162 individuals (most of whose names occurred more than once in the separate hapū lists) were mostly of Ngāti Tū, but there were also people from Ngāti Ruru, Ngāti Taipoto, Ngāti Rangi, and Ngāti Rongonui.\textsuperscript{585}

Te Kere gave the names of interest-holders missing from lists for particular areas in the block. For example, he listed Ngāti Taipoto people with interests in the area from Aurupu to Tieke; Ngāti Tū people with interests in Rētāruke and Kirikau; and another for Ngāti Tū with interests at Ōpatu and Maraekōwhai. One of the areas for which he sent in a list of Ngāti Tū began at ‘Rangiatea i roto Waimarino’ (Rangiātea within Waimarino), and included Rurumaikatea and various places across the block to the eastern districts of Piriaha and Kākahi.\textsuperscript{586} Five individuals among those included in Te Kere’s list were already on the Waimarino owners’ list.\textsuperscript{587}
Lewis decided that Te Kere could apply to have the names inserted in the Maraekōwhai block, ‘but the title to the other blocks cannot be disturbed’.\textsuperscript{318} This was presumably because the Crown had already bought and partitioned out land in all the other blocks. It had purchased all but one of the 59 ownership interests in the Kirikau block by 1881, when it was partitioned,\textsuperscript{319} it had purchased 146 out 166 ownership interests in the Rētāruke block by the time it was partitioned in 1884,\textsuperscript{320} by the time the Ōpatu block was partitioned in April 1887 (like Waimarino), the Crown had purchased 65 of the 67 ownership interests.\textsuperscript{321} The court determined the ownership of the Maraekōwhai block in 1886, but by 1890 the title remained undivided and no interests had been sold.\textsuperscript{322} The Crown was unwilling to give up land it had bought to accommodate Te Kere and Ngāti Tū, and it had no power to include Te Kere’s people in the ownership of land that remained in Māori ownership.

\textbf{(5) Te Kere remains in occupation}

Te Kere and his followers continued to occupy the Waimarino block despite their inability to secure ownership rights there. In the early 1890s they were living at Tawatā before some moved to Rētāruke and Kaitieke. Te Kere encouraged some of the people, mainly those from Tokaanu and southern Taupō, to establish new kāinga, and he himself seems to have built or carved the marae Whaikirihau at Kaitieke. He established other houses on the route to Tūhua. He promised the people that ‘his power as a tohunga would prevent the Crown from taking the land’.\textsuperscript{323}

The Crown regarded Te Kere and his supporters as squatters on Crown land, and began investigating their occupation of Crown land in 1899. The group told officials that they were acting on Te Kere’s instructions, and that the Native Minister knew what they were doing.\textsuperscript{324}

The refusal of Te Kere and Ngāti Tū to accept the loss of their land eventually bore fruit. In 1901, the year of Te Kere’s death, the Crown promised to provide a 1,500-acre reserve at Tawatā. In 1904, the Crown set this area aside under section 8 of the Maori Land Claims Adjustment and Laws Amendment Act 1904. Four years later, it reserved another 800 acres at Kaitieke after a report stated that the people there were effectively landless.\textsuperscript{325}

\textbf{13.8.7 Conclusions}

Māori had too little ability to have decisions significantly affecting their interests reviewed, whether through the court system or via direct approaches to the Crown.

The lack of any automatic right of appeal of court decisions that determined their rights in land left many hapū, and perhaps hundreds of individual Māori, with no recourse when the first-instance court did not recognise their ownership interests in land and resources in the Waimarino block. The Crown submitted that some Māori did exercise the legislated right to apply for a rehearing of the title determination decision. This was correct. But the circumstances only underline the need for an appeal right, because when the chief judge turned down all the applications, he was entirely at liberty to exercise his discretion on any basis he chose, and his decision was not itself subject to appeal or review.

With nowhere to go in the court system, Māori could only approach the Crown directly. This avenue gave them no power, no right of audience, no guaranteed outcome. They simply went cap in hand to the power brokers, and asked for deliverance from an arbitrary system. Usually, they sought reserves, and continued to occupy land illegally for as long as they could.

Obviously, this was not a satisfactory alternative to a proper appeal from court decisions. The success of such direct approaches was extremely limited, and depended entirely upon the goodwill of ministers and officials. It was all too easy for those in power to reject the idea that the system was at fault, to blame Māori for their absence from court, and to find reasons to deny the justice of their claims.

The Crown was right to concede during our inquiry that the lack of a body to hear appeals from Native Land Court decisions before 1894 ‘reduced the options of those refused a re-hearing by the Governor-in-Council before 1880 or the Chief Judge after 1880’.\textsuperscript{326} We think, though, that the Crown’s acknowledgement of fault should have gone further. For many, the land court’s flawed process,
and their inability to have its decisions reviewed, resulted in the complete loss of the rights that they would have claimed in the Waimarino block. These included rights of occupation and control, and ongoing connection with kāinga, wāhi tapu, and resources. What they were entitled to went to others, and they had no recourse.

Petitions to Parliament and direct approaches to ministers delivered very little indeed. The Native Affairs Committee was a body independent of the Government that reviewed petitions. But it had recommendatory powers only, and the Māori members appear not to have played leading roles. Its protocols also precluded challenges to Government policy.

There was certainly no guarantee that a petition be properly inquired into. Of the numerous Māori attempts to engender a meaningful response, there was only one official inquiry, and its outcome was negative.

In the end it was the Crown alone that decided whether to respond to Māori protests about what happened in relation to the Waimarino block. It is unsurprising that the result of Crown ministers and officials assessing criticisms of their own policies and practices was usually a rejection of the justice of the claim, or a finding that no change was practicable.

### 13.9 Findings

The Waimarino purchase and the business in the court that preceded it were distinguished not so much by one startlingly negative feature, but by the fact that so many of the potential shortcomings of the native land laws processes and the Crown’s approach to purchasing came together in one place and time, and were writ large. The ‘writ large’ aspect arose from the extraordinary size of the block, the correspondingly numerous hapū affected, and from the degree to which the Crown conducted its part in a manner that was rushed, slipshod, and intent on advancing Crown interests at the expense of those of tangata whenua. The Crown’s approach reflected the critical part that purchase of the Waimarino block played in the success of the Government’s cornerstone economic stimulation policy, which aimed to construct the North Island main trunk railway, and to ‘open up’ the Rohe Pōtāe to settlement and commerce. The Government set itself too many objectives to achieve too quickly. Proper process to determine and respect the land interests of tangata whenua of the expanse of territory comprised in the Waimarino block was a tragic casualty. Indeed, the title determination and partition stages of the court process for the Waimarino block exemplified some of the worst aspects of the court system.

The unfortunate history of the Waimarino block led the Crown to make some helpful concessions about its role. We considered that the concessions were certainly called for but on the whole erred on the side of caution.

#### 13.9.1 Concessions

The Crown conceded that its Waimarino purchase failed to comply with the high standards expected of it as a privileged purchaser of Māori land – particularly when it:

- discouraged the partition of the block;
- purchased ownership shares based on its own determination of relative interests;
- failed to provide full information about how it determined the price;
- failed to ensure that it paid a fair price for the land and its resources;
- failed to allocate the reserves contemplated in the purchase deed; and
- provided a system that, before 1894, lacked a body to hear appeals from Native Land Court decisions.

It conceded that its purchase of the Waimarino block failed to meet the standards of reasonableness and fair dealing that found expression in the Treaty of Waitangi and breached the Treaty of Waitangi and its principles.

We appreciate and endorse these concessions, but these findings reveal how much more comprehensive they might reasonably have been.

#### 13.9.2 The application

We find that, at the application stage of the investigation of title:

- We know too little about the persons named on the application, and the process by which those persons
came to be named there, to say that they were not the right people. By the same token, given the size of the block, it is surprising that there were not more names – particularly as the claim does not appear to have been advanced on behalf of Whanganui iwi nui tonu (all the Whanganui peoples).

▷ In order for a proceeding to determine title to land to be fair, affected persons need to know what land was comprised in the application; and when the hearing would take place.

▷ As regards what land was comprised in the application, the process for the Waimarino block failed because:
  ▪ The verbal description of the land in the application was insufficiently clear – especially in the places where the boundaries were on Ruapehu, or departed from waterways.
  ▪ The boundaries mistakenly included Kirikau and Rētāruke, and also included 88,000 acres that many (especially in the Tūhua district) justifiably believed were within the Rohe Pōtae or Aotea block.
  ▪ The law did not require the land to have been surveyed nor boundaries marked on the ground, nor for visual images based on survey to be filed with the application. Legislation requiring all of these would have facilitated interest-holders’ grasp of what land was before the court.
  ▪ Key players (including the Crown’s purchase agents and the court) seem not to have known about or understood the legal requirements for applications at the time, which led to a muddle that included statements in the application that the boundaries of the block had been marked out, and that a map of the block had been submitted, when the law required neither, and the statements were untrue.

▷ As regards when the hearing would take place, notice of the hearing of the Waimarino title determination was inadequate and ineffective. Non-appearances at court and complaints afterwards indicated that many (it is impossible to know how many) would have pursued claims in court, but either they did not receive notice of the hearing or the interval between the receipt of notice and the hearing left too little time for them to organise their affairs, prepare their case, travel to Wanganui, and attend.

▷ There is no evidence of impropriety in the role that the Crown’s purchase agents, McDonnell and Butler, played in assisting with Te Rangihuatau’s application.

▷ There is no evidence that the Crown interfered with the court’s usual practice for arranging hearings to determine title, which was to accumulate applications until the number on hand justified a sitting of the court, and then to proceed to hear all claimants under the mantle of the application that seemed most comprehensive.

▷ Neither the court nor the Crown sufficiently prioritised or managed the potential problems of concurrent Native Land Court title hearings of large adjacent land blocks – even though they both recognised and understood the possible prejudice to affected Māori. The Crown was responsible for these failures of process.

13.9.3 The determination of title

In early March 1886, the Native Land Court at Wanganui determined title to an area of 450,000 acres after a hearing that occupied only four days, with all the applicant’s evidence of exclusive ownership presented and accepted on the first day.

Our task is to assess the acts and omissions of the Crown against Treaty principles; it is not our job to criticise the work of the Native Land Court, which was not the Crown. However, we do look into the work of the court to ascertain whether the Crown, by determining the framework in which the court operated, was responsible for how the court went about its business, and thus contributed to negative outcomes in ways that breached the principles of the Treaty.

We ascertained that the Native Land Court Act 1880, as amended in 1883, constituted law which, if judicial officers had exercised their powers conscientiously and in accordance with the letter, spirit, and intent of the legislation, could have, and should have, gone a long way towards safeguarding the interests of the owners of customary rights in the land comprised in the Waimarino block.

However, in its determination of title to this land, the court conducted a proceeding that failed to protect many
interest-holders’ rights. This was to some extent due simply to the court’s non-compliance with the provisions of the Acts, for which the only remedy was rehearing, review, or appeal.

The Crown was responsible because the legislation was itself deficient. In circumstances like these, where:

- the law specified that the parties were not to have legal representation;
- the rights that the court was determining comprised in many, if not most, cases the chief asset of the parties before the court, and their culturally defining connection with land; and
- there was no appeal, no review, and effectively no rehearing,

we find that the legislation should have prescribed how the requirements for due process and proof were to be met. It should have spelled out:

- a requirement for survey and survey-based maps before the hearing commenced, with a reasonable opportunity for affected parties to inspect them, object, and have their objections considered and amendments made where necessary;
- a process to ensure – or at least to require the court to make a reasonable effort to ensure – that all relevant parties were present, with adjournment if they were not; and
- rigorous testing of the assertions of rights made in support of title, in a way that did not give the applicant primacy but allowed the court to assess fairly all the evidence and all the claims.

This would have gone some way towards ensuring that the Native Land Court – whose decisions were, in effect, final decisions – did a better job. The process for determining title would inevitably have been longer and more exhaustive, as was entirely appropriate given the gravitas of the matters before the court.

13.9.4 The purchase

By early 1887, only months after the court determined title of the Waimarino block, the Crown had bought up about 90 per cent of the interests, including almost 95 per cent of minors’ interests.

Despite appearances to the contrary, this was not a population of Māori interest-holders intent on selling to the Crown. Rather, there were other explanations for the quick sales – factors which, in combination, made sale to the Crown almost inevitable for most owners.

We find that the factors that made the quick sale of interests to the Crown almost inevitable were:

- Each Waimarino owner obtained by way of title an undivided and unspecified interest in a vast area of land. In order to find out the size and location of their share, and therefore to use it themselves, or even to ensure ongoing connection to places of cultural importance, they required a partition from the Native Land Court.
- The Crown blocked the process by which owners could apply to the court to subdivide their interests, fearing that it would delay purchase.
- The Crown’s land purchase officers were relentlessly intent upon buying up every interest they could as quickly as possible, including the interests of minors. The officers concealed the true terms of the deal that was on offer, deliberately making it impossible for interest-holders to compare what the Crown was paying different owners, to assess the size or location of areas that would remain to them, or understand how it was unilaterally (and extra-legally) deciding on owners’ relative interests.
- Many of the interest-holders in the Waimarino block were minors. The Crown rode roughshod over the legal requirements for the appointment of trustees for minors in order to be able to buy up their interests more quickly.
- The law allowed each individual owner to sell his or her interests without reference to traditional leaders or the community. Chiefs and hapū were disempowered as the Crown bought the land from under them before anyone really had a chance to realise what was happening.
- The Crown undermined the integrity of tribal responsibility and relationships by paying or otherwise rewarding rangatira to persuade interest-holders to sell.
- The court did not follow the steps that the legislation laid out for issuing a certificate of title after it determined the owners of the block. After the block was
surveyed, it should have advertised the plan, allowed for inspection, heard objections, and amended the plan if necessary, before issuing a certificate of title. If it had been followed, this process would have provided a period of consolidation and clarification before interests were sold or partitioned.

- The legislation allowed the court too much discretion, denied parties legal representation, and provided no readily available review or appeal mechanism.

We find that the Crown influenced or contrived these circumstances, or acted directly to bring them about, wrongfully subjugating the interests of owners in the Waimarino block to the Crown’s policy objective of purchasing as many of the interests in the block as it could, at prices and on terms most advantageous to it.

13.9.5 The partition

When the court moved to determine and partition out the Crown’s interest in the Waimarino block, it had not attended first to the owners’ inspection of and response to the survey plan.

It heard the Crown’s application despite the near total absence of those owners who had not sold their interests to the Crown, and in the face of active opposition of many of those who had sold their interests. Both reflected the high level of frustration and distress that resulted from the Crown’s approach to purchasing Waimarino ownership interests.

Most of the sellers present wanted the court to adjourn while they held an out-of-court meeting with the Crown to establish which parts of the block the Crown could fairly claim. The Crown opposed this. The court supported the Crown’s stance, confirming the view we expressed in chapter 10 that the Native Land Court regime was intended to advance the Crown’s agenda, and not to protect or promote Māori interests (see section 10.10.4). Here, the court took account of Māori disaffection only to the extent of characterising it as a conspiracy to frustrate the Crown’s application, and declaring that absent non-sellers had only themselves to blame if they were left with the ‘precipices and pinnacles’.

Taking this approach to determining the Crown’s interests, the court once more overrode Māori owners’ interests. The native land laws allowed the partition case to proceed without the participation of those whose interests the court was really determining by default. The effect of this was exacerbated when the court went beyond its powers to partition the interests of those who had not sold to the Crown and to determine their relative interests, although they did not ask the court to do this, and there was therefore no notice.

This irregular exercise of court power enabled the Crown to move directly to establish reserves for those who had sold their interests.

We find that the native land laws facilitated the court’s support of the Crown’s interests and the subjugation of the Waimarino owners’ interests, and provided no means for affected owners to call the court to account to the extent that its disregard of the legislation went beyond the discretion that the law allowed.

13.9.6 Reserves

The purchase deed stated that Māori who sold to the Crown would receive up to 50,000 acres of reserves, but when negotiating the purchase the Crown’s purchase agents assured Māori that they would get 50,000 acres. The Crown reserved only 33,140 acres. It claimed that this lesser amount reflected the fact that fewer owners sold their interests than the Crown expected, but the Crown did not mention this element in negotiations. Even if it proportionally reduced reserves to take account of it, it would have reserved 44,580 acres.

The Crown’s agent, Butler, determined the number, size, and location of reserves without Māori agreement or even input. The allocation did not properly or sufficiently take into account the needs of tangata whenua. Many were allocated fewer than 50 acres. On any view of it, 50 acres should have been an absolute minimum, because that was the standard that the Crown set for itself. In most places, allocation at this level would have been barely enough for subsistence. Waimarino Māori found their interests confined to seven non-seller blocks, and six seller
reserves which, against their wishes, did not include a number of places of longstanding occupation and cultural importance.

What the Crown focused on instead was aggregating its own 378,056 acres in one largely contiguous area that rendered them as valuable and as useful as possible.

### 13.9.7 Remedies

We find that the avenues available to Māori with interests in the Waimarino block to seek and obtain review and redress of the decisions and processes that illegitimately affected them were few, and ineffective.

Although affected Māori sent letters of protest and petitions to Wellington, and applied to the chief judge for rehearings, these approaches yielded almost nothing of what they asked for. The system’s intransigence was in spite of the fact that, as these findings show, the performance of the court and Crown agents left much to be desired. Ironically, the only protest that could be regarded as at all successful was that of Te Kere Ngātaie rua and Ngāti Tū, who acted largely outside the law to resist the decisions that deprived them of their property rights, but managed to extract from the Crown, many years later, two extra reserves.

We find that if the Crown had provided a court system that incorporated an automatic right of appeal when the court at first instance, the Native Land Court, erred either as to process or substance, many of the effects of the court’s conduct – which materially facilitated the Crown’s actions to the detriment of Māori – might have been averted.

### 13.9.8 Breaches

It follows from these findings that the Crown acted inconsistently with the principles of active protection and good government when it legislated for a court process to comprehensively determine Māori rights in land, but reposed in the court so much discretion that it could make decisions that were very poor both as to process and substance in the many ways found in this chapter, and with no right of appeal.

It also engaged in conduct inconsistent with the principle of active protection when it wrongfully subjugated the interests of owners in the Waimarino block to the Crown’s policy objective of purchasing as many of the interests in the block as it could, at prices and on terms most advantageous to it. It instructed its agents accordingly, and they embarked on a wrongful exercise of purchasing individual interests at speed before the court determined their relative size, and blocked the process of partition that owners wanted to occur before interests were purchased.

Particular egregious aspects of Crown conduct need special focus.

(1) **Minors’ interests**

We take a very dim view of the Crown’s approach to purchasing minors’ interests in the Waimarino block, which happened to have a larger than usual percentage of owners who were minors. One of the salient features of democracy introduced by the Magna Carta, 800 years old this year (2015) was that the Crown too was subject to law. This became a fundamental element of the rule of law, brought to New Zealand along with the English colonists. But here, the Crown enacted, but did not comply with, a process for appointing minors’ trustees. Instead, it purchased minors’ interests from persons not formally trustees, and who therefore lacked legal capacity to sell on minors’ behalf. The Crown knew that it had not followed the law, but specifically requested the Native Land Court to proceed to recognise its purchases from minors regardless. This was poor conduct indeed, and breached not only the law but every Treaty principle in the book.

(2) **Reserves**

The Crown accepted that it did not allocate the area of reserves anticipated in the Waimarino purchase deed. We go further. We find that the Crown’s agents misled Waimarino owners when it told them that, following purchase, sellers would be left with 50,000 acres of reserves, and that the choice of location would be theirs. The Crown’s later justification of fewer reserves because it did not purchase the entire block was never prefigured to Māori owners. It
was in any event disingenuous because the reserves allo-
cated amounted to significantly fewer acres than would
have resulted from calculating reserves based on the acre-
age of the Crown's actual purchase. Reserves for Māori are
always important, but never more so than here, where so
much land was alienated so quickly and by questionable
means. The Crown's conduct, which reduced the already
miserly acreage left to Waimarino Māori, and did not
ensure that key significant areas were included in reserves,
breached its duty of good faith, and failed to actively pro-
tect the interests of its Treaty partner.

(3) Redress
We have found that the Crown provided no effective
means of redress for Māori adversely affected by the
court's processes or the Crown's purchase practices. An
automatic right of appeal from the capricious decisions of
the court at first instance could alone have averted many
of the worst outcomes here.

The Crown's failure to provide an effective, independent
reconsideration of the decisions concerning the Waima-
rino block that adversely affected tangata whenua went to
the fundamental guarantees of the Treaty. Article 2 guar-
anteed Māori ownership of their land, and the ability to
choose whether or not to sell it; article 3 guaranteed them
the rights of British citizens, which included due process
of law. In the case of Waimarino, many Māori were effec-
tively denied the ability to be recognised as owners of the
land, to assert their rights as owners, or to decide freely
and transparently whether or not to sell. In these circum-
stances, not providing to Māori effective means to have
poor decisions reconsidered and redressed was an egre-
gious breach of the Treaty and its principles.

Notes
1. Descent groups claiming interests in Waimarino include: Ngāti
   Ātamira, Ngāti Haua, Ngāti Hauaroa, Ngāti Hekeawai, Ngāti Hikairo,
   Ngāti Hinekohara, Ngāti Hinekura, Ngāti Huairehe, Ngāti Hinewai
   (Tānoa and Taitua Te Uhi and Tūao's people), Ngāti Hinewai
   (Tuwharetoa), Ngāti Kairatangiwharau (or Kuratangiwharau),
   Ngāti Kahukurapane, Ngāti Kahukurapango, Ngāti Kapakapa, Ngāti
   Kaweau, Ngāti Kuratangiwharau, Ngāti Manunui at Kākahi, Ngāti
   Maringi, Ngāti Matakaha, Ngāti Ngāmanako, Ngāti Ngaronoa,
   Ngāti Pare, Ngāti Parekitai, Ngāti Parekaahu, Ngāti Poumua, Ngāti
   Rangi of Mangaiuatea, Ngāti Rangitautahi, Ngāti Reremai, Ngāti
   Ruakōpiri, Ngāti Tamahuatahi, Ngāti Tamakana, Ngāti Tangiwharau,
   Ngāti Tauangaero, Ngāti Tara, Ngāti Tūkaiora, Ngāti Tūmānuka,
   Ngāti Uenuku, Ngāti Waewae, Ngāti Wai, Ngāti Wairehu, Ngāti
   Whati. Other groups with connections to Waimarino include:
   Tieke/Taumatamahoe groups including Ngāti Tamahaki, Ngāti
   Rangitenga; those associated with Kaitieke and Kirikiriroa such
   as Ngāti Tū, Ngāti Rangi of Ngāti Haua; the remnants of Ngāti
   Hotu associated with Ngāti Hinewai at Kākahi, Ngāti Tūwharetoa at
   Kaitieke; as well as some other groups of the Te Patutokotoko collec-
tive, originally of Manganui-a-te-ao. The concept of 'tangata whenua'
or pre-waka groups is discussed in chapter 2.
2. Submission 3.3.56, p 4
3. Submission 3.3.43, p 5
4. Submission 3.3.122, pp 1–2
5. Ibid, pp 2–3
6. Submission 3.3.130, pp 3–4
7. Submission 3.3.56, p 9
8. Document A37 (Berghan), p 491; Taupo Native Land Court, minute
   book 4, 15 January 1886, fol 35
9. Submission 3.3.56, pp 24–25; see also doc A37 (Berghan), p 490
   n 1081, 1082.
10. Submission 3.3.56, pp 24–25; submission 3.3.81, pp 20–21; submis-
    sion 3.3.74, pp 29–30; submission 3.3.75, pp 12–13; submission 3.3.102,
    pp 23–24; submission 3.3.73, p 9
11. Submission 3.3.56, pp 26–27
12. Ibid, pp 30–31
13. Ibid, p 6
15. Ibid, pp 48–50
16. Ibid, p 60
17. Submission 3.3.122, p 3
18. Ibid, pp 2–3
19. Ibid, pp 5–6
20. Ibid, p 3
21. Ibid, p 8
22. Te Puru ki Tūhua (the plug at Tūhua) refers to the protective role
    played by Ngāti Haua rangatira such as Te Mamaku against invasion
    from the north: Ngāti Haua were kin to Tainui and Whanganui.
23. Document D41 (Otimi), p 18
24. James H Kerry-Nicholls, The King Country; or, Explorations in
    New Zealand: A Narrative of 600 Miles of Travel Through Maoriland
    (London: Sampson Low, Marston, Searle, and Rivington, 1884),
    pp 286–288, 295–296
25. Whanganui Native Land Court, minute book 9, 15 March 1886, fol
    s 284–285
26. Document A99(d) (Joel supporting documents), pp 965, 966; see
    also Whanganui Native Land Court, minute book 13, 1 April 1887, fol
    s 135, 136.
27. Document A60 (Marr), p 541
The Waimarino Purchase

28. Submission 3.3.81, p 18
29. Richard Boast, Buying the Land, Selling the Land: Governments and Māori Land in the North Island 1865–1921 (Wellington: Victoria University Press, 2008), p 149
30. Document A87 (Loveridge), pp 131–132; see also Boast, Buying the Land, Selling the Land, pp 157–158
31. Document A110 (Hearn), p 14
32. Document A60 (Marr), p 69
33. Ibid, p 70
34. 'Report of the Select Committee Appointed to Consider and Report on the Best Route for the North Island Main Trunk Railway', 9 October 1884, AJHR, 1884, I-6, p 6
35. Document A60 (Marr), pp 69–70
36. Ibid, pp 89–93
37. These were Mangaotuku and Retaruke: see doc A66 (Mitchell and Innes), app 1.
38. Document A60 (Marr), pp 28–30, 101
39. Document A87 (Loveridge), p 130
40. Document A60 (Marr), p 99
42. Document A60 (Marr), p 30
43. Document A42 (Oliver), pp 2, 12
44. Document A60 (Marr), p 30
45. Ibid, p 33
46. Document A99 (Joel), p 15; doc A60 (Marr), p 91
47. Document A60 (Marr), pp 88–91
48. 'Report of the Select Committee Appointed to Consider and Report on the Best Route for the North Island Trunk Railway', AJHR, 1884, I-6, p 84
49. Document A99(g) (Joel), pp 62–63
50. The Crown acknowledged that its officials were aware of valuable timber resources on the block, but those resources were not reflected in the price it paid for the Waimarino block.
51. Document M2(d) (Hayes), p 3
52. 'Main Trunk Line, Auckland to Wellington (Reports on)', AJHR, 1884, D–5, p 2
53. Document A60 (Marr), pp 144–145
54. Document M2(d) (Hayes), pp 1–2
55. Ibid, p 12
56. Ibid
57. Ibid, p 16
58. Document A60 (Marr), pp 144–145
59. Document A76 (Loveridge), pp 22–29
60. Ibid, pp 38–41
61. Ibid, pp 43, 46, 50–51
62. Ibid, pp 60, 64
63. Ibid, p 64
64. Document A60 (Marr), pp 115–116
65. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', AJHR, 1883, I-1, pp 1–4
66. Document A76 (Loveridge), p 71 n 177
67. Document A60 (Marr), pp 107–108
69. 'Main Trunk Line, Auckland to Wellington (Reports on)', AJHR, 1884, D–5, pp 3–5
70. 'Petition of the Maniapoto, Raukawa, Tuwharetoa, and Whanganui Tribes', AJHR, 1883, I-1
71. 'The Native Minister in Waikato', Waikato Times, 1 December 1883, p 2
72. Document A60 (Marr), p 132
73. Document A14 (Hamer), p 10
74. Document A60 (Marr), pp 135–136
75. Document A11 (Ward), p 43. The date on which the surveyors signed this map is not provided.
76. Document A83 (Pickens), p 452
77. Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage One, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, p 329
78. Document A83 (Pickens), p 452
79. Document A58 (Mitchell), p 127
80. 'Notes of Native Meetings', 7 January 1885, AJHR, 1885, G-1, p 3
81. Ibid, pp 3, 4
82. Ibid, p 4
83. Document M2 (Hayes), p 81
84. Document A99(h) (Joel supporting documents), pp 1658–1660
85. Document A14 (Hamer), p 11
86. 'Native Meeting, Poutu, Taupo (Report by Inspector Scannell, RM)', 23 September 1885, AJHR, 1886, G-3
87. Document A99 (Joel), p 12
88. Document A60 (Marr), p 262
89. Ibid, pp 256–257
90. Document A99(a) (Joel supporting documents), p 18. For a more legible copy of the Waimarino block application see doc A99 (j) (Joel supporting documents), p 11; transcript 4.1.15, p 269.
91. Document A60 (Marr), pp 257, 259, doc A42 (Oliver), p 25
92. Document A83 (Pickens), p 457; doc A15 (Gould), pp 16–17
93. Document A83 (Pickens), p 457
94. Ibid, pp 507–508. Te Kurukaanga I was the friend of Jerningham Wakefield in 1839; he died in 1844 (see chapters 3 and 5). Rochfort encountered Witiwiti, the mother of Kurukaanga II at Rānana, in 1883. She was the daughter of ‘Te Karu Kainga’ (Te Kurukaanga I) of Ōkirihau at Tīeke, ‘a man of great note’. Her son, ‘Te Karu’ (Te Kurukaanga II) had gone up the river to confer with the people of Whanganui: doc A9 (Laurenson), pp 41–42. ‘Waimarino proper’ usually meant the Waimarino Plains, through which ran the Waimarino Stream, a tributary of the Manganui-a-te-a-o River.
95. Document A99(d) (Joel supporting documents), p 963
96. Toakohuru Tawhirimatea and 101 others to Te Paraihe (John Bryce), April 1884, ACIH 16046 MA13/133/93, Archives New Zealand,
Wellington. See also document A76 (Loveridge), p 131, where the number of petitioners is given as 103.

97. Document A83 (Pickens), p 452

98. Whanganui Native Land Court, minute book 18, 13, 15 March 1876, fols 73, 79, 83–84; Whanganui Native Land Court, minute book 9, 6 March 1886, fol 237


100. Whanganui Native Land Court, minute book 13, 7 April 1887, fol 152; doc A55(h) (Clayworth supporting documents), p [7]; doc A99(a) (Joel supporting documents), pp 7, 16


102. Document A83 (Pickens), p 508

103. Transcript 4.1.15, p 271

104. Document A99(j) (Joel supporting documents), p [1]; see also Whanganui Native Land Court, minute book 9, 16 March 1886, fols 295–310.

105. Submission 3.3.129, pp 12–13

106. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 478–479, 494

107. Document A60 (Marr), pp 259–260

108. Ibid, pp 68–70, 259, 276–277, 375, 472, 541

109. Ibid, p 18

110. Submission 3.3.56, p 10; see also transcript 4.1.15, p 269

111. Submission 3.3.56, p 13 (Tribunal translation)

112. Ibid

113. Ibid, p 15

114. Submission 3.3.73, p 11

115. Submission 3.3.129, pp 14–15


117. Ibid's translation.

118. Native Land Court Act 1880, s 22

119. See ‘Sketch Map of the “King Country” Based upon Trigonometrical and Topographical Survey’ in ‘Report on the Surveys of New Zealand for the Years 1883–84’, 8 August 1884, AJHR, 1884, sess 2, C-1, opp p 29.

120. Document A73 (Pickens), p 449

121. Document A60 (Marr), p 257

122. Submission 3.3.102, pp 21–23

123. Ibid, p 23

124. Document A99(d) (Joel supporting documents), p 807. Conventional word division, spelling, and some punctuation has been imposed.

125. Ibid, p 806

126. Ibid, pp 809–811

127. Document A108 (Young and Belgrave), p 35; Whanganui Native Land Court, minute book 10, 3 July 1886, fol 338. Young and Belgrave were unable to find the Gazette notice in question.

128. Submission 3.3.73, pp 4–5; see also doc A55(i) (Clayworth supporting documents), p [33].

129. Submission 3.3.71, p 7

130. Document A60 (Marr), pp 301–302

131. Native Land Court Act 1880, s 20

132. Ibid, s 22

133. Ibid, s 23

134. Ibid, ss 28–30

135. Submission 3.3.56, p 13

136. Ibid

137. Ibid, p 14

138. Submission 3.3.56, pp 13–14; see also doc A99(a) (Joel supporting documents), p 28

139. Submission 3.3.56, p 11

140. Ibid

141. Ibid, p 12

142. Ibid, p 13

143. Ibid, pp 14–15

144. Ibid, p 15

145. Ibid

146. Ibid

147. Ibid, p 17

148. Ibid, p 18

149. Submission 3.3.129, pp 14–15

150. Ibid, p 15

151. Ibid, pp 15–16

152. Ibid, p 16

153. Ibid, p 15

154. Whanganui Native Land Court, minute book 9, 1 March 1886, fol 199

155. Document A60 (Marr), p 272

156. Ibid, pp 272–273

157. Ibid, p 273

158. Ibid, pp 273–274

159. Ibid, pp 274–275

160. Ibid, p 146


162. ‘Sketch Map of the “King Country” Based upon Trigonometrical and Topographical Survey’, in ‘Report on the Surveys of New Zealand for the years 1883–84’, 8 August 1884, AJHR, 1884, sess 2, C-1, facing p 29.

163. Document A60 (Marr), pp 146–147

164. Ibid, p 275

165. Document A99(a) (Joel supporting documents), p 16

166. Ibid, p 14

167. Document A60 (Marr), p 277

168. Document A99(a) (Joel supporting documents), p 10

169. Ibid, pp 16–17

170. Document A60 (Marr), pp 259–260

171. Document A99(a) (Joel supporting documents), p 71

172. Document A37 (Berghan), pp 1011–1024

173. Native Land Court Act 1880, s 22
174. Ibid, s 23
175. Transcript 4.1.15, p 269
176. Document A60 (Marr), p 261
177. Submission 3.3.56, p 21
178. Document A99 (Joel), p 12; doc A60 (Marr), p 262
179. Document A60 (Marr), p 266
180. Ibid, p 263
181. Document A37 (Berghan), pp 520–521
182. Ibid, p 521
183. Document A83 (Pickens), pp 451–452. Only a proportion of the owners in Taumatumāhoe were also owners in Waimarino.
184. Submission 3.3.129, pp 13–14
185. Submission 3.3.56, p 9
186. Submission 3.3.122, p 5
187. Document A60 (Marr), pp 259–260. The applications were: an application from Taiwiri, Pāora Toho, and Toi Te Huatahi for Popotea lands filed on 11 July 1885 (according to Whanganui Native Land Court, minute book 9, 1 March 1886, fol 202, this block was heard as a separate block in the south-west of Waimarino, beginning on the same day as Waimarino itself, on 1 March 1886); an application from Honi Paiaka Te Uruhanga, Te Tera Pounamu, and Tangi Makurau for Kawautahi land filed on 26 October 1885; an application from Whakamou, Paiura Te Rangihiwinui, and Honeri Hēnare, for Ngāti Pare land at Mangapapa and Ōtaihanga filed on 12 November 1885; and an application from Whakamou, Paiura Te Rangihiwinui, and Honeri Hēnare, for Ngāti Pare land near Mangapapa filed on 3 December 1885.
188. Document A60 (Marr), pp 258–260. These blocks were: an application from Te Rangi Kawana, Wiha Te Whata, and Iwi Tewhatupunga of Ngāti Rangi that included Te Kiekie, Maraekōwhai, Marangi, and Te Pohatu in its description of the land involved; an application from Patu Wairua, Te Rangi Tawana, and Kuramate of Tīeke for Ngāti Wai land at Tahereaka near Mangapōrūra; an application from Te Keepa Tahukumitia, Kaioroto, and Mahirini for lands at Whakaihuwaka; an application from Kaioroto, Rāhera Te Kauwhata, and Te Aurere of Pipiriki for Ngāti Rangi land at Ōruapuku; and an application by Kaioroto, Paura Herekau, and Mahirini Rangitauira of Ngāti Rangitautahi for Ngāpōrō lands. Ngāpōrō was heard in the court as a separate block: doc A37 (Berghan), pp 426–431.
189. Submission 3.3.129, p 13
191. Whanganui Native Land Court, minute book 9, 1 March 1886, fol 200
192. Submission 3.3.56, p 9
193. Waitangi Tribunal, Te Kāhui Maunga, vol 1, p 287
194. Ibid, p 235
195. Ibid, p 239
196. Ibid, p 240
197. Document A60 (Marr), pp 258–260
198. Submission 3.3.56, p 9
199. Document A99(a) (Joel supporting documents), pp 27, 37
200. Document A83 (Pickens), pp 486–488
201. Submission 3.3.93, p 30; submission 3.3.81, pp 19–20; submission 3.3.74, pp 29–30; submission 3.3.75, pp 12–15; submission 3.3.73, p 9
202. Submission 3.3.102, pp 23–24
203. Submission 3.3.56, p 24
204. Te Keepa Te Rangihiwinui (or Major Kemp), and Pōari Kuramate were influential throughout the district. Both were predominantly southern Whanganui chiefs, although they had interests in central and eastern parts of the inquiry district.
205. Document A83 (Pickens), p 487
206. Ibid, p 488
207. Ibid, pp 490–491
208. Ibid, p 456
209. Te Keepa Pūataata descended from Te Herekiekie, and from the kāhui ariki of Ngāti Tūwharetoa. His genealogy can be seen in John Te Herekiekie Grace, Tuwharetoa (Auckland: Reed Books, 1992 reprint), pp 540, 542. He belonged to Ngāti Hikairo, Ngāti Tamakana, Ngāti Matangi, and other hapū, as well as Ngāti Maringi. Because he was very knowledgeable, he was frequently called on to give evidence in Taupōniatia subdivision cases, such as Taurewa: see Taupo Native Land Court, minute book 16, 4, 6–8 February, fols 66–67, 81–92; Taupo Native Land Court, minute book 16, 24, 30 March 1904, fols 246–255, 297.
210. Document A83 (Pickens), pp 455–456
211. Whanganui Native Land Court, minute book 9, 30 March 1904, fol 296; Taupo Native Land Court, minute book 4, 4 February 1886, fol 126
212. Document A37(m) (Berghan supporting documents), pp 7499–7512
213. Document A60 (Marr), p 541
214. Ibid, p 542
215. Document A99(f) (Joel supporting documents), pp 1487–1502. There were more than 330 names, but many were repeated in the different hapū lists.
216. Document A99(f) (Joel supporting documents), p 1487
217. Document A60 (Marr), pp 375–377
218. Ibid, pp 525–526
219. Ibid, p 526
220. Document A60 (Marr), p 463; Whanganui Native Land Court, minute book 13, 31 March 1887, fol 126
221. Document A99(d) (Joel supporting documents), p 954
222. Native Land Court Act 1880, s 17(1)
223. Ibid, s 22
224. Document A99(d) (Joel supporting documents), p 954
225. Submission 3.3.56, pp 19, 37
226. Submission 3.3.73, p 9; submission 3.3.81, p 20
227. Submission 3.3.56, p 24; submission 3.3.81, pp 19–20
228. Submission 3.3.81, p 19
229. Submission 3.3.56, p 23
230. Submission 3.3.129, pp 11–12
231. Ibid, p 16
232. Ibid, p 18
233. Document A83 (Pickens), pp 455, 456–457; claim 1.3.3(b) (Crown supporting documents), p 210
234. Whanganui Native Land Court, minute book 9, 1 March 1886, fol 199
235. Submission 3.3.56, pp 19–20
236. Document A83 (Pickens), p 459
237. Submission 3.3.56, p 19
238. Document A60 (Marr), p 287. None of the whakapapa as given by claimants shows Tūkoio, son of Tamahaki, to be also a descendant of Tamakana. Tamawhata was a descendant of Ururangi, associated with Paerangi; we were given no lines of any descent of his from Tamakana. We have discussed these ancestors in chapter 2.
239. Ibid, pp 287–288
240. Document A83 (Pickens), p 460
241. Whanganui Native Land Court, minute book 9, 1 March 1886, fol 199
242. Document A99(c) (Joel supporting documents), p 538. This woman may have been the wife of Te Keepa Te Rangihiwinui (Major Kemp).
243. Whanganui Native Land Court, minute book 9, 13 March 1886, fols 277–278
244. Document A83 (Pickens), p 466; doc A60 (Marr), pp 292–294. Pickens and Marr refer to him as Pauira or Pairua, and Te Rangikātahu or Te Rangikātatu, and the place claimed as Mangapapa.
245. Whanganui Native Land Court, minute book 9, 16 March 1886, fol 289. Ngāti Taumatamāhoe, as a hapū, did not figure among the hapū listed in the various title lists.
246. Document A83 (Pickens), p 469
247. Ibid, p 292
248. Whanganui Native Land Court, minute book 9, 15 March 1886, fol 286; doc A83 (Pickens), p 466; doc A60 (Marr), pp 292–294. Pickens and Marr refer to him as Pauira or Pairua, and Te Rangikātahu or Te Rangikātatu, and the place claimed as Mangapapa.
249. Whanganui Native Land Court, minute book 9, 16 March 1886, fol 289. Ngāti Taumatamāhoe, as a hapū, did not figure among the hapū listed in the various title lists.
250. Document A83 (Pickens), p 469
251. Whanganui Native Land Court, minute book 9, 16 March 1886, fol 290
252. Ibid, 1 March 1886, fols 199–200
253. Ibid, 16 March 1886, fols 295–310
254. Document A83 (Pickens), pp 470–471
255. Ibid, p 471
256. Document A99 (Joel), p 7
257. Submission 3.3.56, p 21
258. Document A60 (Marr), p 309
259. Native Land Court Act 1880, s 23–25
260. Submission 3.3.56, p 19; doc A77(a) (Pickens), p 207
261. Document A77(a) (Pickens), pp 285–286
262. Document A77 (Pickens), pp 305–306
263. Document A99(c) (Joel supporting documents), p 556
264. Whanganui Native Land Court, minute book 9, 15 March 1886, fols 279–280
265. Ibid, fol 281
266. Submission 3.3.56, pp 21–22
267. Ibid, p 22
268. Document A60 (Marr), p 299
269. Ibid
270. Submission 3.3.125, p 1
271. Native Land Court Act 1880, s 22
272. Submission 3.3.56, p 12
273. Ibid, pp 12–13
274. Whanganui Native Land Court, minute book 9, 16 March 1886, fol 289
275. Ibid, fol 290
276. Ibid
277. Native Land Court Act 1880, s 27
278. Ibid, s 28
279. Ibid, s 29
280. Ibid, s 30
281. Ibid, s 31
282. Ibid, s 32
283. Ibid, s 33
284. Ibid, s 34
285. Document A99 (Joel), p 10
286. Document A99(a) (Joel supporting documents), p 27
287. Document A99 (Joel), p 74; doc A99(a) (Joel supporting documents), pp 27–29
288. Document A60 (Marr), p 304
289. Ibid, p 455
290. Submission 3.3.56, p 40; ‘Notice of Time and Place for Inspecting Plan after Interlocutory Order’, 3 April 1882, New Zealand Gazette, 1882, no 32, p 545
291. ‘Oahurangi and Parapara No 2 Blocks’, 7 February 1895, New Zealand Gazette, 1895, no 10, p 256
292. Submission 3.3.129, p 16
293. Submission 3.3.56, p 37
294. Submission 3.3.129, p 16
295. Ibid, p 17
296. Submission 3.3.56, p 13
297. Document A99 (Joel), p 7
298. Document A99(g) (Joel), p 8
299. Submission 3.3.56, pp 26, 27
300. Submission 3.3.153, p 2
301. Submission 3.3.56, p 27
302. Ibid, pp 30–31
303. Ibid, p 31
304. Submission 3.3.43, p 5
305. Submission 3.3.122, pp 1–2
306. Ibid, p 1
307. Ibid, p 3
308. Whanganui Native Land Court, minute book 9, 16 March 1886, fol 290
309. Native Land Court Act 1880, ss 27–33, 47
310. Document M2 (Hayes), p 139
311. Submission 3.3.56, pp 11–12
312. Ibid, p 12
313. Document M2 (Hayes), pp 95–96
314. Whanganui Native Land Court, minute book 9, 15 March 1886, fols 279–280
315. Document M2 (Hayes), p 87
316. Ibid; doc A60 (Marr), p 322
317. Document A60 (Marr), p 320
318. 'The Aramoho Meeting', Wanganui Herald, 30 March 1886, p 2; doc A60 (Marr), pp 322, 339
319. Document A60 (Marr), pp 344, 346; doc A99 (Joel), pp 14–15
320. Document A60 (Marr), p 350; doc A99 (Joel), p 15
321. Submission 3.3.125, p 26; transcript 4.1.14, pp 83–84
322. Ibid, p 26
323. Document A60 (Marr), pp 457–459
324. Document A99(g) (Joel), p 15
325. Ibid, p 11
326. Document M2 (Hayes), p 127
327. Ibid, p 128
328. Document A60 (Marr), p 353
329. Document A99 (Joel), p 54
330. Document A99(g) (Joel), p 75
331. Submission 3.3.125, p 5
332. Document A60 (Marr), pp 344–345
333. Native Land Act 1873, s 24
334. Document A60 (Marr), p 345
335. Document A99(g) (Joel), p 12
336. Ibid, p 144
337. Document M2 (Hayes), p 106; doc A60 (Marr), p 307
338. Document A60 (Marr), pp 349, 460
339. Document A99(c) (Joel supporting documents), pp 550–551
340. Document M2 (Hayes), p 125
341. Document A99(d) (Joel supporting documents), pp 841–842
342. Ibid, p 855
343. Ibid, p 854
344. Ibid, pp 1001–1003
345. Document A60 (Marr), pp 433–434
346. Document A42 (Oliver), pp 26, 41
347. Document A60 (Marr), p 404
348. Ibid, p 405
349. Document A99(c) (Joel supporting documents), p 532
350. Document A99(d) (Joel supporting documents), pp 809–811
351. Document A60 (Marr), p 435
353. Document A99 (Joel), pp 8–9, 12–13, 35–39
354. Document A99(g) (Joel), p 103
355. Document A99 (Joel), pp 18, 19, 20, 21–22
356. Ibid, pp 28–29, 30
357. Ibid, pp 34–35
358. Document A99(g) (Joel), pp 192–193
359. Document A99 (Joel), p 37
360. Ibid, pp 37–38, 105
361. Ibid, pp 104–105
362. Ibid, p 105
363. Document A99(g) (Joel), p 17
364. Document A60 (Marr), p 104
365. Document A99(g) (Joel), pp 17–18
366. Ibid, p 18
367. Ibid
368. Ibid
369. Ibid
370. Document M2 (Hayes), p 105
371. Ibid, p 123; doc A99(c) (Joel supporting documents), pp 546–547
373. Document A99(g) (Joel), p 19
374. Document A60 (Marr), pp 344; doc A99 (Joel), p 15
375. Document A99(g) (Joel), p 12
376. Document M2 (Hayes), p 122
377. Ibid, p 110
378. Document A99 (Joel), p 18
379. Document A60 (Marr), p 392
380. Document A99 (Joel), pp 18–19
381. Document A60 (Marr), pp 393–394; doc A99 (Joel), p 20
382. Document A60 (Marr), pp 428–431; doc A99(g) (Joel), p 45
383. Document A99(g) (Joel), p 45
384. Submission 3.3.125, pp 33–35
385. Submission 3.3.122, p 10
386. Maori Real Estate Management Act 1867, ss 3, 4
387. Maori Real Estate Management Act Amendment Act 1877, ss 9–10
388. Native Land Act Amendment Act 1878 (No 2), s 8
389. Native Land Laws Amendment Act 1883, ss 14, 15
390. Document A99(g) (Joel), pp 157–158
391. Document A60 (Marr), pp 368–369
392. Ibid, p 368; see also doc A99(g) (Joel), p 160
393. Document A99(g) (Joel), pp 160–161
394. Document A60 (Marr), pp 366, 368
395. Document A99(g) (Joel), p 163
396. Document A60 (Marr), p 368; doc A99(g) (Joel), p 163
397. Document A60 (Marr), pp 371–373
398. Ibid, pp 373–374; doc A99(g) (Joel), pp 164–165
399. Document A99(g) (Joel), p 165
400. Document A60 (Marr), pp 368–369
401. Document A99(g) (Joel), pp 163–164
402. Transcript 4.1.15, p 289
403. Document A99(g) (Joel), p 158; doc A99(f) (Joel supporting documents), p 1615
404. Document A60 (Marr), p 366
405. Ibid, p 367; doc A99(g) (Joel), p 180
406. Document A60 (Marr), pp 460–461; doc A99(g) (Joel), p 91
407. Document A99(g) (Joel), pp 91–92
408. Document A60 (Marr), p 461
409. Native Land Court Act 1880, s 38
410. Submission 3.3.122, pp 1–2
411. Submission 3.3.130, p 3
412. Document A60 (Marr), pp 443, 456
Ibid, p 462
414. Ibid, p 479
415. Submission 3.3.56, pp 38–39
416. Ibid, pp 39–41, 44
417. Ibid, p 41
418. Submission 3.3.73, pp 15–17
419. Submission 3.3.122, p 11
420. Ibid, pp 11–12
421. Document A14 (Hamer), p 17
422. Document A99(a) (Joel supporting documents), pp 40–41
423. Ibid, p 1
424. Ibid, p 66
425. Ibid, p 89
426. Ibid, p 90
427. Ibid, p 111
428. Ibid, pp 106–107
429. Document A60 (Marr), pp 455–456. In fact, a later survey in 1900 showed that the block was 452,196 acres: see doc A99(g) (Joel), p 9.
430. Native Land Court Act 1880, ss 28–31
431. Ibid, s 30
432. Ibid, ss 32–33
433. Native Land Court Act 1886, ss 17–22
434. Ibid, s 115
435. Document A99(g) (Joel), pp 137–138
436. Ibid, p 145
437. Ibid, pp 139–141
438. Earlier, we raised the question as to whether in fact the court ought properly to have proceeded to hear applications for partition until survey was finalised and a final certificate of title issued.
439. Document A60 (Marr), p 462
440. Whanganui Native Land Court, minute book 13, 31 March 1887, fols 127–128; see also doc A60 (Marr), pp 465–466
441. Document A60 (Marr), pp 466–467
442. Ibid, p 469
443. Ibid; Whanganui Native Land Court, minute book 13, 1 April 1887, fol 133
444. Document A99(d) (Joel supporting documents), p 962
445. Whanganui Native Land Court, minute book 13, 1 April 1887, fol 135
446. Document A60 (Marr), pp 471–473
447. Whanganui Native Land Court, minute book 13, 1 April 1887, fols 140–142
448. Document A99(d) (Joel supporting documents), p 962
449. Whanganui Native Land Court, minute book 13, 1 April 1887, fol 135
450. Document A60 (Marr), pp 471–473
451. Whanganui Native Land Court, minute book 13, 1 April 1887, fols 140–142
452. Ibid, fol 139
453. Ibid, fol 142
454. Document A60 (Marr), pp 463–464
455. Document M2 (Hayes), p 138
456. Document A60 (Marr), p 475
457. Ibid, pp 475–476
458. Ibid, p 476
459. Native Land Court Act 1886, s 52
460. Document A60 (Marr), pp 462, 478
461. Ibid, p 478
462. Whanganui Native Land Court, minute book 13, 5 April 1887, fols 146–147
463. Document A60 (Marr), p 479
464. Ibid
465. Document A99(g) (Joel), p 143; doc A60 (Marr), p 480
466. Whanganui Native Land Court, minute book 13, 1 April 1887, fol 138.
467. Document M2 (Hayes), p 149
468. Document A60 (Marr), p 483
469. Ibid, pp 484–485
470. Document A55 (Clayworth), pp 8, 41–46
471. Document A60 (Marr), p 485
472. Document A55 (Clayworth), p 40; see also doc A55(a) (Clayworth), p 4
473. Submission 3.3.96, para 4.21
474. Document A60 (Marr), pp 480, 484
475. Ibid, pp 353, 480
476. Ibid, pp 469–470
477. Document A99(d) (Joel supporting documents), p 954
478. Document A60 (Marr), p 481; doc A55 (Clayworth), p 40
479. Document O16 (Hayes), p 17
480. Document A60 (Marr), p 483; Whanganui Native Land Court, minute book 13, 6 April 1887, fol 149
481. Document M2 (Hayes), p 110
482. Document A99(d) (Joel supporting documents), pp 1036–1038; doc A60 (Marr), p 492; doc M2 (Hayes), p 112; doc A99(g) (Joel), p 9
483. Document A99(d) (Joel supporting documents), p 1044
484. Document A60 (Marr), p 492
485. Ibid, pp 486–487; doc M2 (Hayes), pp 110–111
486. Document M2 (Hayes), pp 110–111
488. Ibid, pp 1059, 1061
489. Ibid, pp 1042–1043
490. Document A60 (Marr), p 489; doc M2 (Hayes), p 112
491. Document M2 (Hayes), p 111
492. Document A99(d) (Joel supporting documents), pp 1059, 1061–1062
493. Ibid, pp 1060–1061, minute in margin of Butler’s letter, apparently in Sheridan’s handwriting and an extension of his earlier minute to Butler, 14 October 1887 on the same letter, but unsigned.
494. Submission 3.3.122, p 1
495. Document M2 (Hayes), p 122
496. Submission 3.3.56, p 48; doc A60 (Marr), p 495
497. Submission 3.3.122, p 1; submission 3.3.127, pp 4–5
498. Native Land Act 1873, s 24
499. Document A99(d) (Joel supporting documents), p 1038
500. Document A60 (Marr), p 501
501. Document 016 (Hayes), p 18
502. Document A99(a) (Joel supporting documents), p 332
503. Ibid, p 315
504. Document 016 (Hayes), p 5
505. Document A99(a) (Joel supporting documents), p 320
506. Document A60 (Marr), p 503
507. Ibid, pp 531–532
508. Document A99(a) (Joel supporting documents), p 129
509. Ibid, pp 132, 136, 138, 139
510. Ibid, pp 339–342
511. Memorandum 2.3.103, p 3
512. Memorandum 3.4.24, p 1
513. Document 016 (Hayes), p 10
514. Ibid, pp 20–21
515. Ibid, p 2
516. Ibid, p 11
517. Ibid, pp 12–13
518. Document 016(a) (Hayes), pp 11–12
520. Document A99(a) (Joel supporting documents), p 16
521. Ibid, pp 280–285
522. Document 016 (Hayes), p 37
523. 'Pakeha and Maori: A Narrative of the Premier’s Trip Through the Native Districts of the North Island’, AJHR, 1895, G-1, pp 7–8
524. Document A15 (Gould), p 14
525. Ibid, pp 3, 30; doc A17 (Hamer), pp 7, 9
527. Document 016 (Hayes), p 38
528. Document A17 (Hamer), p 9; doc 016 (Hayes), p 39
529. Document A60 (Marr), p 453
530. Document E6 (Haitana), p 4
531. Document A55(i) (Clayworth supporting documents), p [74]
532. Document A60 (Marr), p 559
534. Document A16 (Maclean), p 4
535. Document A99(f) (Joel supporting documents), pp 1550–1551
536. This person is probably the Pita Aituā and his wife Moetū referred to by Oldham in 1911; see below.
537. Document A99(b) (Joel supporting documents), pp 489, 493
538. Document A99(c) (Joel supporting documents), p 722
539. Ibid, p 725; doc A18 (Cross and Bargh), p 106
540. Document A99(c) (Joel supporting documents), p 731
541. Submission 3.3.122, p 1
543. Submission 3.3.56, pp 45–47
544. Claim 1.3.3, p 169
545. Submission 3.3.122, p 13
546. Ibid, pp 11–12
547. Ibid, p 13
548. Document A60 (Marr), pp 307–308
549. Ibid, p 463
550. Document A99(d) (Joel supporting documents), p 954
551. Document A60 (Marr), pp 377–378
552. Ibid, p 517
553. Document A99(g) (Joel), p 12
554. Document A58 (Mitchell), p 158
555. Document A60 (Marr), pp 518–519
556. Ibid, p 519
557. Ibid, p 520; doc A58 (Mitchell), pp 158–159
559. Document A11 (Ward), p 76
561. Ibid
562. Document A99 (Joel), p 16; doc A99(c) (Joel supporting documents), pp 517–518
563. Document A99(c) (Joel supporting documents), p 521
564. Ibid, p 524
565. Ibid, p 532
566. Ibid, pp 543–544
567. Ibid, pp 528–529
568. Ibid, p 537
569. Ibid, pp 530, 532
570. Ibid, p 547
571. Ibid, pp 550–551
572. Ibid, pp 554–555
573. Ibid, p 554
574. The name Hāua, pronounced 'āua' in the local mita, is written 'Wawa' in the minutes.
575. Document A99(c) (Joel supporting documents), p 555
576. Document A60 (Marr), p 385; doc M2 (Hayes), p 133
577. Document A60 (Marr), p 541
579. Young, Woven By Water, pp 137–138
580. Document A71 (Anderson), p 59
581. Young, Woven By Water, pp 138–139, 141, 142
582. Document A60 (Marr), p 541
583. Ibid, pp 542–543
584. Document A58 (Mitchell), p 158
585. Document A99(f) (Joel supporting documents), pp 1487–1501
586. Ibid, pp 1494, 1496, 1498–1501
587. Ibid, pp 1489, 1490, 1498. The five were Te Moanapapaku (Waimarino owner 369), Te Waiharakeke (owner 455), Rāwiri Kētū (owner 408), Tōpia Maaka (owner 15), and Te Hihiri (owner 512).
588. Document A99(f) (Joel supporting documents), p 1487
William James Butler
1. Document A60 (Marr), pp 54, 166, 313–314

Table sources
Table 13.1: Document A99(k) (Joel supporting documents), p [13]; doc A60 (Marr), p 479; doc M2 (Hayes), pp 148–149. Ngāti Hinekino is given in error for Ngāti Hinekura in two of these lists.
Table 13.2: Document M2 (Hayes), p 148
14.1 Introduction
New Zealand governments in the nineteenth century actively supported the transformation of the New Zealand landscape into farmland and towns, purchasing millions of acres of Māori land for settlement, building infrastructure, and providing access to finance—although generally not for Māori.

In this chapter, the first of several on twentieth century land issues, we begin our inquiry into whether, from the early twentieth century onwards, the Crown made reasonable efforts to manage development in Whanganui in the spirit of partnership. What did it do to meet its Treaty guarantee actively to protect te tino rangatiratanga of Whanganui Māori? Did it ensure that Māori too could access opportunities? In the plethora of legislative measures for Māori land administration in the early twentieth century, the Maori Lands Administration Act 1900 stands out as especially important in the Whanganui district, so we focus on that Act and its amendments. We also look into the landmark district Māori land council and land board systems.

Today, Whanganui Māori own some very large and profitable farms in the centre of the district. The Morikaunui Incorporation owns 4,883 hectares (12,000 acres); the Ātihau-Whanganui Incorporation owns over 40,931 hectares (100,000 acres). This accounts for almost half the remaining Māori land in the Whanganui inquiry district. Although these incorporations are doing well, the traditional rural settlements of Whanganui Māori are now almost empty; and outside of the incorporations, Whanganui Māori have almost no presence in the farming economy. The other Māori freehold land is mainly in small parcels, often isolated, covered in scrub, and undeveloped.¹

What happened to the vision of Māori rural development that the likes of James Carroll and Āpirana Ngata promoted in the late nineteenth and early twentieth centuries? Did the Crown not play its part? Or did Carroll and Ngata just get it wrong, because they did not (or could not) factor in the nature of the terrain, and the many economic and other forces over which neither Whanganui Māori nor the Crown had any control?

14.2 Seddon’s Acknowledgements
We begin by noting some statements that Premier Seddon made in the late nineteenth and early twentieth centuries in Wanganui. Importantly, he acknowledged the duty of the Crown to help Whanganui Māori both to develop their land and to bring them into a
He Whiritaunoka: The Whanganui Land Report

662

‘state of prosperity’; the need for Māori to hold on to their remaining land; and the need for Māori to control their own land with the assistance of the Government.

In 1895, Whanganui Māori agreed to give land at Pīpīriki for a township. Premier Seddon looked forward to the success of the development and its benefits for Māori, saying:

The country was large enough for both races. In days gone by their forefathers had been the friend of the Europeans and had encouraged them to stay and had assisted them to become a great and powerful people. It was therefore the bounden duty of the Europeans to assist now in bringing up and developing the native race in that state of prosperity and numerical strength in which the Europeans found them.2

In 1898, promoting his land Bill of that year at Pūtiki, Seddon told the people:

we believe that in saving the land we are saving the Native people . . . I take it all the Native land now in existence is wanted for your support. I hope that you will increase in numbers, and if you do so more land will be required, for without the land you and your children cannot live.

In 1902, again speaking at Pūtiki, Seddon said that the Government’s new land policy enabled ‘the placing of control of those lands in the hands of the natives themselves with the assistance of the Government’3

We attach considerable importance to these statements. Seddon, speaking as Premier and on behalf of the Crown, endorsed the Crown’s responsibilities with respect to Māori land at the beginning, really, of the modern era. What he said indicates that, more than half a century after it signed the Treaty of Waitangi, the Crown continued to see itself in a protective role, with a duty to address the condition to which colonisation had driven Māori, and with a key part of its obligation centring on Māori land. There can be no suggestion, then, of ahistoricity if in this era we look to the Crown to achieve the policy goals for Māori and their land that Seddon articulated.

14.3 The Parties’ Positions

14.3.1 What the claimants said

The claimants said that in the twentieth century the Crown fell far short of its Treaty obligations to Whanganui Māori as it pursued the development of the district. It continued to erode te tino rangatiratanga of Whanganui Māori, passing legislation and setting up institutions that facilitated excessive sales, and taking administration of the land out of Māori hands. Māori regained some authority in 1900 through a system of Māori land councils. This was shortlived, though. The Crown breached the Treaty when it legislated for the land boards that succeeded the land councils, and for land to be transferred to the Māori Trustee. The Crown, moreover, was well aware of the particular difficulties Māori faced in developing their lands. There were five critical obstacles: continuing Crown purchasing; the state of Māori land titles; lack of finance; lack of infrastructure; and lack of training. The Crown ought to have acted to overcome these problems, some of which it created, but did not. Instead, it focused its attention on assisting settlers. These Crown failures breached the Treaty right of development, and the principles of equality and active protection. A change of policy to assist Māori farm development failed due to mismanagement and lack of genuine consultation.4

The claimants submitted that:

› the 1900 Act was ‘a significant shift in policy towards addressing Whanganui Māori concerns over land development and administration’;
› Whanganui Māori appreciated the autonomy represented by the elected Māori representation on the land councils; and
› the regime was, ‘despite some deficiencies, a positive initiative by the Crown which [by 1906] was beginning to benefit Whanganui Māori’.5

The Crown’s later changes to the regime in 1905 and 1913 were to the detriment of Māori because they ultimately ended elected Māori representation so that the land board made important decisions without the owners’ consent.6 Whanganui Māori lost autonomy and decades of practical experience in managing trust lands, and therefore the
opportunity to convince the Government that they could manage such enterprises with an elected council.⁷

The claimants contended that the Crown should be held responsible for the actions of the Māori land councils, Māori land boards, and the Māori Trustee. In relation to the lands vested for leasing out, the claimants said that the Crown was accountable for decisions made by the Aotea District Māori Land Council and the later land board. This was because the Crown was closely involved in all aspects of promoting the scheme, transferring the land, and decision-making about the terms of leases – in this last respect improperly influencing the land council. Owners should have been, but were not, given the opportunity to take their lands out of the trust. With no Māori representation on the new trustee organisations, the Crown should have consulted directly with beneficial owners on management issues to do with the vested lands, but it did not.⁸

14.3.2 What the Crown said
In general, the Crown did not dispute that it was aware that developing Māori land was difficult, but it rejected the suggestion that it should have done more than it did. It consulted with Māori and took steps to assist development – Māori land councils, Māori land boards, and the Māori Trustee – all of which was reasonable for the times and fulfilled the Crown’s Treaty duties to protect Māori land and assist development. It genuinely intended that Māori would benefit from its initiatives, and economic failures were due to factors outside the Crown’s control. State support was minimal in the nineteenth century but expanded in the twentieth century, and considerably benefited Māori.

We noted previously the Crown’s one concession concerning land management: it failed to provide an effective form of corporate title, or ‘communal governance mechanism’, until 1894. This breached the Treaty.⁹ We welcome this concession, and in the following chapters investigate the effects of this breach.

The Crown acknowledged that the elected Māori representation on the original land councils may have been important in gaining Whanganui Māori support for the whole 1900 regime. But it pointed to a lack of opposition to the 1905 changes, and also to later Whanganui Māori requests for the amalgamation of the land board and land court. This suggested that what was important was that the various trustee bodies carried out the terms of the trust, and acted in the best interests of owners: ‘The identity of the persons acting as trustees for owners was, in that sense, irrelevant.’ (Those acting in such roles in this period included the land board, the Public Trustee, and the Native Trustee, later called the Māori Trustee.) There was no Treaty duty to ensure direct Māori representation on trust bodies, and the legal responsibilities of the land boards as trustees did not change. The Crown said there was no evidence that Māori land boards were any less diligent than their predecessor land councils in carrying out their duties, and the change from councils to boards did not detrimentally affect Whanganui Māori.¹⁰

The Crown focused its attention on the legal relationship created between the land council, the land board, and the Māori Trustee and their Māori beneficiaries. It submitted that the Crown is responsible for the legislative framework but not for the ‘particular decisions of the Council/Board within that framework’. The Crown denied that its involvement with vesting lands in trust was at a level that would make it responsible for the Aotea District Māori Land Council’s actions, or that its influence was such as to direct trustees. Many of the claimants’ grievances to do with lands in trust, the Crown said, were administrative matters which were properly the preserve of the trustees. When serious problems were brought to the Crown’s attention, it did provide assistance.¹¹

14.4 What the Crown and Māori Agreed in 1900
14.4.1 Introduction
The Maori Lands Administration Act 1900 is one of the few exceptions to the Crown’s poor record of addressing Māori concerns about land management. After many years of Māori protest, negotiations, and compromise with the Government, this Act finally provided for committees
with strong Māori representation to manage Māori land, and it gave the committees proper legal recognition.

As we have said, this Act was of particular importance in Whanganui. In order to assess the significance of later changes to the regime, and because we often refer to the Act in later chapters, we subject this topic to close scrutiny. We cover the discussions between Māori and the Government prior to the Act, the provisions of the Act itself, and the setting up of the Aotea land council in Whanganui. We then examine briefly the land council in operation.

### 14.4.2 Te Keepa’s last words to the Crown

In the later 1890s, the Government showed a greater willingness to listen to Māori, partly in response to the fact that Māori were more effectively protesting their loss of land and exclusion from power. A series of meetings between Whanganui Māori and the Crown in 1897 and 1898 led to an important agreement about land management, and Crown assistance and protection.

The Crown, as we saw in chapter 10, was intent on promoting the Public Trustee as a suitable vehicle for managing Māori land, while Māori countered with their preferred alternatives of committees and boards with both Māori and Pākehā representation.

In March 1897, there was a meeting that Māori in Whanganui remembered for long afterwards. The Native Land Court in Wanganui was investigating the title to the Ōhotu block. At 88,000 acres, this was one of the largest stretches of land in the district still in Māori possession. James Carroll was in town, and the ageing Te Keepa Te Rangihiwinui invited the Hon Minister to discuss the matter of the best method to be adopted to assist his people, and to preserve the remnants of their lands for the benefit of future generations as they considered that far too much of their lands was being sold to the Crown and others.¹²

When Carroll spoke at this meeting, he urged Māori to develop the land. He recommended that the owners form an incorporation, either to farm the block themselves or to lease it out on the same principle as Crown land. He made clear the Government’s desire for settlement, saying:

> The land must be used, either by [your]selves or by those who could turn it to account, and any help the Government could give which would promote settlement would only be too willingly afforded.

According to one report, Carroll suggested that Māori vest the land in the Crown, and ‘assured them that the
Crown would protect their rights for the benefit of future generations’. To this, Te Keepa responded with the words: ‘E Timi: Te morehu tangata, me te morehu whenua ki a koe. (James, I give into your keeping the last vestiges of my people and of our land.)’\(^{13}\)

Not long afterwards, in April 1897, a Māori military contingent travelled with Seddon to England to take part in Queen Victoria’s diamond jubilee celebrations. With them went a petition in the form of a loyal address to the Queen, signed by 18 Te Kotahitanga supporters. It asked the Queen to prohibit further sales of Māori land, and declared Māori willing to lease land they could not currently cultivate themselves. It was presented to the British Parliament in June.\(^{14}\)

In November, Te Keepa and other chiefs followed up this petition by going to Wellington to ask Seddon to stop Māori land sales, and bring the land under some system of leasing.\(^{15}\)

These endeavours began to yield results. In 1898 and 1899, Government and Māori engaged in debate and negotiation about new land legislation. Māori political groups also thrashed out the burning issue of what the draft legislation should say. The particular view of Whanganui Māori is not always discernible, but they seem to have supported moves to set up land boards and committees to assist Māori to deal with their land, and sought legislation that enabled Māori to control a process of leasing (rather than selling) land.\(^{16}\)

14.4.3 New land legislation debated in 1898 and 1899

Te Keepa died in April 1898. His tangihanga (period of traditional funeral rituals) was a huge event, and many leading figures attended, including Carroll. In his kōrero (speech), Carroll acknowledged Te Keepa’s ohākī (last words): to save his people and their land.

(1) Ministers promote the 1898 Bill

In 1898, Seddon and Carroll again toured the North Island, as they did in 1894. This time, their aim was to engage with Māori on the new Native Lands Administration and Settlement Bill, which enabled the setting up of Māori land block committees and district land boards.

In May, Seddon and Carroll attended a meeting at Pūtiki to discuss the Bill. Waata Wiremu Hipango and Takarangi Mete Kingi both addressed the ministers, reminding them of Te Keepa’s desire for an end to land sales and for Crown assistance with leasing. Hipango said that their great hope was that

the purchase of Maori lands will cease, so that the remnant of the land will be saved; that the Native Land Court will be abolished; and that the lawyers who are consuming the Maori people will cease to be required.\(^{17}\)

They pressed for a Government response.

This was one of the occasions when Seddon made acknowledgements to Whanganui Māori about the future role of the Crown in protecting Māori land. He said that the time had come to stop land sales and that indeed more rather than less land would be required if, as he hoped it would, the Māori population expanded. To assist, he proposed to set up Māori land boards or councils, with the commissioner of Crown lands as chairman and two other Europeans and two Māori as members. The task of these bodies would be to look after land vested in them. He recognised that many of his audience would prefer a wholly Māori body, but Parliament would insist on Pākehā representation on the boards if it were to lend money to set up the scheme. Seddon was encouraging, however, about future possibilities, saying:

If in time . . . you prove to be capable of administration and careful of the money granted by Parliament, then Parliament may give an extension of the representation of the Maori race upon these Councils.\(^{18}\)

Seddon also responded to Māori concerns about the costs of such a scheme, focusing on loans for roads. Under the Loans to Local Bodies Act, borrowers would usually be required to pay off loans over 26 years at five per cent interest, with the Government contributing two per cent of that cost. Seddon now proposed that if Māori placed their land with land boards, the Government would not make ‘a present of any money’, but it would extend the
loan term to 42 years, ‘at the end of which time the debt upon the land will be paid off’. Thus, he said, ‘By these proposals you will see that the land cannot possibly disappear from you.’

(2) Suggested amendments to the Bill
Later that month, a Kotahitanga hui at the Māori Parliament at Pāpāwai in the Wairarapa suggested amendments to the Bill: Māori representation on the land boards would increase to four Crown-appointed Māori members, plus the commissioner of Crown lands. Whanganui Māori, represented by Te Keepa’s daughter Witiōra Keepa, seem to have been in favour.

However, when the Government introduced the Bill to Parliament in August 1898, it had none of the amendments proposed at this hui. The Bill then went to the
Native Affairs committee, which considered it along with numerous petitions relating both to the original proposals and to the version amended at Pāpāwai. One of the petitions was from Wīari Tōpia and others, from upper Whanganui. They wanted land sales to be prohibited, but opposed the original Bill out of concern – shared by a good number of others – about the potential expense of any leasing scheme. The petitioners stated that their land was worth only about 1s 6d per acre, so they could not afford the expense of paying any land board’s expenses, or the necessary loans and interest, which ‘would entirely crush our lands and would prevent permanent benefits arising to the owners of the land’. Debate continued both between the Government and Māori, and among Māori political groups, but no agreement eventuated.

(3) Bills of 1898 and 1899 both dropped
This 1898 Bill was dropped, and Māori were also divided in their opinion of a new Bill that was introduced in October 1899, and it, too, was dropped. Premier Seddon proposed a short stop-gap measure ‘undertaking that no further land should be bought until Parliament has definitely settled how the land should be dealt with’. This resulted in the Native Land Laws Amendment Act, passed in October 1899. Section 3 specified that Māori land ‘shall not be alienated to the Crown by way of sale’, except to allow the completion of purchases that were already underway. The Act was of limited duration, section 5 stating that it would remain in force ‘until 10 days after last day of the next session of Parliament’.

14.4.4 Parliament passes the 1900 Act
In March 1900, many attended a hui of the Māori Pāremata at Ōhinemutu in Rotorua. Politicians Āpirana Ngata and Hone Heke drew up new Bills on land administration and social issues, which the Pāremata approved. Their land Bill proposed the replacement of the Native Land Court by seven land boards, one of which would hear appeals from the other six. Local or block committees would inquire into titles and report to the six district land boards, borrow money for land development, decide on lease terms (leases to be no longer than 42 years), reserve lands for papakāinga, and identify land where owners would have the first option to lease. The hui also strongly recommended reserving all remaining Māori land from sale.

We do not know what Whanganui Māori thought about the views advanced at the Rotorua hui, but two months later, Carroll, now Minister for Native Affairs, was again in Wanganui. Māori leaders reminded him of the last injunctions of Te Keepa and other elders to ‘make a better use of the little land remaining’, and pressed him for some way of dealing with Ōhotu immediately. Carroll ‘recognised that they should sell no more’, and said that ‘facilities would be given enabling the land to be leased and settled’. The Government would ‘help them in every way towards attaining this end’ and ‘intended to introduce the necessary legislation [in the] next session, particularly with regard to developing the large and valuable Ōhotu block’. Seddon incorporated a number of the Ōhinemutu proposals into new Bills in time for the next session of Parliament. Whanganui Māori were among a large delegation that went to Wellington in September to express to Seddon and Carroll their support for the proposed legislation and to press for its speedy introduction to Parliament. Waikato Māori, who opposed previous legislation, were apparently absent from the meeting in Wellington, but ‘Hiponga’ of Whanganui (probably Waata Hipango) assured Seddon that the Waikato people were also in agreement.

Parliament debated and passed the Maori Lands Administration Bill in October 1900. All the Māori politicians spoke in support of the Bill. Hone Heke, member for Northern Maori, said that although the Bill did not deliver some things Māori wanted (such as a complete ban on sales, and provisions for Māori farming), he thought that, overall, they were ‘satisfied with this compromise’. During the debates, Carroll argued strongly that Pākehā needed to trust Māori to manage their own land and give them control of it. Previous Pākehā legislation and management of Māori land had led to a ‘terrible mixed-up state of things’, but the current Bill represented an opportunity for Māori ‘to improve their position – to control their own affairs’. According to Carroll, Māori ‘want their
own affairs to be intrusted to themselves to this extent: that they shall, through their own Councils, see that their lands are well leased and well disposed of’. He added that ‘the general policy of the measure is to give the Natives the control of their own lands, that they may assist in promoting settlement by getting the land cut up and let.’ Archibald Willis, the member for Wanganui, asserted that many Māori from his area had visited him and urged him to support the Bill. 

14.4.5 Land management under the 1900 regime

The preamble to the Maori Lands Administration Act 1900 set out some background and stated the Act’s objectives. It said, first, that Māori had petitioned the Queen and Parliament requesting the retention of the remaining Māori land (about five million acres), for their use and benefit. Secondly, the Crown, in the interests of both Māori and Pākehā, wanted to make provision for the

better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive, and for the encouragement and protection of the Maoris in efforts of industry and self-help.

Thirdly, ‘better administration’ was necessary in order to prevent ‘useless and expensive dissensions and litigation’ concerning Māori land.

The Act provided for land that Māori needed for occupation to be set aside so that they would not become landless; for Pākehā settlement of Māori land to continue, but through leases rather than sales; and for the establishment of new entities called Māori land councils, to assist in managing the land. At least six Māori land districts, with a Māori land council to administer each district, were to be created. Each council would be set up as ‘a body corporate, with perpetual succession and a common seal’.

The land councils fulfilled several important administrative and judicial roles. They were given many of the same powers as the Native Land Court to decide on titles, partition, succession, and the appointment of trustees. Their first task was to determine ‘with all convenient speed' how much land each Māori in the district owned, and how much of that they required for their ‘maintenance and support and to grow food upon’. The council was to issue a certificate declaring such land as papakāinga for Māori, and as such absolutely inalienable. No other land was to be alienated without this certificate first being produced, or at least a notice from the council that land had been identified preparatory to a certificate being issued. The council could then deal with the remaining land according to the Act’s alienation provisions.

(1) Options for Māori landowners under the 1900 Act

For land with multiple owners, Māori had several options. They could:

- arrange a lease or mortgage privately;
- vest their lands in the land council in trust;
- request that the land council administer the land in a similar manner to Crown land; or
- sell their land, subject to certain conditions.

In this inquiry, most claims about this regime relate to the second point, the councils’ trustee role, but for the sake of completeness we outline all the options.

Where Māori owners arranged leases or mortgages privately, the council was meant to act as a safeguard for owners, who had to get its approval to lease or mortgage their land. For leases, the legislation prescribed conditions that had to be fulfilled in order to get council consent. If in agreement, the council recommended to the Governor that he remove alienation restrictions on the land, which the Governor would announce by proclamation.

(2) The option of vesting land in the council

Alternatively, Māori could vest their lands, which involved transferring legal ownership of the land in trust to the land council. This is what many landowners in Whanganui decided to do. The Act required all the owners to consent unanimously to the vesting, unless owners formed an incorporation, in which case the incorporation committee could authorise a transfer of the land with the consent of a majority of owners. Once the owners vested their land, the land council could, at the request of a majority of owners, reserve part of the land for Māori ‘occupation and support’. These areas would be completely inalienable.
The land council had power then to deal with the remaining land. Subject to written terms agreed between it and the owners, it could lease, partition, manage, improve, and use it as security for loans. It could not sell it. Another type of administration was also possible, under section 31. A majority of owners could request that the land council administer their land in the same way as Crown lands were administered by a land board under the Land Act 1892. The land council would not have the right of sale, but the terms and conditions of the leases would follow standard Crown terms. Dissenting owners could have their interests partitioned out. This option does not appear to have been taken up in Whanganui, and according to historian Dr Loveridge it is unlikely that it was much used nationally.

Under the new regime, Crown and private purchases begun before the 1900 Act could be completed. New Crown and private sales were possible, subject to the lifting of any restrictions on the land and the Governor’s consent. Māori were also required to hold a papakāinga certificate from the land council in order to be able to sell. In practice, new sales would be limited while the Government’s policy remained not to allow further Māori land purchasing. We return to this aspect of the 1900 Act in chapter 15.

14.4.6 Māori representation on district land councils
Under the 1900 regime, the size of each council, and the number of Māori members, was variable. Each council was to have between five and seven members, comprising a president appointed by the Government, two or three members also appointed by the Government (at least one of these to be a Māori), and two or three Māori members to be elected by Māori. The regulations of 1901 specified that the Governor would decide the number of land council members for each district.

In practice, the president was nearly always a stipendiary magistrate or Native Land Court judge, and therefore Pākehā. For a quorum, a majority of council members was required, always including at least one Māori member.

Elections for the Māori members were to be held in a manner similar to the parliamentary elections for Māori seats. On an appointed day, eligible voters (that is, all Māori of the district aged 21 and over) would nominate candidates. Every male was eligible for nomination in the district where he resided. A show of hands decided the election, unless either a candidate or an elector demanded a poll, whereupon new arrangements would be made for voting at appointed places.

Depending on the make-up of the council, the system could result in Māori having a minority of votes at council meetings. The president had two votes: a deliberative and a casting vote. The maximum number of Pākehā council members was three, while the minimum number of Māori was also three. There could therefore be a council of six with even numbers of Māori and Pākehā. If a vote was split between Māori and Pākehā on such a council, and the president exercised his casting vote, Māori could be outvoted four to three.

Speaking in Parliament, Seddon implied that if there were any question of conflict between council members, he expected Government-appointed Māori members to support Crown policies. He reassured the House that in five- and seven-member councils, Government appointees would predominate, so that ‘the Government practically has a majority’. Carroll stated that the Government had been careful ‘to introduce safeguards so as to insure the best representation on the Councils’, whatever that might have meant. He also spoke of giving Māori ‘the control of their own lands’ through ‘their own councils’, suggesting he saw the councils as Māori-controlled bodies.

Whatever the intention, Māori ended up as a majority in both numbers and votes on five councils; a majority in numbers and equal in votes on one (Waikato); and equal in numbers and a minority in votes on another (Hikairo–Maniapoto–Tūwharetoa). The Aotea land council was one of the largest councils, with two Pākehā members (including the president) and five Māori, two appointed and three elected.

14.4.7 The Aotea District Māori Land Council
By 1903, seven Māori land districts were set up, each with its own Māori land council (later Māori land board). The Aotea district covered most of the land in the Whanganui
inquiry district. Some land in the north of the district, principally Taumarunui, came under the Hikairo–Maniapoto–Tūwharetoa district. The title of this district was changed to Maniapoto–Tūwharetoa from October 1902 (and was amalgamated with the Waikato district in 1910, becoming the Waikato–Maniapoto district).³⁹

In the Aotea district, there were elections in May 1901 for the three elected Māori members. Eleven candidates stood, and voters cast 3,186 votes at 50 polling stations.⁴⁰ In December 1901, the first district Māori land councils were announced. The members of the Aotea District Māori Land Council were: Native Land Court judge William James Butler (president); Thomas William Fisher, Rū Rēweti, and Taraua Utiku Marumaru (appointed members); and Takarangi Mete Kingi, Waata Wiremu Hipango, and Te Aohau Nikitini (elected members).

The same five Māori members remained on the Aotea District Māori Land Council for the four years of its existence.⁴¹ They were men prominent in the community, experienced in land affairs and politically active (see sidebar opposite). Mete Kingi and Hipango had interests in Māori land in the district, while the others married Whanganui women with land interests.

Of the Pākehā members, presidents rapidly succeeded each other up until 1906. Indeed, William Gilbert Mair had already replaced Butler by the time the council assembled for its first meeting on 21 February 1902 (although Butler took over again at the end of the year). The presidents were: William James Butler (14 December 1901); William Gilbert Mair (8 February 1902); Butler again (17 November 1902); Henry Dunbar Johnson (31 March 1904); and Thomas William Fisher (12 August 1905). Butler, Mair, and Johnson were all Native Land Court judges at the time of their appointments.⁴²

Fisher was an important figure in Māori land administration in Whanganui. In the 1870s and 1880s he owned a general store in Waitōtara. A fluent speaker of te reo Māori, in 1895 he became an agent, collecting and distributing rent for the Public Trustee and the West Coast Reserves Agency. In February 1907, he was appointed as a Native Land Court judge. From the same date, he was also Under-Secretary of the Native Department, a post he held until October 1916. Despite his appointment to the Native Department in 1907, Fisher remained president of the Aotea Māori land board until 1910. When Fisher was appointed president in 1905, Robert Sim, previously an official in the Maori Lands Administration Department, was appointed as the other Pākehā member.⁴³

14.4.8 The Maniapoto–Tūwharetoa land council
A small amount of land in the north of our inquiry district came under the Maniapoto–Tūwharetoa District
Aotea Māori Council Members

Takarangi Mete Kingi (c.1845–1914), son of Mete Kingi Te Rangi Paetahi, member of the House of Representatives for the Western Māori seat in the 1870s, brother of Hoani Mete Kingi, and husband of Raita Tukia of Ngā Poutama. Mete Kingi was a member of the Wanganui Māori Council, and a native health commissioner and inspector from the early 1900s. He was an owner in the Ōhotu block and signed the deeds vesting Ōhotu in the Aotea land council.1

Waata Wiremu Hipango (c.1853–1915), son of Hoani Wiremu Hipango. He conducted title hearings in the Native Land Court in the 1880s and 1890s, such as the Urewera, Puketarata, Ramahiku, and Taumatamāhoe blocks. He was an owner in some of the Pūtiki blocks, several of which he leased out in the 1880s. In the early twentieth century, he was an important spokesman for Māori on land affairs, being chairman of the union formed in 1909 to seek the return of land in the West Coast Settlement Reserves to Taranaki Māori, and giving evidence to the 1912 royal commission on the issue.2

Rū Rēweti (also known as Lewis (or Louis) Davis), of Ngāti Manu, Ngāti Raukawa, and Pākehā parentage, son of Henry Davis and Ihipera Tīaho Pōmare, and husband of Wikitōria Taitoko (daughter of Te Keepa Te Rangihiwinui). Described in his obituary as ‘a prominent figure in all Native Land Court work, being engaged as conductor by the different tribes’, he was the spokesman for the Māori committee formed to take the Ōhotu block through the court in 1897. He was secretary and treasurer for the committee of Whanganui chiefs formed in Wanganui in 1898 to publish Te Tiupiri / The Jubilee, a bilingual Māori newspaper. He stood for the Northern Māori seat in 1905, but was unsuccessful. He was only 44 when he died in 1906.3

Te Aohau Nikitini, also known as Neville Nicholson, of Ngāti Raukawa and Pākehā parentage. Nikitini worked as an agent for Māori in the Native Land Court. In 1896, he claimed land interests on behalf of his wife Ngākura Te Aohau, in the Wharepū, Maraetaua, and Taonui blocks. Ngākura was the daughter of the Ngā Poutama chief Rēneti Tapa. Nikitini also claimed rights on behalf of his wife in the Kaitangata title hearing in 1895, and he purchased three Kaitangata blocks in the 1920s. He too was on the publishing committee for Te Tiupiri / The Jubilee.4

Taraua Ūtiku Marumaru, of Parewanui, Rangitīkei, son of Ngāti Apa chief Ūtiku Marumaru, married two daughters of Whanganui rangatira, Mete Kingi. He was chairman of the Kurahaupō Māori Council and was also elected to the Wanganui Agricultural Association in 1903. He died in 1911 at the age of 48.5

Clockwise from top right: Takarangi Mete Kingi, Waata Hipango, Rū Rēweti, Taraua Marumaru, and Te Aohau Nikitini

Downloaded from www.waitangitribunal.govt.nz
Map 14.1: The seven Māori Land Council districts set up by the Maori Lands Administration Act 1900.
Māori Land Council. We have less information about this council, but we introduce it here because it set up the Taumarunui Native Township, the subject of chapter 17.

Originally called the Hikairo–Maniapoto–Tūwharetoa Māori Land Council, the Governor proclaimed its establishment in December 1901. By mid-1902, all the members were in place. They were: George Wilkinson (president); John Elliot and John Ormsby (appointed members); and Pēpene Ēketone, Eruiti Ārani, and Te Papanui Tamahiki (elected members). After 'Hikairo' was removed from the title in October 1902, it was called the Maniapoto–Tūwharetoa district.

Māori living in Taumarunui would have preferred to be under the Aotea District Māori Land Council. In mid-1901, Lawrence Grace was acting for the Government in setting up the district land councils. He conducted a poll of Māori landowners in various Māori settlements in the area on the proposed boundaries. At Taumarunui, he took the votes for 40 adults, and trustees representing 78 minors. Voters were almost unanimous in preferring the Hikairo-Maniapoto-Tūwharetoa boundary line to an alternative proposed by the Kīngitanga. However, at the same time they also protested that 'their lands about Taumarunui form part of the Whanganui tribal estate, and . . . they should have been included in the Aotea Maori Land District.' They asked Grace to tell the Premier of their desire to be joined with the Aotea district in the future.44

14.4.9 Whanganui Māori support the 1900 regime

Whanganui Māori embraced the new Act. In December 1901, they met with Native Minister Carroll at Hiruhārama on the Whanganui River, and then again in late February, or early March 1902, on which occasion Patrick Sheridan and council president Mair were also present. Sheridan, former chief land purchase officer in the Native Department, was the head of a new department of Maori Land Administration, set up to coordinate administration for the district Māori land councils.45 At these meetings, Māori landowners agreed in principle to vest large acreages, including much of the Ōhotu block, in the Aotea land council.46

(1) Seddon explains the new regime at Pūtiki

In December 1902, Māori leaders from many parts of the lower North Island attended a meeting at Pūtiki to hear Seddon explain the new Māori land policy. Accompanying him were Carroll, Māui Pōmare (then in charge of Māori local councils), and Hone Heke (member of the House of Representatives).47 Seddon said that the policy was intended to conserve Māori land 'so that the natives themselves might live', and – one of the Crown acknowledgements we quoted earlier – to put their control 'in the hands of the natives themselves with the assistance of the Government'.48

Seddon also talked about the need to provide for both Māori and European settlement, and to make the land productive. He was chary about committing any funds, though. He hoped the Ōhotu block could be settled without 'costing the colony a penny piece'; surveys would not be free as requested; and interest would be charged, although repayments would be extended over a reasonable period of time. He said council members did not usually get free travel, but he would ask the relevant minister what might be done about a discount. He did think that the legislation was consistent with advancing loans from the Advances to Settlers funds on Māori land in the same way as European lands. He also observed that it was encouraging that Māori were now requesting roads and bridges, and Māori would have the same opportunity as Europeans for work on roads. He 'believed that Ōhotu would lead the way, and historians would be able to point to it as the first successful settlement' under the new legislation. He added that the Government wanted to designate an official who would be responsible for 'the expeditious survey' of the land. Finally, he asked whether they approved the policy he had just explained. Several Māori leaders made speeches in favour, including Takarangi Mete Kingi who announced that 'his people were prepared to hand over 100,000 acres in the Ohutu [Ōhotu] for the purposes mentioned by the Premier'.49

(2) Amendments

In 1900, Carroll had emphasised that the Government would later amend the Act if necessary. Subsequently,
amendment Acts in 1901, 1902, and 1903 aimed to enlarge both the judicial and administrative powers of the councils, and increase the amount of land vested in them. For example, there were new provisions for councils to create and administer native townships. From 1901, a majority rather than all owners could vest a block, making it easier to vest land. An amendment in 1903 required a response from the Governor within six months to any request from the land councils to remove restrictions on land to enable mortgaging. This responded to complaints that council recommendations were languishing with Sheridan’s Department of Māori Land Administration, sometimes for months, before going on to the Governor. There were elements of compulsion in some of the amendments to do with vesting land, such as the provisions for native townships. Also in this category was the 1903 amendment enabling the Native Land Court to order the vesting of land – if the majority of owners did not oppose it – for the purposes of its being leased out (rather than sold) in order to repay survey debts. Then in 1904 came...
provisions empowering the Native Minister to order land to be vested and leased to pay outstanding rates, without owners’ consent.\(^{53}\)

Turning briefly to other aspects of the Aotea land council’s duties, Selwyn Kātene’s study of the council showed that a large part of its business was recommending the removal of restrictions on land and approving or refusing consent for private leases and mortgages. It also recommended the removal of restrictions for private sales, although details of such transactions are available only for lands outside of the inquiry district and we do not know if the council approved any private sales within the Whanganui district.\(^{54}\)

**14.4.10 Conclusions on the 1900 Act**

Before 1900, Māori rejected the Crown’s proposed measures for administering their land as too centralised, too Crown-controlled, and lacking Māori representation. The 1900 regime incorporated a number of features that created a fairer, more representative system. The Aotea District Māori Land Council gave Māori a majority voice, and the substantial elected component of that Māori representation meant a degree of council accountability to owners. The system was also voluntary, it encouraged leasing rather than sales, and had safeguards to prevent landlessness. Māori had asked for all of these things in lengthy negotiations prior to the Act. Perhaps the main shortcoming in the regime as it was originally set up was a lack of focus on encouraging Māori to farm land themselves. Hone Heke pointed this out in parliamentary debate, but it was not a subject of much discussion at the time. Overall, the 1900 regime was the outcome of a long interaction between the Crown and Māori that saw compromise on both sides. For this alone, it was an important milestone in the relationship between Māori and the Crown.

The 1900 Act had special significance for Whanganui Māori, because Te Keepa played a leading role in seeking compromise with the Government, and in encouraging his people to take the path that eventually resulted in the Act. Approaching the end of his life, in 1897, he specifically asked that the Crown save the land and his people.

In 1898, after his death, Seddon and Carroll both acknowledged the obligation, and Whanganui never forgot it.

**14.5 Changes to the 1900 Regime**

**14.5.1 Introduction**

In this section we consider changes to the 1900 Act, the reasons for them, and their effect.

Beginning in 1905, the Liberal Government radically altered the regime instituted in 1900, renaming land councils as land boards, reducing Māori representation, making vesting compulsory, resuming Crown purchase of Māori land, and gradually dismantling restrictions on the alienation of Māori land generally.

In 1912, the election of the new Reform Government led by Prime Minister Massey, with William Herries as Native Minister, heralded further changes. Herries was in favour of unrestricted dealings in Māori land, and disliked the use of land boards to administer Māori land. The new Government soon did away with Māori representation altogether, combined the personnel of the Native Land Court and land boards, and put in place a number of measures to facilitate the alienation of Māori land.\(^{55}\)

After that, the system stayed fundamentally the same until 1952, when the Crown abolished land boards and replaced them with the Māori Trustee.

**14.5.2 Why did the regime change?**

One of the main aims of the Maori Lands Administration Act 1900 was to make provision for ‘the better settlement and utilisation of large areas of Maori land at present lying unoccupied and unproductive’.

After only a few years of operation, there was a public reaction against the land councils. The various amendments to the regime seem to have done little to speed up council processes; both Māori and Pākehā complained of their slowness. In some districts, Māori remained cautious about transferring land to the council, and some remained opposed to the whole idea of vesting land in trust. Other Māori wanted to strengthen the councils’ finances, increase their powers to approve private transactions, and make them more efficient.\(^{56}\)
Settlers were not convinced that this was happening quickly enough, however. A 1904 royal commission on land settlement commented that '[t]he settlement of the North Island [was] very much retarded by the extensive areas of unoccupied Native lands that are scattered over it.' According to Stout and Ngata in 1907, the ‘vigorous settlement of Crown lands’ under the Land Act and the Land for Settlements Acts of the early 1890s was rapidly exhausting the available supply of lands suitable for close settlement. The result was, as they noted wryly in their report, ‘the agitation of 1904 and 1905’, which ‘forced the Crown once more into the field to resume its purchases.’

Dr Loveridge suggested that the problems of Māori not vesting enough land and not enough land being made available for settlement were ‘as much one of perception as of reality’. Māori did complain about land councils, but there is evidence that they were gaining confidence in the system, and by 1904 were vesting more land. However, any increased Māori support was too late to prevent major change.

(1) Change afoot
In 1905, with an election due in December, there was intense political and public pressure on the Government. Premier Seddon and Native Minister Carroll told Māori at hui in Raglan and Rotorua in March that change was needed. They seemed to be inclined to compel Māori to vest their lands, but at the same time suggested that they would strengthen measures to enable Māori to farm the land themselves. Unlike the period before 1900, these meetings in 1905 did not kick-start a sustained period of discussion, negotiation, and compromise.

There was some discussion about possible change to the system in early September 1905, when the Native Affairs committee examined a large petition from Ngāti Maniapoto. Pēpene Ēketone, a member of the Maniapoto–Tūwharetoa District Māori Land Council, was the spokesman, but Te Heu Heu Tūkino, the Ngāti Tūwharetoa paramount chief, supported the petition and also gave evidence. There was wide-ranging discussion about the main reforms put forward in the petition, including the need to strengthen the councils with better finance and to give more power to approve leases. They did not want a radical change in the numbers or composition of the councils, nor were they in favour of compulsory vesting. The petition asked that councils have five members, with two Europeans appointed by the Governor and three members elected by local Māori. Ēketone explained that they wanted to keep elected Māori members on the council in order to maintain the councils’ accountability to owners. Carroll suggested it would be ‘conducive to freer action’ if councils were reduced to three Government-appointed members, but Ēketone insisted on five. Carroll responded that perhaps it would be better to have the Governor appoint six members from men nominated by Māori, which Ēketone agreed sounded satisfactory, ‘because, first of all, it would save the colony’s money, and, secondly, the Māori people would still have a voice in the matter. That is all I am trying to preserve.’

(2) Carroll introduces new Bill just before the election
Carroll then introduced the Maori Land Settlement Bill to Parliament on 27 September 1905. It was debated and passed in October. There were now Māori land boards rather than councils, and more significantly there were only three members, a president and two others, one of whom had to be Māori. None was elected; the Governor appointed them all. Carroll justified the measure as avoiding the expense of elections; he maintained that the new system was just as capable of producing suitable board members. The Governor, he said, would always be able to ‘discriminate as to their qualifications before selecting those whom he thinks fit, capable, and competent to be members of that Board.’ But other Māori politicians opposed this aspect of the Bill, Hēnare Kaihau and Wi Pere denouncing it as a return to Government control over the alienation of Māori land.

Kātene conjectured that the reduction of Māori representation in 1905 was a response to the actions of the Māori members of the Aotea land council, who in 1904 refused to agree to perpetually renewable leases for vested lands – even though Carroll was in favour. Historian Tony Walzl also thought it possible that there was such a connection.
the refusal of the Māori members of the Aotea Māori land council to agree to perpetual leases on vested lands, Sheridan wrote to Carroll 'I am afraid the council by its action . . . has sounded its death knell'. We do not know whether Carroll responded.  

We do not discount the possibility that Māori councillors’ opposition to perpetual leases at least contributed to the downfall of land councils.

Hone Heke, the member for Northern Maori, speaking in Parliament on 17 October gave an account of the variety of Māori opinion on the 1905 Bill. He said that Māori had come down from Whanganui to meet Seddon and Carroll in Wellington during the debates on the Bill. He said the Ministers agreed that

the Council or Board should administer their large lands by way of lease, instead of allowing the Board to sell such lands – if there were surplus lands, the Board should have control of it only for leasing purposes.

Dr Loveridge suggested that Carroll ‘saw compulsory vesting as the only means available to forestall’ a return to sales. If so, the strategy was unsuccessful.

In summary, it appears that Carroll was behind the introduction of three-person, Government-appointed Māori land boards. In September 1905, he talked of the changes achieving ‘freer action’, perhaps meaning it would allow the councils to deal with land more quickly; in October, he said it would save the expense of elections. There is no evidence that Whanganui Māori asked for the changes and, apart from the meeting with Carroll and Seddon in Wellington, they appear to have had no opportunity for input.

14.5.3 The Stout–Ngata commission of 1907

Responding to the continual pressure to make Māori land available for settlement, the Government set up a royal commission. On 21 January 1907, Chief Justice Sir Robert Stout and member of Parliament for Eastern Maori Āpirana Ngata were commissioned to inquire into native lands that were ‘unoccupied’ or ‘partially and unprofitably unoccupied’, and to make recommendations as to how ‘such lands should be profitably occupied, cultivated and improved’. The commissioners were asked to identify areas of native land that could or should be set apart ‘for individual occupation of the Native owners, and for purposes of cultivation and farming’, or as ‘communal lands for the purposes of the Native owners as a body, tribe or village’. They were also asked to indicate where Māori land might be made available for the settlement of Europeans.

This commission of inquiry undertook the most
important investigation of Māori land up to that point in colonial history. In Whanganui, it had particular significance, leading to land being vested for Māori occupation, and in the following chapters we explore its findings and recommendations in depth.

In May 1907, the commissioners came to Whanganui, where tangata whenua expressed heartfelt complaints against the scheme for vesting their land in the land council or board, alleging 'delay, expense, and loss of freedom of dealing'. They preferred to lease land privately, which the 1905 Act now enabled them to do.70

The commissioners, though, were supporters of the Māori land boards, of land being vested in them, and of the supervision they offered. They recommended no reduction in their role, and did not comment on the reduced Māori representation. They recommended that the boards be ‘constituted as at present’, but with presidents to be Government officers, paid by the Government, and experienced in ‘cutting-up’ and leasing land.71 The most innovative part of the commissioners’ report was their practical recommendations for how Māori could use and occupy their land.
14.5.4 Māori representation on Whanganui land boards
In accordance with the Maori Lands Settlement Act 1905, the Aotea District Māori Land Council became the Aotea District Māori Land Board on 6 March 1906. Membership was reduced to three. Takarangi Mete Kingi was the one Māori member; Thomas Fisher was the president; and Harry Lundius, the other member, was a Crown lands ranger. The disillusionment with the vested land scheme that Whanganui Māori expressed to the Stout–Ngata commission – perhaps exacerbated by their reduced representation on the board – may help to explain why they later supported moves to amalgamate the Aotea land board with the Native Land Court.

(1) Moves to change the land boards
Those moves began in August 1912, when Te Whatahoro Jury and Weraroa Kingi Taitoko led a delegation to meet Native Minister Herries in Wellington. They presented a petition indicating that communications with the Aotea land board were under strain. Owners were not fully informed about the board’s actions, and there were other problems with the vested lands. Among other requests, Te Whatahoro asked that the land board ‘be amalgamated with the Native Land Court and be made one office, for the reason that these two tribunals have one work to present and that was in connection with Native land’. He also objected to assessors no longer working in the Native Land Court. Now, he said, courts were ‘filled with Agents and Solicitors’. He wanted assessors reinstated and paid a proper salary, because they could ‘give the Court a good deal of advice and elucidate many matters that came before them’. The role of the one Māori member on the land board was not mentioned. Herries approved amalgamating the two bodies, and he assured the delegation that any new Bill would be ‘submitted to the Chiefs or the Natives to see whether they could suggest anything better or to get their approval’ (see section 18.4.3(1)).

A few months after this meeting, in February 1913, Whanganui Māori, including Takarangi Mete Kingi and Waata Hipango (former land council member), met Herries at a hui at Hīruhārama. The Wanganui Herald reported that Hipango read out 19 requests to the prime minister on behalf of the new ‘Union of Wanganui tribes’. The first request was that the Government prohibit sales of land not already subdivided. Other requests focused on assistance for developing land, voting rights, and a reduction in death duties. Again, they asked for amalgamation of the land boards and the land court, and for assessors to be appointed. Herries reiterated his approval of amalgamation, and said that he would take the advice of Native Land Court judges about assessors.

(2) Native Land Amendment Act ends Māori membership
The Native Land Amendment Act 1913 made the boundaries of the Māori land districts and court circuits the same, and reduced the number of members on land boards to two: the judge and registrar of each Native Land Court. There was provision in the Act for judges to appoint a Māori assessor to assist in particular cases, but we do not know if this ever occurred in Whanganui.

Herries explained the changes in Parliament, saying ‘I have practically made the Native Land Court and the Maori Land Board the same’. The former Native Minister, Carroll, protested the loss of a Māori voice on the boards, for it was ‘a universal principle recognized by all civilized races, that there should be representation on any board dealing with the interests and property of those concerned: Others supported his sentiments, but to no avail.

On Mete Kingi’s death in July 1914, Judge Jack, president of the Aotea District Māori Land Board, sent a message of condolence. He wrote that working with Mete Kingi taught me to respect his opinion on all matters affecting the welfare of the Maori people, and to recognise in him a man with a lofty sense of the trust imposed on him as representative of the Maori people on the Board. In all his thoughts he was essentially a true Maori. When the exigencies of the changed law compelled his retirement from the Board after twelve years’ service, we parted with mutual regret.

Thereafter, Whanganui Māori had some influence in farm management at Morikau and Rānana, but otherwise had little formal connection with the Aotea land board. In
the 1930s, Hoeroa Marumaru was employed by the Native Affairs Department, and after the Second World War Rangi Mete Kingi also worked for the department, but no Māori filled the post of land board president or registrar in the Aotea district until much later.\footnote{78}

(3) \textbf{Parallel changes for Maniapoto–Tūwharetoa district}

In the north of the district, the Maniapoto–Tūwharetoa District Māori Land Council became the Maniapoto–Tūwharetoa District Māori Land Board in March 1906, with three appointed members. The first three members were George Wilkinson as president, with members James Seymour and John Ormsby, who had a Ngāti Maniapoto parent. In June 1910, the Maniapoto–Tūwharetoa board was amalgamated with the Waikato board, becoming the Waikato–Maniapoto District Māori Land Board.\footnote{79}

In 1914, when land board district boundaries were reorganised to become the same as Native Land Court districts, parts of Ōhura South B, C, D, and M were included in the Aotea district. The rest, however, including Taumarunui, was in the Waikato–Maniapoto district. Here as elsewhere after the 1913 amendment Act, the land board now comprised two people, the district Native Land Court judge and registrar as president and board member respectively.\footnote{80}

The level of owner influence and connection with the land boards remained a national issue. The 1936 Māori Labour conference called for the land boards to be more accountable to owners, but with little apparent effect. In 1939, Ngata commented on the general tendency of the administration to exclude Māori from administrative positions. In 1948, another call from Māori for Māori members on Māori land boards was circulated to Māori land board presidents. Most, including Judge Dykes at Wanganui, resisted the idea as an unnecessary complication of board business, and the proposal was not taken up.\footnote{81}

\textbf{14.5.5 The district Māori land boards in Whanganui}

We describe the Aotea District Māori Land Board’s operations in Whanganui in following chapters, and give only a snapshot here.

The Aotea board’s operations increased substantially in the 1910s. Given its reduced membership and minimal resources, there are inevitable questions about its capacity to manage its responsibilities.\footnote{82} For instance, in Whanganui, the Aotea board’s responsibilities for vested land increased in the 1910s, when it took over management of Pipiriki Native Township, and it also became involved in farming Māori land at Morikau and Rānana. It was also increasingly involved in the confirmation of leases and sales. After the removal of restrictions on leasing in 1905, a large part of its business became giving approvals for leasing. From 1902 to 1905, under the land council, 13,178 acres were leased in the inquiry district; from 1906 to 1909, under the board, that figure almost doubled – to some 25,389 acres – with most new leases in the east and south of the district.\footnote{83}

In 1906, the district Māori land boards resolved nationally on a set of standard rules to be followed when approving leases, or recommending the removal of restrictions, or consenting to sales and mortgages.

In Whanganui, Lundius and Mete Kingi had suggested several amendments they believed would strengthen protection for Māori, but their president, Fisher, agreed with none of them. Owing to a misunderstanding, their suggestions were not forwarded to the Under-Secretary of Native Affairs until three days after the new rules were published in the \textit{New Zealand Gazette}, so they had no impact.\footnote{84}

The Māori land boards’ other main business was the administration of sales. In brief, the Native Land Act 1909 signalled a change of policy away from encouraging owners to vest their land in boards, to owners themselves selling and leasing land, although with continued land board supervision.\footnote{85} The effect nationally was to facilitate sales. After 1909, very little land was vested in Whanganui but the Aotea District Māori Land Board’s administration of sales greatly increased. We explore this further in chapter 15.\footnote{86}

\textbf{14.5.6 The end of the land boards}

By the late 1940s, the Government wanted to simplify Māori land administration. It viewed the land boards with some dissatisfaction, at least in part because of their
independence from direct Government authority. In 1949, the Under-Secretary of the Māori Affairs Department suggested replacing them with new district boards consisting of a locally nominated Māori member, the district registrar of the Māori Land Court, and a Crown official such as the commissioner of Crown lands or superintendent of land development. The land boards and the Māori Trustee were doing similar land development work, he told the Minister of Māori Affairs, and this was leading to confusion. Moreover, the land boards, as separate corporate entities, were not obliged to follow Government policy and ‘can follow their own wishes regarding work and systems’.

In 1951, the under-secretary again expressed his view that although the land boards were ‘instruments of Government’, the problem was ‘they [were] not answerable to any authority’. He thought it ‘fundamentally wrong that Judges of any Court should be mixed up in administrative duties’. The same year, a royal commission reported unfavourably on the land boards’ management of vested lands, in Whanganui in particular, which Dr Loveridge told us might have influenced the Government’s decision to abolish them. In 1952, the Maori Land Amendment Act discontinued the land boards and transferred all their powers and duties to the Māori Trustee.

14.5.7 Conclusions
The Māori Land Settlement Act 1905 undermined the 1900 system to the detriment of Whanganui Māori in several important ways: the removal of majority Māori representation, the introduction of compulsory vesting, and the reintroduction of Crown purchasing. The changes were arguably more adverse for Whanganui Māori than for Māori elsewhere, for they had embraced the council system. They elected their leading rangatira as members in 1901, and then vested a great deal of land in the council. Seddon’s addresses to Whanganui Māori at the turn of the century championed the protection of remaining Māori land for Māori use and benefit, with the Crown assisting Māori administration and control. These principles were cast aside to facilitate a return to large-scale land acquisition.

14.5.8 The Extent of Crown Obligations

There was minimal discussion prior to the 1913 changes which saw the combination of land court and land board personnel. There is irony in Carroll’s being the lone voice protesting the total removal of Māori representation, when he himself dramatically reduced Māori membership on the boards. His protest was in any case ignored. In Whanganui, however, Māori twice requested the amalgamation of the court and the board. Claimants and the Crown have disagreed over the significance of this, with the Crown suggesting that Māori may not have seen representation on the land board as important. In our view, Whanganui Māori land owners were clearly interested, as were many Māori, in making the administration of their land more efficient, and that concern lay behind their support for amalgamation. We do not know whether they realised that amalgamation would involve the removal of Mete Kingi from the Aotea board. We agree with claimants that the political reality of the situation made it less likely that Whanganui Māori would press for the reintroduction of elected representation, but we think it significant that they twice requested that permanent Māori assessors be appointed to any amalgamated district land court/board, strongly suggesting that they wanted a Māori hand somewhere on the tiller.

With no seat on the boards, Māori drifted further away from administering their land. While the Aotea District Māori Land Board managed their land, and particularly after 1913, Whanganui Māori had little say in the board’s decision-making. As the Native Department became more involved in farming Māori land, and employed local men such as Hoeroa Marumaru and Rangi Mete Kingi, the board did have more access to Māori views. Nevertheless, formal Māori authority was entirely absent.

14.6 The Extent of Crown Obligations

14.6.1 Introduction
A key issue in this inquiry is to what extent the Crown should be held accountable for certain decisions and actions of the Aotea District Māori Land Council and Board when they were carrying out their duties as trustees of Māori land. Moreover, to what extent should the
Tribunal investigate the actions of land councils and land boards, given that its jurisdiction is to examine Crown actions and policies?

These questions are relevant for our investigations into land management in subsequent chapters. We had detailed submissions on them, which we address in the relevant chapters. Here, we outline our general views. We begin by summarising previous Tribunal findings about the Public Trustee and the Māori Trustee, two bodies which have similarities with the district Māori land councils and land boards.

14.6.2 The Public and Māori Trustees – Crown agents?
Other Tribunals have considered whether the Public Trustee and the Māori Trustee were Crown agents, so as to make the Crown responsible for their actions.

The Tribunals for Te Whanganui-a-Tara and Te Tau Ihu followed the courts in applying what is known as ‘function’ and ‘control’ tests to determine Crown agency. These tests involve asking first, were the trustees carrying out Crown functions?; and secondly, were they under the control of a Crown minister? If the answer to these questions was yes, then they were Crown agents. In relation to control, the courts have consistently found that it is de jure control, or the control that a minister is legally entitled to exercise, that is relevant – not control that a particular individual may happen to exercise. The Tribunals found that the Public and Native/Māori Trustees cannot be considered Crown agents. The Crown created the statutory framework for the trustees and regulated their actions, but under the law the trustees acted on behalf of their beneficiaries, not the Crown, and were not under the control of a minister of the Crown. The Whanganui-a-Tara Tribunal said of the Public Trustee:

it is clear that the primary obligation of the trustee was, at all times, to the beneficiaries whose property he held on trust. If he failed to measure up to his fiduciary obligations, he was amenable to the control of the Supreme Court at the suit of an aggrieved beneficiary.

In other words, if trustees failed to fulfil their duties, the remedy available to beneficiaries was to take them to court.

There may be particular situations where the Crown remains responsible for the actions of the Māori Trustee. The Te Tau Ihu Tribunal made such a finding in relation to the management of native reserves in the Nelson area. This arose against a background where the administration of the native reserves was previously under Crown control. The Tribunal said:

the fact that management of native reserves was central to the responsibilities of the colonial Government . . . is nonetheless persuasive in determining that the trustees were carrying out the Crown’s Treaty obligations.

The Crown handed over the management of the reserves to the Public Trustee in 1882, which the Tribunal saw as a case of the Crown attempting to fulfil its Treaty obligations by passing its responsibility to an independent trustee. The Crown was nevertheless obliged to see that ‘adequate safeguards exist to ensure that Treaty duties encumbent on the Crown are not breached’, and the Crown had to ensure that trustees continued to fulfil the Crown’s obligations ‘in a manner consistent with the Treaty’.93

The Tribunal for the Te Urewera inquiry found that the Crown was responsible for the actions of the Māori Trustee when he was fulfilling that part of his duty that involved distributing money that the Crown owed to Māori, such as compensation for public works and debenture payments for land. In such situations, the Crown, as debtor to Māori, remained responsible for ensuring that Māori were paid.94

The Crown was also responsible for the Māori Trustee’s actions in any situation where, on the facts, he was a Crown agent. One such example, which we discuss in chapter 19, was where the Māori Trustee played a role in managing the Crown’s farm development schemes, such as the Rānana development scheme of the 1930s. There, the Māori Trustee was a Crown agent because he was carrying out a Crown programme and was subject to the Crown’s financial control.95
14.6.3 Were land councils and land boards Crown agents?
When district Māori land councils and land boards were acting as trustees for Māori land, their role was similar to that of the Public Trustee and Māori Trustee. They were not accountable to any minister of the Crown; rather, they managed the Māori land vested in them subject to the terms of trust deeds and the statutes and regulations passed by Parliament. They were therefore not Crown agents in a legal sense, and their actions were not those of the Crown.

It is also of note that, before the land in Whanganui was vested in the councils and boards, it was Māori freehold land. It was not under Crown management. This differs from the native reserve land that passed from Crown management to that of the Public Trustee.

Nevertheless, we now turn to consider whether other factors came into play that would make the Crown responsible for the actions of the land councils and boards that it created.

14.6.4 Was the Crown otherwise responsible?
The Tribunal is not confined to determining legal accountability; our task is to consider whether the Crown acted consistently with the principles of the Treaty.

We consider first the statutory framework that established and regulated the land councils and boards in their role as trustees for Māori land. The Crown is clearly responsible for actions that the legislation obliged the councils or boards to take.

(1) The composition of councils and boards
The Crown also determined, by statute, the composition of these bodies. When it set up the district Māori land councils, the Crown provided for a good proportion of Māori members. However, it acted to reduce Māori representation from 1905 on, and put in place no other mechanisms to ensure that the councils and boards made decisions about Māori land with the knowledge and consent of owners.

The Crown argued that lack of Māori representation was immaterial as long as the trustees carried out their duties properly. We find this a disingenuous argument, because:

- it is no longer possible – if it ever was – to compare the post-1905 bodies’ decisions with those that a fully representative body would have made;
- it sidesteps the powerful point that Carroll expressed in Parliament that there is a ‘universal principle recognized by all civilized races, that there should be representation on any board dealing with the interests and property of those concerned’; and
- on even the most reductive view of te tino rangatiratanga, Māori should have comprised a majority on any body determining the future of their land.

Seddon captured some of this when in October 1900 he asked Parliament:

would any European owner of the freehold or of a leasehold in this colony, without his consent or knowledge or without being consulted, like to have a body set up that was going to lease or let the land for him and administer it? The answer would be ‘Certainly not.’

Whanganui Māori consistently advocated for maintaining control of their land, and Seddon assured them that under the land council regime they would have it.

We therefore consider that, certainly after 1913, the Aotea District Māori Land Board was not a suitable body to own and manage Māori land. The absence of an effective Māori voice particularly affected its decisions about Whanganui Māori using and occupying the land they had vested in the board, and how it balanced the interests of current and future owners in complex financial decisions. These were decisions that required the input of the owners.

(2) The Crown’s responsibility
In summary, the Crown was and is directly responsible for actions that the trustee bodies took in order to meet the legislative requirements set by the Crown.

The Crown also had ongoing obligations to Māori that meant, when it set up a regime to administer and manage Māori land – especially one that involved Māori
landowners handing over their rights as owners – it had a responsibility to monitor outcomes to ensure that the regime was working well, and was fulfilling the objectives for which it was established. The Crown’s responsibility in this regard increased after 1906, when it put in place the land board system, to which Māori did not consent.

Claimants cited other factors which they said put on the Crown additional responsibility for the Aotea land council and board’s decisions on vested land. They were: the Crown’s intense promotion of the scheme; Crown involvement in the process by which land was signed over to the council; and an amendment to the 1900 Act that required only a majority of owners (rather than all owners) to consent to vest land. We consider these submissions in our chapter on vested lands.

Finally, we note that the Aotea District Māori Land Board was also the manager of land development schemes in Whanganui from the 1930s onwards. In these schemes, Māori retained ownership of the land and the Māori land boards were not acting as trustees. They were carrying out a Crown programme, and were subject to the Crown’s financial control. There, the Crown was directly accountable for the board’s actions.

14.7 Findings

Here we make general findings on the 1900 regime and subsequent changes to it. These inform later chapters where we investigate whether particular legislation, administrative systems, and actions fulfilled the Crown’s Treaty obligations.

We begin by observing that the Maori Lands Administration Act 1900 was a promising piece of legislation which, with continued support, could have gone a long way towards giving effect to the Treaty guarantee of te tino rangatiratanga of Whanganui Māori. We agree with the assessment of the Central North Island Tribunal, that the Act was an ‘important step taken to mitigate its [the Crown’s] Treaty breach in failing to provide for community title and management of land’. There is no doubt that a trustee regime independent of the Crown and political vagaries had potential benefits for Māori landowners. Trustees had strict legal duties to their beneficiaries: they were obliged to abide by the terms of the trust, and to act always in beneficiaries’ best interests. As such, the district Māori land councils’ trustee role was akin to that of the Public Trustee who was, as the Wellington Tenthis Tribunal put it, ‘appointed with a view to insulating his function from the Government’.

Political vagaries ultimately triumphed, however, for it was in response to perceived pre-election imperatives in 1905 that the Government hurriedly introduced changes that robbed the system of the features that were, for Māori, most promising. Māori had no chance, in advance of the 1905 Act, to provide necessary input, much less consent. This was the more disappointing as the system of land councils was the outcome of a lengthy process of engagement. That engagement generated in Whanganui Māori particular confidence and hope, which they exhibited by vesting more land in the council than Māori of any other district. For the Crown to suddenly change the system without so much as a by-your-leave was inevitably disillusioning.

The Central North Island Tribunal found that the removal of the Māori elected representatives from Māori land boards, and the reduction of Māori representation to just one of three members, was in breach of the principle of active protection and the requirement, in the spirit of partnership, that Māori be the predominant voice in decision-making about their own lands through the choice of their own representatives.

We agree that the 1905 changes were contrary to the broad understanding about Māori land administration forged between the Crown and Māori in 1900, and breached Treaty principles.

We reject the Crown’s argument that it did not matter who was on the land board as long as it fulfilled its trustee functions properly, and there was no evidence that it did not. This argument took no account of the Treaty guarantee to Whanganui Māori of te tino rangatiratanga, the inevitable loss of autonomy when they lost an effective voice in the management of their land, and the
consequential loss of the opportunity and experience they would have gained if they had been permitted continued direct involvement in managing leases. There is every reason to think that Whanganui Māori wanted to retain influence in the district land board. Instead, the 1913 Act did away with Māori representation entirely. This change too lacked the necessary Māori input or consent, and breached the Crown's Treaty guarantee of tē tino rangatiranga of Whanganui hapū and iwi.

Māori land councils, land boards, and the Māori Trustee, when acting as trustees for Māori, were not agents of the Crown. However, the Crown was responsible for the design of the regime, and any negative outcomes that flowed from that. It was obliged to monitor the scheme to ensure that it fulfilled its statutory objectives and remained what Māori wanted and had agreed to. It should have been ready to respond if and when things went off course.

In some situations, particularly after the establishment of land boards that had no Māori representation and the introduction of compulsion in the vesting of land in boards, the Crown's Treaty obligations might have required it to intervene in the management of trust lands for the protection of Whanganui Māori interests. Decisions about any such intervention should have been made with the consent of Whanganui Māori.

Notes
2. Document A51 (Walzl), p 28
3. Ibid, p 67
4. Submissions 3.3.53, 3.3.59
5. Submission 3.3.59, pp 9, 13–14, 19
6. Submission 3.3.53, pp 7–10
7. Submission 3.3.59, p 13; submission 3.3.53, pp 11, 17–19
8. Submission 3.3.53, pp 11–13
9. Submission 3.3.130, pp 4–5
10. Submission 3.3.117, pp 20, 27–28
11. Ibid, pp 26, 28, 37, 45–46, 49
13. Ibid, pp 52–54. This is the version of the speech passed down in oral tradition and quoted in a letter from Whanganui Māori to the

Native Minister in 1935. Document A51(e) (Walzl supporting documents), pp 1846–1847, gives a slightly different version, in English only, from an official report of Seddon's meeting with Māori at Pūtiki in 1898: "the last words of Major Kemp to him [Carroll] were "Save the remnant of the Maori people, and conserve their lands to them.""
15. Document A51(e) (Walzl supporting documents), p 1847
17. 'The Native Lands Settlement and Administration Bill, (Report on), Together with Petitions and Minutes of Evidence', AJHR, 1898, I-3A, p 6; doc A51(e) (Walzl supporting documents), p 1847
18. Document A51(e) (Walzl supporting documents), pp 1846–1855
19. Ibid, p 1852
20. 'The Native Lands Settlement and Administration Bill, (Report on), Together with Petitions and Minutes of Evidence', AJHR, 1898, I-3A, pp 3, 10, 80
22. 'Minutes of Evidence Taken in Connection with Petitions relating to the Proposed Native Lands Settlement and Administration Bill', AJHR, 1899, I-3A, p 8
24. Document A51(e) (Walzl supporting documents), p 1691
25. Ibid, pp 1692, 1694–1695
26. Hone Heke, 12 October 1900, NZPD, vol 115, pp 188–189
28. Maori Lands Administration Act 1900, s 7
29. Ibid, ss 21, 23
30. Under section 22, land with not more than two owners was exempt from the Act's provisions for sale but came under all other provisions of the Act.
31. Maori Lands Administration Act 1900, ss 22, 24; doc A166 (Loveridge), p 23. Between October 1900 and October 1907, restrictions were removed to enable the lease of 53,116 acres.
32. Maori Lands Administration Act 1900, ss 28, 30
33. Document A166 (Loveridge), p 27
34. Maori Lands Administration Act 1900, ss 34–35
35. Ibid, ss 22, 24
36. Ibid, ss 6, 7(10), 8; 'Regulations under the Maori Lands Administration Act, 1900', 26 December 1900, New Zealand Gazette, 1901, no 1, pp 1–2
B F J Edwards, formerly of the Native Land Court, was also employed:


39. Document A166 (Loveridge), pp 29–30; ‘Regulations under the Maori Lands Administration Act, 1900’, 7 January 1901, New Zealand Gazette, 1901, n0 1, pp 10–11; doc A51(e) (Walzl supporting documents), p 1702

40. Document A101 (Horan), p 8; doc A166 (Loveridge), p 34; doc A51(e) (Walzl supporting documents), p 1702. An interpreter: a Mr B F Edwards, formerly of the Native Land Court, was also employed: see Wanganui Herald, 22 February 1902, p 2.

41. Document A101 (Horan), pp 8–9; doc A166 (Loveridge), p 34; doc A51(e) (Walzl supporting documents), p 1702. An interpreter: a Mr B F Edwards, formerly of the Native Land Court, was also employed: see Wanganui Herald, 22 February 1902, p 2.

42. Document A101 (Horan), p 8


47. These local councils were set up under the Maori Councils Act 1900. The preamble to the Act stated that it was intended to establish a measure of local self-government for Māori.

48. Document A51(e) (Walzl supporting documents), pp 1713–1714

49. Ibid

50. Native and Maori Land Laws Amendment Act 1902, s 10; Maori Land Laws Amendment Act 1903, s 22

51. Maori Lands Administration Amendment Act 1901, s 6; Maori Land Laws Amendment Act 1903, s 20(1)

52. Maori Land Laws Amendment Act 1903, s 35(1)–(5)

53. Native Land Rating Act 1904, s 9

54. Document A78 (Katene), pp 70–85; doc A51 (Walzl), pp 125–127

55. Document A166 (Loveridge), pp 125–129; Native Land Amendment Act 1912, s 18; Native Land Amendment Act 1913, ss 95, 109

56. Document A166 (Loveridge), pp 35–66; Williams, Politics of the New Zealand Maori, p 119; doc A51 (Walzl), p 105; Hēnare Kaihau, Hone Heke, Wi Pere, James Carroll, 4 October 1904, NZPD, vol 130, pp 640–645

57. Document A87 (Loveridge), p 186

58. Stout and Ngata, ‘Native Lands and Native Land Tenure (General Report)’, AJHR, 1907, G-1c, p 7


60. Document A51 (Walzl), pp 104–106

61. ‘Native Affairs Committee: Report on the Petition of Te Wherewhero and Two Hundred and Seventy-Six Others Re Maori Land Councils Bill, Together with Minutes of Evidence’, July 1905, AJHR, 1905, 1-38


63. James Carroll, 13 October 1905, NZPD, vol 135, p 703

64. Hēnare Kaihau, Wi Pere, 30 October 1905, NZPD, vol 135, pp 1304–1305

65. Document A78 (Katene), p 174

66. Hone Heke, 17 October 1905, NZPD, vol 135, p 772


68. ‘Native Lands and Native-Land Tenure (Interim Report of the Commission Appointed to Inquire into the Question of)’, AJHR, 1907, G-1, p 1

69. Ibid


72. Document A101 (Horan), p 10; doc A51 (Walzl), p 113

73. Document A51(f) (Walzl supporting documents), pp 2069, 2071–2072

74. Document A101 (Horan), p 11; doc A101(l) (Horan supporting documents), pp 1–2


76. Document A166 (Loveridge), p 126

77. ‘The Late Takarangi Mete Kingi’, Wanganui Chronicle, 16 July 1914, p 4

78. Butterworth and Young, Maori Affairs, pp 72, 74

79. Document A166 (Loveridge), pp 63, 123

80. Ibid, pp 126–127

81. Bennion, Maori Land Court, pp 58–60, 69

82. Ibid, pp 37–38

83. Document A51 (Walzl), pp 128, 228–229

84. Document A101(m) (Horan supporting documents), pp 64–65, 70–72

85. Document A166 (Loveridge), pp 75, 83

86. Document A51 (Walzl), p 286; doc A166 (Loveridge), pp 66, 142

87. Bennion, Maori Land Court, pp 68–71

88. Ibid

89. Ibid, p 71; doc A166 (Loveridge), p 152

90. Submission 3.3.59, p 13

91. Waitangi Tribunal, Te Whanganui a Tara me ona Takiwa: Report on the Wellington District (Wellington: Legislation Direct, 2003),
LAND ISSUES FOR WHANGANUI MĀORI, 1900–52

92. Waitangi Tribunal, Te Whanganui-a-Tara me ona Takiwa, p 364
93. Waitangi Tribunal, Te Tau Ihu o te Waka a Maui, vol 2, pp 897, 900
94. Waitangi Tribunal, Te Urewera Pre-Publication Part 111
(Wellington: Waitangi Tribunal, 2012), pp 369–370
95. For the Native Trustee, see Waitangi Tribunal, Te Whanganui-a-Tara me ona Takiwa, p 369; Waitangi Tribunal, Te Tau Ihu o te Waka a Maui, vol 2, pp 899–900.
96. Document A166 (Loveridge), p126
97. Richard Seddon, 12 October 1900, NZPD, vol 115, p 166
98. Waitangi Tribunal, He Maunga Rongo, vol 2, p 679
99. Waitangi Tribunal, Te Whanganui a Tara me ona Takiwa, p 351
100. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 679, 681–682
101. Submission 3.3.117, pp 27–28
102. Submission 3.3.53, p 17

Aotea Māori Council Members
5. ‘Māori Lands Administration’, Taranaki Herald, 20 December 1901, p 2; ‘Wanganui Agricultural Association’, Wanganui Herald, 19 November 1903, p 5; ‘Further Details’, Evening Post, 26 December 1911, p 8
15.1 Introduction
By the beginning of 1900, Māori owned 741,055 acres, or one-third, of the land in the Whanganui district. In the nineteenth century, the Crown bought up the coastal land, at least one and a half million acres from inland blocks, and most of the huge Waimarino block. A further 503,817 acres went out of Māori ownership in the twentieth century, with the Crown buying just over half of it. It now focused on purchasing land in a few large blocks in the north and north-west of the inquiry district.¹

In this chapter, we look into how and why the Crown continued to purchase land in the Whanganui district in the twentieth century, even though the potential for Māori in the area to become landless was well recognised by this time. We also examine the legal context within which private purchasers operated after 1909, when restrictions on alienation were eased. From this point, the Crown no longer positioned itself at the centre of the market, and as the Crown purchased less land, private purchasers bought more. However, policies continued to favour Crown purchase activity for some years to come, and this affected the private market (see graph 15.1).²

15.2 The Parties’ Positions
15.2.1 What the claimants said
The claimants submitted that the Crown’s continued purchase of Māori land in the twentieth century was contrary to fundamental Treaty guarantees.

In the period between 1900 and 1905, when there was a general moratorium on purchasing, the Crown could ‘complete’ purchases where negotiations were already underway. There was no independent valuation system, and the way the Crown set prices was ‘haphazard and unchallengeable’, and enabled it to ‘fix the value of the asset it intended to buy’.³

When the Crown ended the moratorium in 1905 to fulfil its objectives for settlement, it again exploited its monopoly as it did during Crown pre-emption in the nineteenth century. For instance, during this time, Māori owners could neither mortgage nor lease their land, making development difficult, and raising the likelihood that they would have to sell to the Crown, the sole buyer in the market.⁴ Tactics like this were ‘deeply unfair’, ‘one-sided’, and ‘coercive’, claimants said.⁵

The claimants also argued that, because the Crown persisted with a native land title system that involved allocating individually owned shares that were undifferentiated on
the ground, it was able to pursue its practice of buying up shares piecemeal and then partitioning them out. In the Native Land Court system, owners (both sellers and non-sellers) bore the costs of surveys and land court processes, which they often ended up paying for in land.

The claimants submitted that in the period from 1910 to 1929, the powers that the 1909 Act conferred on the Crown, and the very broad way ‘alienation’ was defined, maintained the Crown’s position as a privileged buyer. Through the use of proclamations, the Crown could still prevent owners from mortgaging their land, or entering into most kinds of leases, including forestry leases. This was another obstacle to owners’ efforts to use, develop, or derive income from their land – with ‘devastating’ effects. Claimant counsel noted that although the Crown’s proclamations originally had effect for a maximum of 18 months, conditions were relaxed under later amendments to the point where blocks remained under proclamation for years. The claimants argued that the finding of the Mohaka ki Ahuriri Tribunal also applied to Whanganui: that orders in council prohibiting alienation created a monopoly, and the Crown exploited that monopoly. The 1909 Act’s removal of restrictions on alienation also threatened the ‘special status of . . . reserves as areas for the maintenance and support of Māori’.

For the period since 1930, submissions particularly focused on the Raetihi area. The claimants said that the Crown breached its Treaty duty to act in good faith when it bought interests in Raetihi 2B and 3B1 land blocks. The Small Farms (Relief of Unemployment) Act 1932–33, they said, unfairly targeted Māori land because it gave the Crown specific powers to acquire land that was ‘not being adequately used’, to create small farm settlements. In the Raetihi area, the Crown had done little to help Māori landowners to make their land more productive. Instead, Māori land was mostly leased for long terms to investors who milled the timber and left the land barren. Raetihi Māori land was thus largely ‘undeveloped’ and an easy target for acquisition under the small farms legislation. The claimants also submitted that the Crown

Graph 15.1: Crown and private purchase of Māori land in the twentieth century by decade

<table>
<thead>
<tr>
<th>Decade</th>
<th>Crown purchases (acres)</th>
<th>Private purchases (acres)</th>
</tr>
</thead>
<tbody>
<tr>
<td>1900s</td>
<td>153,090</td>
<td>8,788</td>
</tr>
<tr>
<td>1910s</td>
<td>34,490</td>
<td>83,336</td>
</tr>
<tr>
<td>1920s</td>
<td>17,690</td>
<td>47,015</td>
</tr>
<tr>
<td>1930s</td>
<td>14,050</td>
<td>5,135</td>
</tr>
<tr>
<td>1940s</td>
<td>203</td>
<td>2,524</td>
</tr>
<tr>
<td>1950s</td>
<td>408</td>
<td>6,016</td>
</tr>
<tr>
<td>1960s</td>
<td>1,007</td>
<td>17,543</td>
</tr>
<tr>
<td>1970s</td>
<td>0</td>
<td>5,709</td>
</tr>
<tr>
<td>1980s</td>
<td>0</td>
<td>21</td>
</tr>
<tr>
<td>1990s</td>
<td>0</td>
<td>194</td>
</tr>
</tbody>
</table>

Figures are for purchases only and do not include public works takings, land converted to general title, etc. Figures rounded to the nearest acre.
15.2.2 What the Crown said

The Crown accepted that there were some faults with its purchasing policies and practices but maintained that it did not acquire land from Māori unfairly, and generally conducted purchases in a manner that was consistent with the Treaty. Counsel acknowledged that ‘[p]ursuant to the treaty, the Crown stood in the position of a privileged purchaser of Maori land’ but the right of pre-emption was not in itself a breach of the treaty: only ‘the unreasonable and unfair use of [the Crown's] powers as a privileged purchaser would amount to a Treaty breach’. Counsel did, though, agree with claimants that the Crown's position of privilege put it under an obligation to apply ‘high standards of good faith and fair dealing’. Such standards would have been breached, said counsel, if the Crown had made excessive use of proclamations restricting the use of land used inappropriate methods to acquire Māori land for the small farms scheme, and that Crown agents and the Native Trustee took advantage of Māori landowners in these transactions.16

Many of the Crown’s twentieth century purchasing practices were thus coercive and unfair, the claimants contended.17 The Crown breached its Treaty duty of active protection when it bought reserves that the Native Land Court had earlier declared to be inalienable.18 It failed to monitor whether Māori retained sufficient land, and continued purchasing land itself. Māori were left with inadequate land both in terms of quantity and quality, limiting their ability to participate in the pastoral economy. Other than the blocks held by Māori incorporations, land still in the hands of Whanganui Māori is mainly of poor quality, fragmented, and difficult to access.19

Map 15.1: Percentage of Maori land remaining by block in 1900 and 2000
it wished to purchase, and if owners lost opportunities as a result.\textsuperscript{20}

Crown counsel said that claimants had not identified any inappropriate actions taken by specific Crown agents.\textsuperscript{21} As to valuation, the Crown accepted that it ‘had a duty to pay fair prices for Maori land’ but argued that this did not equate to an obligation to ensure ‘competitive valuation’. In any case, establishing what a ‘fair’ price would have been is difficult, if not impossible, and would need to be assessed on a case-by-case basis.\textsuperscript{22}

Although the Crown disagreed that there was a ‘whole system of Crown purchasing’ which was ‘coercive or unfair’, counsel conceded that ‘there was at times a lack of due care’ in the way its purchasing policies were carried out.\textsuperscript{23} Indeed, said counsel, designing a comprehensive purchasing system might have been helpful, in that it might have forced the Crown ‘to confront directly the impact of its policies on Maori as a whole’. Instead, the Crown had simply ‘blundered ahead without clearly understanding what the consequences might be’.\textsuperscript{24} Counsel stated:

The objective of obtaining land for closer settlement, the absence of any system to monitor the alienation of Maori land, and the lack of any plan for settlement (other than acquiring sufficient land to allow settlement to occur) set the scene for Crown purchasing to occur in a largely unchecked manner.\textsuperscript{25}

The Crown also acknowledged that it ‘failed to ensure that particular groups have retained sufficient land for present and future generations and/or are (virtually) landless’, although noting that the circumstances for each group differ, depending on factors like the extent and quality of landholdings, and the size of the population.\textsuperscript{26} Although its monitoring of land alienation and the impact on Māori was inadequate, the Crown did not agree that the protections in place were themselves inadequate.\textsuperscript{27}

The Crown advanced its argument that land ownership did not necessarily translate to income, and deciding to sell land might in fact have been economically rational for Māori. It emphasised the role of autonomy and choice in decisions to sell, saying that Māori ‘did not have to sell if they did not wish to.’\textsuperscript{28} It agreed, though, that because of its failure to monitor land loss, it was not in a position ‘to recognise the tipping point at which some groups were at risk of being left with insufficient lands and resources.’\textsuperscript{29}

For the 1910 to 1929 period, Crown counsel submitted that although the Native Land Act 1909 allowed unrestricted alienation of Māori land, it also offered some protection mechanisms. In any case, Crown counsel suggested, the Act had little impact on land alienation because ‘[m]ost of the land in the District had been alienated before that time.’\textsuperscript{30}

Counsel acknowledged that where proclamations were continually rolled over and owners lost opportunities as a result, the Crown might have breached its duty to act in good faith and as a fair purchaser. However, in order to establish prejudice, cases would need to be examined on an individual basis.\textsuperscript{31}

The Crown also acknowledged that the broad definition of ‘alienation’ in the Native Land Act 1909 prevented productive use of land subject to a proclamation and, in doing so, unreasonably fettered the article 3 rights of landowners. Counsel maintained, though, that the claimants failed to identify blocks where prejudice occurred as a result.\textsuperscript{32}

The Crown made no submissions on claims relating to the purchase of Māori interests in Raetihi 2B and 3B1 to create the Mākaranui Land Development Scheme.

Throughout the Crown’s submissions, counsel emphasised the need to pay close attention to historical context and the specific experiences of Whanganui Māori, and to avoid generalisations. He contended that Crown purchasing raises issues ‘with the particular processes and outcomes’ of native land law operation, and requested that the inquiry focus on those.\textsuperscript{33}

15.3 \textbf{Taihoa, 1900–09}

15.3.1 \textbf{Introduction}

By the end of the nineteenth century, Whanganui Māori were acutely aware that most of their land had passed out of their hands, and they urgently needed better land
management systems so that they could use and hold on to the land they still owned. Their discontent gave rise to the Native Land Laws Amendment Act 1899, which introduced a moratorium on new Crown purchases, but allowed the completion of Crown and private purchases already underway. The following year, the Maori Lands Administration Act changed these settings. Purchases already begun could still be completed, but now new sales were permitted again provided that the Governor consented, and certain other requirements were met. However, the Government’s policy of not allowing the purchase of Māori land was officially still in place, so this was called the ‘taihoa’ period. Taihoa in this context means temporary cessation.

Between 1900 and 1910, 162,190 acres of Māori land were purchased in Whanganui, of which Crown purchases made up 94 per cent or 153,090 acres. Although this was a very significant quantity of land, it was less than half the area that the Crown purchased in the 1890s. These figures do not, however, include areas taken compulsorily for purposes like scenery preservation and roads.

The 1905 Act changed the Māori land settings radically, so it makes sense to divide the first decade of the twentieth century into two when examining purchase statistics.

Between 1900 and 1905, the Crown ‘completed’ purchases in the Ahuahu, Maraetaua, Murimotu, Ngāpuke-whakapū, Ōhura South, Parapara, Puketōtara, Rangitatau, Taonui, Te Tuhi, and Tūpapanui blocks. The result was that, in the 1899–1900 financial year, which included the first three months of 1900, the Crown purchased 14,730 acres of Māori land in the Whanganui district, representing 17.51 per cent of Māori land purchased nationally that year. For the year to March 1901, its purchases still totalled 12,150 acres, representing more than one-fifth of the national total. The 1901–02 financial year then saw a slight drop-off, with 7,842 acres purchased (although this still represented 26 per cent of the national total). Only after that was there a significant reduction, with just 108 acres purchased up to March 1903, 48 acres to March 1904, and 135 acres to March 1905.

In 1905, under pressure from settlers around the country to free up more land for settlement, Seddon concluded that there was ‘too much “taihoa”’. Parliament passed the Maori Land Settlement Act 1905, which lifted the moratorium on Crown purchasing, although restrictions on private purchasing remained in place. Over the ensuing five years, up to the end of the decade, Crown purchases across the Whanganui district picked up again. Purchases in 1907 in the blocks Taumatamahoe, Whakaihuwaka, and Te Tuhi stand out.

15.3.2 ‘Completing’ purchases, 1900–05

(1) Debate over what ‘completion’ of purchases meant
To assess whether the Crown acted fairly in the period from 1900 to 1905, it is necessary to investigate the use of the word ‘completion’.

When Seddon proposed the temporary halt to purchasing in 1899, John Stevens, the member for Manawatū (and, significantly, himself a former land purchase agent for the Crown in Waimarino), sought to get the measure of the policy in the Native Affairs Committee. He asked Seddon:

does that mean that the Crown shall be enabled to complete the purchases of all blocks over which there is a proclamation or of blocks in which they have obtained one, two, or three signatures?

Seddon hedged:

Say, where there are any negotiations for certain blocks at the present time – we have bought interests in those blocks. It might be necessary in those blocks to get those interested to partition. The blocks are not in a position at present to be partitioned. It simply gives the power to complete purchases already commenced and partition interests already acquired, but otherwise not to enter into any fresh negotiations.

Stevens probed further: ‘That means any block in which the Crown has a signature – that would meet the position, I understand?’ Seddon replied: ‘To purchase sufficient area to warrant it. You would not leave the acres with a piece here and there – you had better return the money.’

‘Supposing a block is 100,000 acres’, persisted Stevens. ‘That is a matter of detail’, Seddon answered, ‘which, in
going through the Bill, we could fix by a sliding scale – as to the proportion.’

Following this exchange in the Native Affairs Committee, there was also heated debate in the House and the Legislative Council about the terms for completing purchases. For instance, should completion be allowed where negotiations had begun, but were only verbal? Hutchison (the member for Pātea) thought not: ‘There could strictly be no contract or agreement with reference to land except in writing.’ And was it intended to allow the Crown to finish purchasing whole blocks? Again, opinion differed. McLean (member for Napier) thought the measure should be restricted ‘simply to partition, and the adjustment of boundaries.’ Carroll likewise mentioned ‘partition or adjustment of interests.’ Members and councillors produced amendments and counter-amendments, and there were even two joint conferences on the matter, involving representatives of the House and the Council.

(2) What the law said in 1899
In the end, the very brief Native Land Laws Amendment Act, passed on 24 October 1899, specified that where a written contract or agreement for purchase by the Crown already existed, the purchase could be completed ‘in so far only as is necessary for the adjustment of boundaries and partition of the respective interests of the Crown and Native owners.’ The fifth and final clause of the Act affirmed that the legislation was intended as a temporary measure, to ‘remain in force only until ten days after the last day of the next session of Parliament.’ In short, it provided a tight set of conditions that all parties could agree on, pending a wider revision of Māori land law that would take more time.

(3) What the law said in 1900
Surprisingly, given all the to-ing and fro-ing over the wording of the temporary Act, there was almost no comment from either members or councillors about sale clauses during debates on the 1900 Bill. When the Maori Lands Administration Act 1900 finally passed, its terms were looser than the 1899 Act: section 34 of the new legislation stated that Crown purchases could be completed – with no accompanying proviso about the nature of that completion – wherever ‘negotiations’ were already in progress. There was no longer any reference to written contracts or formal agreements. All that was needed was a certificate from the Minister of Native Affairs to the effect that negotiations were in place. No member or councillor seemed to notice any difference. Indeed, the only person to mention section 34 during debate (other than a passing reference by Premier Seddon), was Alfred Fraser, the member for Napier, who saw it as ‘an identical section’ to that passed in 1899. He thought they were both toothless:

Did it prevent the Crown purchasing lands they had not negotiated for before the passing of the Act? No. And this injustice is perpetrated in the present Bill, for only the Minister’s certificate is required as evidence that negotiations for purchase were in progress.

(4) Were the Crown’s purchases after 1899 ‘completions’?
Was Fraser correct in his assessment that the 1899 legislation was ineffective in preventing new purchases, and that the same would be true of the 1900 Act? Certainly, the Crown finalised many purchases after instituting the moratorium. What is less clear is whether any of the purchases were also initiated after then.

The uncertainty arises from the Crown’s purchasing methods. As we know, most blocks had numerous owners, and the Crown’s process, as in earlier times, was usually for its agents to negotiate with each individual owner. This could take months or years. The Crown was regarded as having purchased the shares when it paid for them. For the Crown to take possession of the land, however, it had to apply to the Native Land Court to have those shares partitioned out of the block. In order to minimise the cost and time involved in getting the court to partition out its interests, the Crown typically waited until it had purchased all the shares that owners in a block were prepared to sell before approaching the court. This might take many years.

(a) Purchases in Rangitatau: Rangitatau, where the land was reported as being ‘of good quality and containing some
very good level country', is a good example of how the Crown's practice in purchasing make it difficult to ascertain whether it complied with the requirements of the legislation.

The Crown began purchasing interests in Rangitatau in 1898. Following the passing of the 1899 Act, on 24 October, activity seems to have increased for a while rather than diminished, with the Crown purchase agent, William Edward Goffe, focusing on paying for interests in Rangitatau 1D2, and for a few others in 1D4 and 1D5. In all, over the 12 months that the Act was in force, Goffe paid more than £2,000 directly to owners for their interests in these blocks, and another £41 to the Public Trustee for the interests of minors. Between November 1900 and September 1901, after the passing of the 1900 Act, Goffe switched his focus to Rangitatau 1D3, 1D4, and 1D5, paying over £840 directly to owners and another £215 to the Public Trustee for the interests of minors. The Crown finally partitioned out its interests in all four of the Rangitatau 1D subdivisions in September 1901. Had negotiations for any of the interests, though, been initiated after the moratorium began in 1899? We simply do not know. Records reveal only the dates on which money was paid over, which tells us nothing about when discussions had first begun.

(b) Purchases in Taonui: Taonui is another example. The Crown began purchasing there almost as soon as the block was subdivided into Taonui 1 (3,147 acres) and Taonui 2 (4,103 acres) in 1896, and purchasing continued after the 1899 legislation. For the financial year to 31 March 1901, the Crown purchased interests that amounted to 780 acres in Taonui 1 and about three-quarters – 3,050 acres – of Taonui 2. At the end of 1901, the Crown partitioned out 62 per cent of the smaller block and 97 per cent of the larger. We do not know, though, whether negotiations for any of the interests it purchased began after the Government brought in the moratorium.

(c) Purchases in Ōhura South: Then there is Ōhura South, at the northern end of our district. The Crown began purchasing land interests there in the late 1890s, but the Native Land Purchase Office’s 1901 return shows 10 Ōhura South blocks where purchasing activity continued in the year to March 1901. Indeed, in some of those blocks, the bulk of the Crown’s purchases were finalised in that year. For example, of the 1,692 acres that the Crown said it had purchased in Ōhura South A4, 1,048 acres (62 per cent) were bought in the year to March 1901.

Also mentioned in the 1901 return was Ōhura South G, where only a couple of years earlier, three of the owners had written to Premier Seddon asking that the Government ‘cease making purchases’ and that he ‘instruct [his] officers’ to this effect. Four-fifths of the acreage that the Crown finally acquired in that block was purchased in the year to March 1901. Again, though, we do not know whether any negotiations began after the passing of the 1899 Act.

(d) Purchases in Parapara 2: The same pattern was evident in the 3,500-acre Parapara 2 block, in the central part of our district. In 1896, the owners secured its division into two equal parts, 2A and 2B. In early 1899 (before the passing of the Act), the Crown began to purchase interests in 2A, and then extended its activities to 2B. It continued to pay for interests purchased into January 1902, paying just over £35 to owners while the 1899 Act was in force, and another £53 3s 4d after the introduction of the 1900 legislation. The Crown finally partitioned out its interests in February 1903, securing about one-third of Parapara 2A and one-tenth of 2B.

The Crown also purchased interests in the Te Tūhi, Tūpapanui, and Whitianga blocks after the introduction of the moratorium.

(e) What we can discern from the evidence: All these examples show that, after the passing of the 1899 and 1900 legislation, Crown agents continued to pay money to owners for the purchase of their interests (or to the Public Trustee, in the case of minors whose interests were held in trust). There is nothing in the evidence, though, that enables us to discern whether agents were initiating new negotiations with owners or simply continuing discussions begun before the moratorium was in place.
Loveridge, in his preliminary assessment of evidence for the country as a whole, expressed the view that ‘[a]s far as can be determined, no new purchases were initiated after 1899’\(^5\). On balance, we are inclined to think that this assessment holds for the Whanganui region. Purchases seem to have almost ceased by early 1902, which suggests to us that agents were completing work already on their books. Moreover, in late 1903 when Wikirini Te Inaina approached the Crown seeking to sell some shares, Sheridan, the chief land purchase officer, responded firmly: ‘Government has discontinued [the] purchase of Native lands and that I am therefore unable to make an offer for your shares in the Puketotara blocks.’\(^5\) Indeed, from the sweep of evidence before us (and particularly the reports by Walzl and Hearn), our general impression is that after the passing of the October 1900 legislation, the Crown was far more preoccupied, in the Whanganui region at least, with encouraging Māori to vest their lands in the newly created Māori land councils.

### 15.3.3 Events after the Crown stopped purchasing

Sometimes the Crown did not immediately seek to partition out the interests it had purchased. In Parapara 2A, for instance, the last payment voucher is dated 10 December 1900, but partition into 2A1 (for the Crown) and 2A2 (for the remaining owners) did not occur until 13 February 1903.\(^5\) In Whitianga 2, it took even longer: the Crown completed the bulk of its purchasing there by December 1901, but did not get its interests cut out until May 1907.\(^5\)

Between purchase and partition, owners found themselves in an uncertain situation. Because the Crown was purchasing *interests*, rather than specific areas of land, owners who did not sell had to wait until the land was surveyed and partitioned out in order to know the location of the land they retained. If the Crown delayed partitioning out its interests, there was a hiatus in which owners could not really use or develop any land in the block lest it ended up being awarded to the Crown.

Owners in Rangiwaia-Tārere 2 experienced this problem. In 1903, Tiemi Te Wiki and four others wrote to Sheridan to say that they were ‘very anxious’ for the interests that the Crown had purchased in the Rangiwaia-Tārere 2 block to be cut out, so their own part was defined. Sheridan subsequently clarified that the block in question was actually the Parapara block where, as we have seen, Crown purchasing had ceased over two years earlier.\(^5\) Stout and Ngata commented on these situations in their royal commission report, noting that until the whole court process was complete, Māori landowners were effectively blocked from developing their own land.\(^6\)

Then there was the land that the Crown acquired in lieu of payment for surveys. In some blocks – Ōhura South, Murimotu, Rangiwaia, and Taumatamāhoe, for example – the Crown’s purchases and subsequent partitions imposed heavy survey costs on non-sellers as well as sellers. We noted in earlier chapters how non-sellers in particular were often in a situation where, unlike those who had sold their interests, they lacked cash and could only pay the debt in land. When this happened, the Crown secured land interests from Māori as surely as if it had purchased them – and despite the moratorium.\(^6\) This was how the Crown acquired interests in Ōhura South subdivisions A, C2, D, and G in 1900 and 1901, after four episodes of partitioning resulted in the Crown’s acquiring an additional 1,628 acres in lieu of survey fees. These acres represented 13 per cent of the total that the Crown acquired in Ōhura South over this period (see table 15.1).\(^6\)

Less than 10 years earlier, the Native Land Court had declared these Ōhura South blocks to be inalienable.\(^6\) The purchase was possible because, as Hearn pointed out, from 1883 the law provided ways to remove restrictions on the sale of reserves, and then, between 1893 and 1909, ‘[the Crown] introduced other changes to the law intended to make removal or variation of restrictions on alienation easier.’\(^6\)

Stout and Ngata later noted that partitions of the Rangiwaia block in 1900 and 1901 also generated debt for court fees, agents’ fees, and other expenses associated with court hearings. Without access to capital, Māori were often ‘compelled to sell portions of the land’ to cover those costs. The same happened, the commissioners reported, in Raetihi, Maungakaretū, Raketāpāuma, and Murimotu blocks.\(^6\)
15.3.4 The Crown revises its purchasing approach, 1905

As we have seen, strong political pressure to make more land available for settlement led to the Government passing the Maori Land Settlement Act in October 1905, which enabled the Crown to recommence its purchase of Māori land.

Under the 1905 Act:

- The Crown, through the Governor, gained the power to purchase Māori land (section 22(1)).
- When purchasing, the Crown had to ensure that each Māori man, woman, or child retained a ‘sufficiency’ of other land for his or her own use, which was defined as a minimum of 25 acres of first-class land, 50 acres of second-class land, or 100 acres of third-class land (section 22). These acres did not have to come from the block being purchased. The Crown could provide land elsewhere instead, and did not have to take into account traditional connections.
- For the first time, there was to be a minimum price for Māori land. The Crown would now need to pay ‘not less than the capital value of the land as assessed under “The Government Valuation of Land Act, 1896”’ (section 25).
- If a majority of owners agreed to a sale, the Crown could simply make payment to the receiver-general for the interests of the dissenting minority and gain ownership of the whole block (section 20). Stout and Ngata later called this ‘contrary to natural justice’.

The Wanganui Herald applauded these changes: Māori would have no cause for complaint if ‘ample provision is made against the alienation of a defined area, so that the natives will not be left landless, and they are paid the market value of their land’.

In 1906, the new Premier, Joseph Ward, described the Government’s policy on Māori land as being to ‘set aside a sufficiency of Native lands for the maintenance of the Natives’ and to ‘as far as possible give the Natives a “start” to farm these lands and . . . guide them in making the land productive’.

Alongside that, he said, the Government wanted:

To throw the balance open for settlement and cultivation – by (a) the Crown purchasing at the Government valuation, (b) vesting it in the Boards for lease . . . and (c) allowing the Natives to lease it themselves . . .

It was therefore a stated goal in this period to ensure that Māori retained sufficient land – as an allocation of acres per individual, anyway. It was less clear how ‘sufficient’ land for Māori would be balanced against the Government’s other goal of freeing up land for European settlement.

15.3.5 Stout–Ngata on what land Māori could spare

A year later, in 1907, Stout and Ngata tried, in carrying out their royal commission, to quantify how much land Māori
still owned in various districts, including Whanganui. The commission's job was to put the Crown in a position of knowledge about Māori landholdings and future needs so as to inform its decisions about purchasing Māori land. The commission's report highlighted how little land remained in Māori ownership nationally, and the commissioners sounded this warning: 'A few more years of the Native Land Court under the present system, and a few amended laws for free trade in Native lands, and the Maoris will be a landless people.' This view informed its recommendation that '[i]n dealing . . . with the lands now remaining to the Maori people we are of the opinion that the settlement of the Maoris should be the first consideration.'

In the Whanganui district, the commissioners reported that, at a generous estimate, Māori perhaps retained 500,000 acres, but holdings varied widely from person to person. It was simply unsafe for the Crown to keep purchasing Whanganui Māori land:

though a minority of owners can afford to sell a proportion of their interests, it will not be wise to treat the mass as having surplus lands for sale. We do not think it advisable that the present system of purchasing should be continued in this district.

Stout and Ngata acknowledged the Crown’s duty to provide land for a growing New Zealand population, but it must also ensure that ‘in the performance of that duty it does no injustice to any portion of the community, least of all to members of the race to which the State has peculiar obligations and responsibilities.’ They recommended that the Crown should no longer purchase land directly from Māori, but should go through land boards acting as agents for the owners.

No doubt the commission’s very cautionary tone was in part a response to the Crown’s resumption of purchasing on a large scale. In our district, it was the circumstances of the Taumatamāhoe block that sparked the commission’s most admonitory message. It recommended to the Crown to stop purchasing interests there; to define its interest in Taumatamāhoe 2B2; to create four papakāinga totalling 550 acres (including 300 acres at Útapu); and to set aside 5,000 acres for the owners to farm themselves. It also expressed concern about Crown purchasing in the large Whakaihuwaka block. Witnesses had told the commissioners that ‘many of those who had interests in Whakaihuwaka possessed no other lands,’ and owners in the block were ‘unanimous and emphatic’ in their opposition to further Crown purchases. The owners wanted papakāinga reserves (totalling 340 acres) around four kāinga, and 4,000 acres to farm themselves. They were prepared to lease the remaining 9,000 acres, but they wanted to organise it themselves. Stout and Ngata recommended that the Crown agree to these proposals, and cease purchasing in the block.

Later we examine what came of these recommendations. For the time being, we turn our attention to a more detailed investigation of the Crown’s purchasing policy and practices at this time.

15.3.6 Why Whanganui Māori restarted selling land
The claimants in our inquiry criticised the Crown’s monopoly on purchasing during this period as conferring on the Crown the power to drive sales and ‘manipulate’ land prices. Land owners needing capital, they said, ‘had no other choice’ but to sell to the Crown.

The evidence shows that once the Crown re-entered the market for Māori land, the patterns of the nineteenth century re-emerged. Māori owners’ reasons for selling seem to have been broadly the same, as were the Crown’s purchase methods. Māori were, though, divided in their views about to whom they should sell. Some wanted to see an end to Crown purchasing, but others wanted Māori to have free choice to sell to whom they chose, be it the Crown or private buyers.

Stout and Ngata reported evidence from Māori in Whanganui that they were pushed into selling land in order to meet the costs of the Native Land Court process. Their report drew attention to the plight of owners who incurred costs defending their rights to a block where other owners were seeking to sell:
They had to sell to the Crown at the latter’s price, for, among other things, Court fees, agents’ costs, and survey charges had to be met, and in litigation, in order to substantiate claims to one block, a whole tribe will recklessly throw away the land it has already won.  

Poverty played a part. Hēnare Paparua wrote to Sheridan in March 1902 offering to sell land at Pākihi, near Raetihi, because he was now an old man and ‘unable to work and grow food’.  

We know of one instance of an owner selling not to meet personal needs but to meet obligations to others. This was the case with Höhepa Tūtāwhiri. In an exchange of correspondence between his lawyer and the Under-Secretary of the Native Department, the lawyer commented: ‘He of course feels it incumbent upon him as
a chief to assist his people in tribal matters. That meant providing for them both in cash and kind. Tūtāwhiri sold land in Maungakaretū to cover debts he incurred as a result, but a few years later the money (more than £1,500) was nearly all gone and he was contemplating further land sales. 84

15.3.7 Crown purchase agents resume previous practices

Although Parliament passed the Maori Land Settlement Act in October 1905, it was not until May 1906 that purchasing began anywhere in the country. 85 But, by June 1907, William Kensington, the Under-Secretary of the Lands Department, was able to report that land purchase agents in the Whanganui area were hopeful of securing the whole of Whakaihuwaka (63,700 acres) and Taumatamāhoe 2B2 (42,565 acres). Although not all negotiations in train would necessarily result in purchase, he thought it ‘more than probable that the Crown will eventually acquire the full area’. 86

Crown purchase agents resumed their former practice of approaching individual owners and offering to buy their shares in a block.

Henry Dunbar Johnson described how he purchased interests totalling 72⅓ shares in Whakaihuwaka when in Wanganui in January 1907, and then secured a further 40⅔ shares during negotiations three months later in Wellington. In addition, he partly recouped an overpayment to Paura Wharetūturu for interests in Taumatamāhoe by securing ‘the transfer of two interests in the Whakaihuwaka Block’. 87

By May 1907, the Crown was in a position to partition out its interests in Whakaihuwaka A and B, totalling 37,029 acres (almost 60 per cent of the block). The 497 remaining owners retained the balance as Whakaihuwaka C, but when Stout and Ngata reported only months later, the area that Māori still owned had shrunk to the equivalent in undivided shares of only 13,311 acres – although with the understanding that the Crown would provide reserves for the sellers from land it had already purchased. 88 The Crown had by then spent almost £19,000 on the block, paying 7s 6d an acre. 89 It is not clear from the evidence whether the promised reserves eventuated.

In Taumatamāhoe, in the north-west of our district, the Crown had already purchased 104,596 of 155,300 acres before the moratorium. It renewed its activities after 1906, focusing on Taumatamāhoe 2B2. By the time that Stout and Ngata reported, the Crown had purchased three-quarters of the block, including 18,048 acres in 2B2. It will be recalled that the commissioners recommended that the Crown define its interest in this block to enable a partition of the remainder between its owners, and desist from purchasing more. The court duly partitioned Taumatamāhoe in 1907, awarding 2B2A to the Crown and 2B2B to the non-sellers. 90 We see later how, undeterred, the Crown returned to purchasing interests in Taumatamāhoe 2B2B in 1911. 91

As part of the 1907 Taumatamāhoe award, land was also set aside for burial grounds at two Māori kāinga on the block, namely Mātaiwhetū and Puketapu. Te Haere-te-rangi, speaking as a representative of the non-sellers, said during the 1907 hearing that they had been told they would receive 100 acres for the burial ground at Mātaiwhetū, which was at the confluence of the Tāngarakau River and the Whanganui River. In the event, the area that was reserved turned out to be much smaller. Patrick Sheridan, the chief land purchase officer, later said that this was because he believed the area might be needed for storage facilities for steam ships and possibly for a future town. 92

That the Crown was able to purchase repeatedly, and then partition, within the same block of land was in part because it faced no competition from private interests. From the passage of the Maori Land Settlement Act in 1905 until 1909, private buyers could purchase land only if the Crown issued a proclamation waiving pre-emption, which happened very rarely.

Some of the Crown’s land purchase officers exploited its monopoly position in their dealings with Māori, but this does not seem to have been a particular issue in the Whanganui district. Of the three operating in this area at this time – William Grace, Gilbert Mair, and Henry Dunbar Johnson 93 – the only one whose practices we know to have been questionable was Grace, but his main sphere of activity was the Waikato. Although he spoke of inducing owners ‘to fall in with one’s wishes’, we can find...
no proof that he actually pressured any Whanganui Māori into selling their interests.\textsuperscript{94} Actually, evidence generally indicates that they were keen to sell in this period. That said, however – and we have talked about this several times – the undivided interests that the title system provided made it difficult to do anything but sell.

\textbf{15.3.8 Immediate consequences for Māori}

The Crown's return to purchasing again pulled Māori – including those not selling interests – into the expense of court and survey.

Serial partitioning, which we described earlier, seems to have been less of a problem in this period, but we do note below some instances of the practice continuing.

As regards survey costs, we know that in the Wellington district (which included the lower Whanganui area), the Crown obtained approximately 15,000 acres from survey liens in the 10 months from May 1906 to March 1907.\textsuperscript{95} We note that, left unpaid, survey liens usually accrued interest at a rate of 5 per cent per year.\textsuperscript{96}

Specifically, the Crown took land in the following blocks when survey liens remained unpaid:

- Parts of Te Tuhi 1B and Te Tuhi 4C in 1907, following purchasing and subsequent partition in 1899 and 1901.\textsuperscript{97}
- Parts of Murimotu 2B, 4B, 5D1, and 5D3 in 1907.\textsuperscript{98}
- In Ōhura South, to the value of £108.\textsuperscript{99}
- In Rangiwaia, more than one-third of the block according to Stout and Ngata,\textsuperscript{100} following Crown purchases and partitions in 1896, 1899, 1900, and 1901.\textsuperscript{101}

\textbf{15.3.9 The fairness of the Crown’s prices, 1900–09}

\textbf{(1) The parties’ positions}

The claimants argued that because minimum prices for Māori land were unregulated until 1905, and prices per acre increased noticeably after 1910 when the market was reopened to private buyers, it was reasonable to infer that prices were previously kept artificially low.\textsuperscript{102} The Crown justified the undervaluing on the basis that it was no more than 10 per cent, but claimants said this level of undervaluing was unacceptable, especially in light of the high transaction costs when Māori sold land, including court and survey fees, and other costs. Claimant counsel submitted that it is ‘not simply a matter of fair \textit{values} but rather of \textit{fairness} in a more general sense’ (emphasis in original).\textsuperscript{103}

Crown counsel argued that a fair price did not necessarily equate to a free market price. Counsel did, however, agree that where the Crown did not pay full consideration for the land, such as where the value of timber was not reflected in the price, this would fall short of the standard of fair dealing and reasonableness required by the Treaty.\textsuperscript{104}

\textbf{(2) Difficult to compare and assess land prices}

As both Crown and claimant counsel acknowledged, there are difficulties in comparing and assessing prices paid for Māori land because there were so many factors involved. We can name some of them, but in particular cases there would also have been factors that we do not know about at all. However, obvious elements influencing price were the quality and agricultural potential of the land; the availability of resources like timber; how easily the land could be accessed by road, rail, or river; and the relative negotiation strengths of the parties. We also lack information about how value was perceived, and how prices for land were arrived at.\textsuperscript{105}

The most comprehensive analysis of land quality and potential use in Whanganui for this period is the Stout–Ngata report of 1907, and we draw on their findings in this section, and also evidence from technical reports.

\textbf{(3) What the Crown was paying}

Nationally, the Crown was paying a higher rate for Māori land by 1910 than it had in preceding decades. During that first decade of the century, the Crown outlaid a total of £386,757 to purchase 764,909 acres nationwide, which translates to an average of just over 10 shillings an acre. Allowing for expenses of 14 per cent, vendors would have received about 8s 8d an acre on average. Table 15.2 shows how this compared favourably with the three preceding decades.\textsuperscript{106} The decade was, however, punctuated at its midpoint by a change in the method of price-setting, and the average price of 8s 8d per acre does not reflect what happened to prices \textit{within} the decade.
From 1879 until 1905, it was the land purchase officers responsible for buying who set the prices – a pricing system that the Crown has acknowledged was not independent of Crown interests, and which we found in chapter 12 to be ad hoc and often resulting in prices that were below value.\(^{107}\) For the purposes of the present discussion, we briefly recall that, analysing figures from 1885 to 1902, Hearn concluded that Crown and private prices were both generally below property-tax valuations. He noted, though, that further investigation was needed to establish whether the Crown indeed valued all blocks of Māori-owned land for property tax purposes, how it arrived at such valuations, and the relationship between property tax valuations and market values.\(^{108}\)

The Stout–Ngata commission found that, from the early 1880s to 1906, Māori in Whanganui sold over 1.27 million acres of land to the Crown for what it described as ‘absurdly low prices’ (an average of four shillings an acre).\(^{109}\) An article in the *Wanganui Herald* in 1904 criticised the Government’s offer of three to five shillings an acre for the Ōhotu block, saying that private individuals ‘would have been pleased’ to pay 25 or 30 shillings. ‘Had a reasonable sum been offered’, it said, ‘the whole of the Ohutu Block would ere this have been in the possession of the State’.\(^{110}\) Cross and Bargh note that, in general, the larger the area purchased, the lower the unit price paid. Their analysis of the figures suggests that prices in Whanganui were, however, on a par with those in districts like Rotorua and West Taupo.\(^{111}\)

There was, of course, variation between blocks. For example, the Crown purchased land in the Maraetāua, Rangitatau, and Taonui blocks at a rate of seven shillings or more an acre, while Puketōtara and Te Tūhi realised around two shillings and 2s 6d an acre respectively. For the 1 April 1900 to 31 March 1904 period overall, the Crown paid an average of a little over six shillings an acre across various land blocks in Whanganui.\(^{112}\)

The second half of the decade was affected by the Maori Land Settlement Act 1905, which fixed the minimum price for land purchased from Māori as the capital value that the valuation department set under the Government Valuation of Land Act 1896. Prices were no longer tied to the subjective assessment of each land purchase officer. Loveridge commented that inflation might have played a part in the ensuing rise in prices, but believed that the overriding cause was the new valuation provision.\(^{113}\)

### (4) The equitableness of the prices

Stout and Ngata called the system for setting prices after 1905 ‘equitable’, but they did note that the absence of competition from private interests meant that it remained difficult to calculate a market value.\(^{114}\) The lack of an open market also rankled with some Whanganui Māori: the *Wanganui Herald* reported James MacKay as saying that Māori did not want to be ‘compelled to sell’ to the Crown at a lower price than that offered by private interests.\(^{115}\) Māori owners of the Taumatamāhoe 2B2 block complained about the prices the Crown was willing to pay when it purchased the block for 10 shillings an acre in 1907.\(^{116}\) (The Stout–Ngata commission reported that owners of the 2B2 block agreed to sell during a meeting with the Native Minister where he called for land for general settlement, but no notes of this meeting have been found.\(^{117}\) ) According to Stout and Ngata, owners in Whakaihuwaka likewise criticised the Crown’s prices in 1907 as below the full value of the land.\(^{118}\)

Hearn described a tendency on the part of the Crown to enter into purchase agreements that ‘failed to specify the total consideration involved’.\(^{119}\) Prior to 1908, there was

<table>
<thead>
<tr>
<th>Years</th>
<th>Total area purchased by Crown (acres)</th>
<th>Average price paid per acre*</th>
<th>Approximate amount received per acre by vendors*</th>
</tr>
</thead>
<tbody>
<tr>
<td>1870–83</td>
<td>3,757,279</td>
<td>4s 9d</td>
<td>4s 1d</td>
</tr>
<tr>
<td>1883–91</td>
<td>1,316,966</td>
<td>4s 6d</td>
<td>3s 11d</td>
</tr>
<tr>
<td>1891–1900</td>
<td>2,406,918</td>
<td>6s 1d</td>
<td>5s 3d</td>
</tr>
<tr>
<td>1900–1910</td>
<td>764,909</td>
<td>10s 1d</td>
<td>8s 8d</td>
</tr>
</tbody>
</table>

* To nearest penny

Table 15.2: Average price paid per acre of land, by decade, 1870–1910
no system for valuing timber, for example, whether as part of land sales or leases, which Stout and Ngata strongly criticised in their 1907 report. The Crown did not take account of the value of millable timber, on the basis that timber for milling was not an asset when in the possession of the waste lands boards. Why should Māori owners be penalised, they queried, simply because the land administration system did not recognise the added value that timber brought to land? The issue of land prices not reflecting the value of timber on the land was also raised in Parliament in 1907. Evidence indicates that it was around this time that more account began to be taken of resources. It was in 1907 that Native Land Purchase Officer William Grace said he had paid a higher price for some blocks (albeit in an adjoining district) on the grounds that they had good milling timber on them which would shortly be ‘very valuable.’

Lastly, some examples of pre- and post-1905 prices in various blocks give an idea of the variations, both over time and between blocks.

In 1901, the price for Tūpapanui 1 was five shillings an acre, but six years later the Valuation Department considered that Tūpapanui 2A was worth 70 per cent more, compelling the Crown to pay almost 8s 6d an acre. Maraetaua values went from 7s 6d an acre in 1901 to the considerably higher £3 5s an acre for a small area of land that the Crown took for a survey lien in 1911. Variations in the Ahuahu block were more modest: Ahuahu C and F1 fetched three shillings an acre in 1901, whereas Ahuahu F2A was valued at five shillings an acre (a 40 per cent increase) when the Crown took it in 1914 in lieu of outstanding survey charges. We have not identified a single block that went down in price at any stage over the 1900 to 1910 period.

15.3.10 Conclusions
By the end of the nineteenth century, the Crown itself acknowledged that the potential for Māori to become landless was a national concern. We consider that, because the Crown grasped the issue at the time, and also agreed that it was an issue that it needed to do something about, it had a heightened obligation in the twentieth century to fulfil its Treaty duty to actively protect the interests of Māori in their land and resources.

Two enactments – the Native Land Laws Amendment Act 1899 and the Maori Lands Administration Act 1900 – ushered in a period in which Crown purchase of Māori land first slowed, and then halted. The Māori land council scheme was intended to make land available for settlers to lease, but Māori in most parts of New Zealand were slow to get on board – although Whanganui Māori were early adopters. Around the country, as land was not becoming available quickly enough to satisfy the growing population, pressure built for the Crown to act to satisfy demand. The Crown succumbed to the pressure, and passed the Maori Land Settlement Act 1905, which lifted the moratorium on Crown purchasing. Engagement with Māori leaders that preceded the 1900 Act was conspicuously lacking this time around.

Could Whanganui Māori have chosen not to sell their land? The little evidence we have regarding their reasons for selling during this period tends to suggest that vesting in the land council did not live up to its promise, in terms of producing a viable income for owners, and nor did farming, while other options were – or seemed – non-existent. Then, too, there was the fractionated nature of landholdings which meant that, as Stout and Ngata said, an individual owner might ‘own thousands of acres of land, but finds his wealth distributed and dissipated over a hundred or more square miles in forty or more different blocks.’ This situation militated against that owner being able to make economic use of his (or her) holdings, which in turn discouraged retention.

When the Crown resumed purchasing in 1905, its practices were essentially unchanged from the previous century: it approached individuals to purchase their undivided interests in land, and those owners could elect whether or not to sell without reference to their iwi or hapū. In due course, the Crown applied to the court to partition out all the interests it had bought. This could take years. Until the interests were partitioned, non-sellers could not use their land, because they did not know which part of the block would be left to them. The costs of partition fell on sellers and non-sellers alike. They were often
substantial, and included court fees, land survey charges, and the costs of living away from home, to name but the most obvious. In some cases, owners had to sell other land to meet those costs.

Until 1905, there was no independent system of valuing or pricing Māori land. The 1905 Maori Land Settlement Act introduced a minimum price based on Government valuations, which seems to have generated higher prices, although it is difficult to know to what extent inflation also played a part. Before 1909, the Crown had a monopoly on purchase, and made no attempt to ascertain or pay a free market price for Māori land.

In the Maori Land Settlement Act, the Crown continued to make legislative provision for each individual Māori to retain ‘sufficient’ land for his or her ‘maintenance’. The land could be located anywhere. When purchasing a block, the Crown did not inform itself as to how much land the iwi or hapū with interests in the block collectively retained.

It was only with the establishment of the Stout–Ngata commission in 1907 that the Crown made a serious attempt to inform itself about what land remained to Māori of this district. The commission consulted widely, and it informed the Crown in no uncertain terms that there were serious risks if it continued to purchase the land of Whanganui Māori. The commission recommended that no more purchases be made in certain areas. In this and subsequent chapters, we report on the extent to which the Crown heeded the commission’s recommendations.

15.4 Crown and Other Purchasing, 1910–29
15.4.1 Introduction
Historians have called Crown purchasing from 1910 to 1929 the ‘final phase’, because even though it continued to purchase land throughout the century, from 1930 there was a marked decline.127

Of course, the chief reason why Crown purchases of Māori land were fewer in this period is because there was much less Māori land available to buy, as Native Department Under-Secretary CB Jordan admitted in 1920. Reporting that the Crown had purchased more than one million acres of Māori land nationwide since 1909, Jordan acknowledged that only around 907,278 acres of land ‘suitable for settlement’ remained in the hands of North Island Māori. So, he said, ‘purchases will naturally be less in the future than in the past’.128 Echoing Stout and Ngata over a decade earlier, Jordan admitted:

Instead, therefore, of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.

The long and the short of it was that:

All the figures and the statements that can be made will not alter the position, which is that the Maoris have disposed of nearly all the lands that they can dispose of without leaving the bulk of them landless, and later, probably to become a charge on the State.129

Then, too, the First World War placed a strain on the Government’s coffers, making less money available for land purchase. Over 100,000 men served overseas during the war, so that 42 per cent of all 21- to 49-year-olds were out of the New Zealand economy for all or part of the war’s duration.130 Parliamentary debate in 1915 acknowledged the ‘many alterations’ that would occur in the business sector because of the war. It would also affect tax collection, and by 1916 Herries was alerting the House that there was ‘a little tightness in money matters’. He admitted that ‘in war-time it is sometimes difficult, when you are purchasing a block, to get the money to complete the purchase with’.131

Nearly half the Crown’s purchases in this period, almost 150,000 acres, took place in the three years after the First World War (1918 to 1921), when it bought land to set up farm development schemes for returned servicemen.132 Other groups the Crown sought to assist were British ex-service personnel, who arrived in the country in large numbers between 1921 and 1924; even larger numbers of ‘empire migrants’, who arrived from 1922 to 1927 under the imperial government’s Empire Settlement Act 1922; and
the offspring of South Island settlers moving north to seek land.\textsuperscript{133}

In these years, the Crown continued to buy land in six main blocks: Raetihi, Tauakirā, Taumatamāhoe, Taurewa, Waimarino, and Whakaihuwaka.\textsuperscript{134}

The Native Land Act 1909, which came into force in 1910 and was amended in 1913, introduced several major changes to the conduct of Crown purchases, including allowing the Crown to have priority rights of purchase in areas of interest to it. Thus, although private buyers were allowed back into the market, the Crown still had an advantage over them.

Nevertheless, private purchasers dominated in this period, buying more than twice as much Māori land in the district than the Crown. Between 1910 and 1929, private buyers purchased around 130,351 acres, and the Crown purchased around 51,535 acres (not including public works and the like).\textsuperscript{135} The total area – around 181,886 acres – represented 31 per cent of the land that was still in Whanganui Māori ownership in 1910.\textsuperscript{136} Purchases in Waimarino were particularly significant, as we discuss in chapter 20.

We note here that some claimants believed that land that came to be used for the Waimarino hospital in Raetihi, and Mangaetūroa and Horopito schools came from Māori land rather than the Crown's award of Waimarino 1, and contended that now they are closed the sites should go back to their original owners.\textsuperscript{137} However, our research suggests that all three sites were part of Waimarino 1.\textsuperscript{138} The Horopito school site is now owned by the Horopito Residents and Ratepayers Society, which runs the old school building as a community hall.\textsuperscript{139} The hospital and Mangaetūroa school lands have been landbanked by the Crown for possible use in future Treaty settlement negotiations; we consider this to be the appropriate use of the land at this time.\textsuperscript{140}

\textbf{15.4.2 The Native Land Act 1909}

The Government introduced the Native Land Act 1909, as it had the 1905 Act before it, with little or no prior engagement with Māori. That said, it did reflect – in one respect, at least – what the Stout–Ngata commission reported that many Māori wanted, namely the freedom to sell land either to the Crown or to private interests, providing they retained sufficient for their own needs.\textsuperscript{141} Section 207 removed all restrictions on alienation (except for certain vested lands subject to part xv), thus allowing sale to private buyers.

Section 220 did, however, require that the land board satisfy itself that no owner would become landless as a result of the alienation – defining a 'landless' Māori as one whose land interests were 'insufficient for his adequate maintenance'. Section 220 also required the board to check that the alienation was not 'contrary to equity or good faith', and that the consideration paid, 'if any', was 'adequate'.

\textbf{(1) The Crown advantaged as purchaser}

Although it opened up the market to private purchasers, the 1909 Act contained provisions that still advantaged the Crown as a buyer of Māori land. The familiar proclamation in favour of the Crown was there in section 363(1), enabling the Crown to exclude other parties from proclaimed land for a year, extendable for a further six months. The purchase did not already have to be underway: it was sufficient merely that negotiations were 'contemplated'. Loveridge called this 'a selective reintroduction of the Crown's pre-emptive right'.\textsuperscript{142} Neither were Crown alienations subject to the same oversight. Section 360 stated that except where expressly mentioned, none of the Act's 'restrictions, prohibitions, conditions, or requirements' were to apply to acquisitions by the Crown.\textsuperscript{143} This meant, for example, that the Crown was exempt from the provision that the local Maori land board had to confirm a purchase and check that basic provisions relating to price and payment were met.\textsuperscript{144}

Under section 369 (as read in conjunction with section 209), the Crown could purchase interests in Māori land having 10 owners or fewer ‘in the same manner as if the land was European land’, as long as the block was not vested in a land board or ‘corporate body of the owners’.

\textbf{(2) Native reservations}

If the local land board (or the Native Land Court or Appellate Court) recommended it, an order in council
could be issued to set apart native freehold land owned by more than 10 owners as a native reservation for communal use (section 232(1)). Section 232(6) appeared to be strongly protective of the reservation’s inalienable status:

Land included in a Native reservation shall be inalienable, whether to the Crown or to any other person, and whether by the beneficial owners themselves, or by any Maori Land Board, or other body corporate or person in whom the land or any share therein is vested.

However, another clause (section 232(5)) indicated that such an order could be revoked (again by order in council, on recommendation of the land board or court). In other words, native reservations were not absolutely immune from being sold.

(3) **Māori land could be Europeanised and sold**

Under part xiv, it became possible for land boards not only to lease land vested with them, but also sell it (unless protected under part xv, which related to land already vested under earlier Acts) – a matter which we will examine further in chapter 17.

Where a block had only one owner, that owner could apply to the Native Appellate Court to have his or her land transferred into general title (section 208).

This ‘Europeanisation’ of land (as it became known) meant it was no longer subject to the remaining protection provisions – weak as they were – for Māori land, and the owner was free to use, lease, mortgage, or sell it without reference to the Native Land Court or the Māori land board. ¹⁴⁵

Aramoho 1 (just under 10 acres) represents one such example. Sited in a prime location on the Whanganui River bank, not far from Wanganui town, the court declared it to be general land in 1912 and the owner sold it not long afterwards. ¹⁴⁶

Then there is the reserve land at Pūtiki. The land there was much subdivided, and a number of its constituent blocks ended up in sole ownership. Bassett and Kay identified 12 cases where Pūtiki blocks were declared to have the status of general land. In total, these comprised almost 20 per cent of the original reserve. The evidence presented in this inquiry does not reveal what became of the affected blocks, since as general land they disappear from the records of the Māori Land Court and the Aotea land board. ¹⁴⁷ Nevertheless, it seems anomalous that land designated as Māori reserve could end up in general title with no special protection.

(4) **Meetings of assembled owners**

Land owned by more than 10 people was subject to section 209, and also to part xviii of the Act, which set out the procedures for dealing with it through ‘meetings of assembled owners’. Any owner or ‘person interested’ could request the local land board to call such a meeting (section 341), and five owners ‘present or represented’ constituted a sufficient number for a quorum (section 342(5)), irrespective of how many owners there were in total. Potentially, a tiny proportion of owners – possibly represented only by proxy – could vote to sell a block (subject to the approval of the land board) without the sanction of the majority. ¹⁴⁸ We shall see the effects of this in our chapter on Waimarino.

Moreover, section 341(3) specified that resolutions passed at such a meeting could not be invalidated simply because notices to owners had gone astray:

No meeting duly summoned in the prescribed manner, and no resolution passed thereat, shall be invalidated or otherwise affected by the circumstance that any owner has not in fact received notice of the holding of that meeting.

Section 209(3) even allowed for meetings of owners to be dispensed with altogether: if convening a meeting was likely to prove difficult, the board could now approve a sale without a resolution from owners as long as it deemed the sale to be ‘in the public interest and in the interests of the Native owners’.

15.4.3 **The Crown’s aims in the 1909 Act**

Freeing up Māori land for purchasing was a key objective of the 1909 Act. When he addressed Parliament on the Bill, Prime Minister Ward said: ‘It is proposed to purchase
from the Natives as large an area as possible’, and Native Minister William Herries later confirmed that the 1909 Act had created ‘practically free trade again’ in Māori land.149

Another main driver was for land to become ‘productive’ wherever possible. By 1911, the Under-Secretary for Native Affairs, Thomas Fisher, was able to report to Parliament that the Act was already proving effective in this regard: ‘At the present rate of progress it may be assumed that after eight years there will be little, if any, Native land that is not revenue-producing.’ Soon, ‘the cry of “unoccupied Native lands” would be a thing of the past.’150

The Act marked a policy shift from favouring leasing of Māori land to encouraging outright sale. Unsurprisingly, then, the acreage under lease in the Whanganui area declined over the 1910–20 period, while the acreage sold increased.151 Walzl identified 24 Whanganui blocks that were under lease to some extent before 1910. By 1920, sales

Māori men and children grouped around the pātaka at Pūtiki Marae, circa 1920. Under section 208 of the Native Land Act 1909, the owners of several subdivisions of the original Pūtiki reserve were able to convert their holdings from Māori freehold to general land.
had occurred in 21 of those. In 15 of the 21, the purchase involved between 50 and 100 per cent of the block.\textsuperscript{152}

A census official who travelled through the Whanganui area in 1911 commented that Māori were anxious about the implications for their land. The census included questions about the amount of land under production, and the officer noted that these prompted Māori suspicion that he was trying to find out if there was land available for the Government to buy. He observed that, because the Māori land there was ‘more or less’ invested in the Aotea Māori land board, ‘some of them have very little area of land to farm.’\textsuperscript{155}

\subsection*{15.4.4 The 1909 Act modified in 1913}

The Reform Government brought in more, and quite radical, changes under the Native Land Amendment Act 1913. Their composite effect was to make it even easier to purchase Māori land, especially for the Crown.

Where 10 or more owners were involved, it completely dropped the requirement for a meeting of owners before the Crown could purchase land.\textsuperscript{154} This was also the Act that reduced land boards to just a Native Land Court judge and registrar, with no Māori member.\textsuperscript{155} The judge and court registrar exercised the functions of the land board when they sat as the board, but retained their respective roles in the Native Land Court. This arrangement continued until 1932, when the court resumed responsibility for confirming alienations.\textsuperscript{156}

This Act introduced the major change in section 109 of allowing the Crown to purchase individual interests in vested lands, subject to certain conditions. It could later on-sell to lessees. This Act thus heralded the demise of two of the fundamental purposes of the vested lands scheme: protecting land from alienation and securing for owners long-term income from leases. In 1914, Whanganui Māori asked the Government by petition not to apply the Act to their lands, but to no avail.\textsuperscript{157}

The 1913 Act also amended the conditions around orders prohibiting private purchase. The Crown could now use such orders not only for land it was thinking of purchasing, but also for land it wanted to obtain by other means, like lease. The term of the initial prohibition order remained 12 months, but it could now be extended for a further 12 months, and a 1916 amendment pushed this out to two years. According to Hearn, this was to assist the Crown to spread its costs, at a time when, as we noted earlier, funds were tight.\textsuperscript{158}

Communications between Crown Ministers, agents, and officials during this period show that the Crown was being quite strategic about how it purchased Māori land, in terms of where and how land was purchased, and also ensuring that purchases were undertaken in accordance with Crown policy.\textsuperscript{159} For example, in 1916, the under-secretary of the Native Department instructed all purchase officers to check for court fees owing on land they were purchasing so that, wherever possible, fees were deducted before handing over the purchase money to the owners.\textsuperscript{160} Then, in 1917, he instructed the purchase officer for the Wellington region to check, before purchasing, that land titles were up to date. This might involve finding out whether there had been exchanges or successions, and deducting any succession duty or survey liens owing.\textsuperscript{161} Similarly, in 1919, after noting errors and inconsistencies in the processing of purchase vouchers, the Native Minister’s private secretary, Te Raumoa Balneavis, recommended that head office check all purchase vouchers received from purchase officers.\textsuperscript{162}

The purchasing system introduced by the 1909 Act, and amended in 1913, remained largely in place until the 1950s.\textsuperscript{163}

\subsection*{15.4.5 Crown purchase policy and practices, 1910–29}

Hearn described the 1909 to 1913 legislation as enabling the Crown to purchase land quickly and cheaply by means of a multi-pronged strategy. It included:

- the imposition of orders prohibiting private alienation; lodging applications for the cancellation of such partition orders as it considered would impede or add to the cost of acquiring the lands selected and thereby minimise the number of separate valuations it had to secure and to minimise the number of owners with whom it had to deal; and directing the Aotea
District Maori Land Board, where the number of owners in any block exceeded ten, to call meetings of assembled owners to consider Crown offers of purchase.\textsuperscript{164}

Under the Native Land Purchase Act 1892 (section 16), the Crown had been able to preclude private purchasing in any block by giving notice in the \textit{Gazette}. Section 363 of the Native Land Act 1909 varied the procedure slightly, giving power to the newly created Native Land Purchase Board to issue such proclamations.\textsuperscript{165} The board comprised the Native Minister, the under-secretary for Crown lands, the under-secretary of the Native Department, and the valuer general.\textsuperscript{166}

In Whanganui, according to Hearn, the Crown made ‘liberal use’ of orders prohibiting private alienation and also of the 1909 Act’s provisions, under section 371, allowing the Crown to purchase undivided shares in Native land. (Sections 194 and 195 imply that private purchasers were also able to buy undivided shares, albeit with certain provisos.) He described the Crown’s standard practice:
1. Impose a prohibition order over the block.
2. Try to purchase the full block via a meeting of owners.
3. If the above fails, maintain the prohibition and purchase individual interests.
4. Apply to have individual interests partitioned out.
5. Maintain or re-impose a prohibition on private alienation.
6. Try again to purchase individual interests.\(^\text{(1)}\)

Individualised land tenure certainly facilitated the methods Hearn described.

By 1907, all but three land blocks in the Whanganui district had been through the Native Land Court system. Stout and Ngata noted that subdivision in the eastern and southern side of the district was particularly high over the period to 1907, with the court making approximately 230 subdivision orders there. Over 70 per cent of these subdivisions were held either by sole owners or by small groups.\(^\text{(2)}\) This is significant in that, where there were fewer than 11 owners, land could be sold without a meeting of assembled owners.\(^\text{(3)}\)

\section*{(1) The Crown purchases from 'single individuals'}

It will be recalled from chapter 14 that, in 1912, a delegation of Whanganui Māori took a petition signed by 424 people to the Native Minister (see section 14.5.4(1)). The delegation and their petition sought to stop the damaged caused by individuals dealing atomistically with their land interests. Decisions about using, leasing, or selling land were to be in writing and were to be made by the people as a whole, rather than by 'single individuals'.\(^\text{(4)}\) The petition achieved no change.

Indeed, it seems that the tactic of dealing with owners one by one to secure their agreement to sell remained popular with Crown officials. In 1919, the native land purchase officer reported on the state of Crown purchasing in 'the Wanganui blocks'. He recorded that a recent visit to Taumarunui and down the Whanganui River had 'cleared off a number of difficult interests'. However, '[t]he only satisfactory way to deal with outstanding interests', he said, was 'to see the non-sellers (or their successors) personally'. Taumatamāhoe 2B287 was cited as an example of this tactic succeeding. The owners there 'were always regarded as non-sellers, but a personal explanation altered their views and the bulk of the block (1,570 acres) will probably be acquired shortly'.\(^\text{(5)}\)

\section*{(2) The Crown makes use of meetings to purchase}

Sometimes, though, it was easier for the Crown to purchase large and contiguous areas if land purchase officers attended meetings of owners. The requirement to hold meetings of assembled owners was removed in 1913, but a native land purchase clerk was later to record that meetings saved 'many weeks and months of labour and a considerable amount of expense' involved in tracking down individual owners.\(^\text{(6)}\)

From the legislative provisions relating to quorums and proxies at meetings of owners, and from the regulations promulgated under the 1909 and 1913 Acts, it is not clear whether any owners actually had to attend in person. The regulations stated that any proxy votes had to be handed to a representative of the land board prior to the commencement of the meeting, and that the representative could himself chair the meeting.\(^\text{(7)}\) Since those present in person or represented by proxy could vote, it appears that five proxy votes could carry the day. A resolution could be passed by a handful of owners or their proxies at the meeting, even where those holding the majority of shares were either absent or dissented.\(^\text{(8)}\) There are several instances where these provisions resulted in Whanganui land being sold by a small proportion of owners holding only a small proportion of shares, an issue to which we shall return in our later chapter on Waimarino.\(^\text{(9)}\) Convenience, rather than proper collective decision-making, appears to have weighed heavily with the Crown.

Walter Bowler, the president of the Waikato-Maniapoto land board and also the native land purchase officer for Auckland, advised Under-Secretary Fisher in 1914 that, for blocks where there were 'a large number of scattered owners', he thought it better to wait until a meeting of owners was held, to make it easier to 'conduct negotiations'. He amplified in another memo: 'The opportune production of a cheque-book frequently assists deals to go through, & perhaps if the resolutions are lost I might be able to acquire individual interests'.\(^\text{(10)}\)
Meeting rejecting sales does not stop the Crown

Acknowledging that the Native Land Purchase Board in Wellington would have to issue specific instructions before any actual advances were paid over, Under-Secretary Fisher made it clear that a meeting of owners voting against sale need not be an end to the matter. Responding to Bowler’s comments quoted above, he wrote:

The proper procedure, I take it, will be for the Land Purchase Officer to place the proposals for purchase by the Crown from the Native owners in as favourable a light as possible, and failing the passing of a resolution as to a sale to the Crown, to then ascertain what probabilities exist as to fair portions being acquired from owners desiring to sell their individual interests.

Aotea land board president JB Jack confirmed in 1915 that meetings of owners could be an opportunity to purchase individual interests even where the assembled owners resolved not to sell. He reported that where a motion proposing sale failed to carry, this should not be taken as a barrier to ‘a considerable area being acquired’, because ‘once it became known that the Board’s officer here had documents awaiting signature, many of the owners would soon turn up.’

Jack had ideas in this vein for how the Crown could effect the purchase of interests in Taumatamāhoe 2B2B, Whakaihuwaka C, and Whitianga 2B blocks. He suggested meetings of owners in the first instance, but if owners voted against sale, the Aotea board’s officer should be authorised to take signatures from individuals.

In 1916, Jack again offered advice to further the Crown’s interests, recommending a staged approach to the purchasing of Whakaihuwaka subdivisions C13A to H – which, as he acknowledged, were all ‘nominally papakainga areas’. He advised the under-secretary of the Native Department that if Māori interests in C1 and C131 were acquired first ‘[i]t is likely . . . that the owners of the other subdivisions will also wish to sell.’

It seems that the Aotea District Māori Land Board had its eye at least as much on the Crown’s interests as on those of the Māori owners, and completely disregarded the recommendations of the Stout–Ngata commission.

In sum, the practices we have outlined show the Crown conniving to bring about the very situation that Whanganui Māori, in their 1912 petition, lamented and asked the Crown to prevent.

Serial partitioning and survey liens

In this period, there were two blocks where the Crown’s serial partitioning was extreme: Whakaihuwaka and Taumatamāhoe.

Whakaihuwaka

In 1907, the court partitioned Whakaihuwaka into Whakaihuwaka A, B, and C. The Crown’s interests, comprising a little over 37,029 acres, were in Whakaihuwaka A and B. Whakaihuwaka C, comprising 25,456 acres 2 roods 14 perches, went to 497 Māori owners. By 1907, then, the Crown had already bought more than half the block. In 1909, the owners requested division of Whakaihuwaka C into smaller areas for different groups.

On 13 May 1915, the Crown issued a proclamation prohibiting private purchase in Whakaihuwaka C, and embarked on buying interests there itself. Over the next 10 years, its purchases enabled it to acquire, piecemeal, at least 15 more partitions, totalling over 21,510 acres. This does not include parts of Whakaihuwaka C taken for scenery preservation.

In other words, the Crown whit-tled away the owners’ interests by successive purchases and partitions until it owned more than 93 per cent of the original Whakaihuwaka block.

We have seen how new partitions and accompanying surveys created a cost burden for those not selling their interests. Robert Cribb described difficulties facing owners in Whakaihuwaka C block, particularly given the fractionated nature of the title. His old people had managed interests in the block, but ‘there was no way they could ever raise the money [for the survey]’. They were granted a 12-month extension but ‘they knew full well that they would never be able to pay’. In fact, the extension ‘really just increased the amount which they were going to have to pay’ (presumably because of interest charges). It is not clear exactly which part of Whakaihuwaka C was involved: Mr Cribb mentioned both 13C and 13D, but the
He Whiritaunoka: The Whanganui Land Report

The figures he cited do not correspond with information that Paula Berghan gave in evidence for those subdivisions.\(^{183}\)

The important point, though, is that claimants still recall particular examples of the Crown’s partitions imposing insupportable costs on people who wanted to keep their land but could not.

(2) Taumatamāhoe
The Crown also purchased many individual shares in the Taumatamāhoe block, particularly from 1913 to 1924, when the land was under Crown proclamation. It then periodically applied for partition of its interests, and the resulting costs for non-sellers obliged some of them to pay in land. The Department of Lands and Survey informed the under-secretary of the Native Department in 1915 that a lien would be charged against the Taumatamāhoe 2B2B block for current surveys, which would be in addition to an existing survey lien already accumulating interest at the rate of 5 per cent a year.\(^{184}\)

(3) Ahuahu
Another Whanganui block that was partitioned more than once as a result of Crown purchasing was Ahuahu. By 1901, the Crown had purchased 90 per cent of the Ahuahu block, and compulsorily acquired more in 1912 for scenery preservation. Then in 1914, the Crown took 199 acres of Ahuahu F2 in lieu of an outstanding survey charge of £49 14s 8d.\(^{185}\)

(4) Ōhura South
Many of the partitions of Ōhura South arose from private, rather than Crown, purchasing, but the impact of survey costs was the same. Between 1910 and 1930 there were at least 70 individual private transactions, most for areas of fewer than 100 acres, and one Crown purchase, the M3B2B block, comprising just under 197 acres.\(^{186}\) As a result of all this and earlier purchase activity and partition, the court registered survey charges against numerous Ōhura South blocks, and owners had to forfeit approximately 148 acres to the surveyors to pay survey costs between 1910 and 1930.\(^{187}\)

15.4.7 The effect of the Crown’s use of proclamations
We have seen that the 1909 Act provided for proclamations to exclude private purchasers from blocks where the Crown wanted to buy. In 1916, Native Minister William Herries acknowledged that potential existed for the Crown to abuse these powers, but described them as ‘a weapon’ against speculators who might otherwise drive prices up or interfere with Crown plans for land settlement. ‘The Crown’, Herries concluded, ‘ought to be protected while they are purchasing land for settlement’.\(^{188}\) Hearn’s view, in his evidence to us, was that this suppression of private competition meant that Māori who wanted to sell could not do so to their greatest advantage or for the highest price. Even where the Crown negotiated in the absence of a proclamation, the fact it could summon one up put it in a powerful position when it came to price.\(^{189}\)

The Act forbade alienation of land under proclamation. ‘Alienation’ included ‘transfer, sale, gift, lease, licence, easement, profit, mortgage, charge, incumbrance, trust, or other disposition’.\(^{190}\) This broad definition effectively prevented owners of land under proclamation from borrowing using their land as security, developing their land, or deriving income from it in any way that involved contracting with another party. Security from expropriation and the ability to bequeath their interests to their successors were in fact the only ‘incidents of ownership’ they retained while land was under proclamation.\(^{191}\) The period of limbo continued until either the Crown completed its acquisition plans or the proclamation expired.

(1) Proclamation orders extended
Because proclamations so severely limited Māori owners’ ability to derive benefit from their land, it might have been expected that the Crown would ensure that they were of short duration. Instead, the Crown extended the terms of proclamation orders, in some cases several times over.

In 1915, for example, the Crown issued proclamations over Taumatamāhoe 2B2B and (as we saw above) Whakaihuwaka c. In both cases, local Māori protested.\(^{192}\) Clearly undeterred, the native under-secretary not only got the proclamations imposed, but sought to renew them.
in 1918. He proposed opening fresh negotiations with owners for the purchase of ‘the balance of the interests in these subdivisions’, and suggested that further prohibitions against private alienations were ‘desirable’, although conceded that ‘the validity of putting fresh prohibitions on may perhaps be called in question’. The Crown did put ‘fresh prohibitions’ in place though, and continued to do so until at least 1920, while the Crown continued purchasing and partitioning.

(2) Taumatamāhoe 2B2B extensions
Taumatamāhoe 2B2B was a 25,163-acre block which was partitioned into 20 family-group sections in 1909, as recommended by Stout and Ngata. The Crown rolled over the proclamation on that block until 1924 – a situation that claimant counsel described as leaving the block in a state of limbo for almost a decade. During that time, as we have seen, the Crown continued to purchase undivided shares, with total disregard for Stout and Ngata’s specific recommendation that this whole block should be left in Māori ownership. In section after section, the Crown reached the point where no more owners were prepared to sell. It would commission a survey, and then get the court to define its interests, and partition them out. By 1923, the Crown had purchased all the sections of Taumatamāhoe 2B2B block except sections 8A, 13A, 14, 15A2, 15A3, and the papakāinga sections 19 and 20. Section 14 was leased out in 1912 before the proclamation prohibited such transactions, but the Crown compulsorily acquired part of it for a scenic reserve.

(3) Kai Iwi 6E extensions
For the Kai Iwi 6E block, the Crown issued two prohibition orders and continually rolled them over between 1921 and 1926:

- an order dated 25 February 1920 prohibiting dealings until 25 February 1921;
- an order dated 1 February 1921 extending prohibition until 25 August 1921;
- an order dated 19 July 1921 extending prohibition until 25 February 1923;
- an order dated 9 March 1923 prohibiting dealings until 9 March 1924;
- an order dated 4 March 1924, extending prohibition until 9 September 1924; and
- an order dated 1 September 1924, extending prohibition until 9 March 1926.

In December 1925, lawyers Watt and Blennerhassett, acting for Ani Paramena, wrote to Native Department Under-Secretary Robert Jones about the block. They analysed the terms of the various prohibition orders and extensions and concluded that the order of 9 March 1923 was not valid. On that basis, they asked the Crown to remove the latest extension, which was preventing Mrs Paramena from having a lease arrangement finalised by the Aotea District Māori Land Board. Jones sent them a ‘holding reply’ in the first instance, and on 5 February 1926 he wrote to J B Jack, now a Wanganui solicitor, saying that he thought it unlikely that Watt and Blennerhassett would go so far as to take the matter to the Supreme Court as the order was shortly to expire anyway. Then, on 12 February, he wrote back to Watt and Blennerhassett to say that the purchase officer would visit Ani Paramena over the next few days, and if she was still unwilling to sell, the prohibition order would not be extended beyond 9 March.

15.4.8 Did Māori want to or need to sell?
In 1924, the Minister of Lands, David Guthrie, and others met with the Minister of Native Affairs, Joseph Coates, to press for Crown purchasing of land in the Ōhotu blocks. At the end of the meeting, Coates expressed the view that ‘if the Maori wants to sell, . . . he can sell’. His one caveat was that they should not become landless in the process. Between 1912 and 1921, the area that the Aotea Māori land board leased out on behalf of owners of vested land declined, while sales by the board increased. A major factor in the decline was that vested land had been sold: the 1913 Act permitted vested land to be purchased, and allowed private purchasers back into the market. Walzl does give the Ahuahu block as one example of a block where the Native Land Purchase Board opted not to
proceed with purchasing – partly because the land was under a 42-year lease.\textsuperscript{203}

We look now at why Māori sold their land in this period. There were a number of strong motivations, most of a kind that suggests that selling was not exactly voluntary. Circumstances were compelling, and options were limited. We consider the evidence.

\textbf{(1) Sale to realise funds for development}
As noted in earlier chapters, the difficulty Māori experienced in accessing money meant that, in order to obtain funds for land development, they often had to lease or sell some land.

A letter to the Native Minister in 1910 noted that Māori owners of Raetihi 2B2C (1,050 acres) wished to sell land to the Crown to obtain ‘money for improving their farms and for adding to their small flocks of sheep’.\textsuperscript{204} They appear to have sold some of Raetihi 2B2C to a purchaser by the name of Harris, in the early to mid-1920s. The solicitor involved, also named Harris (not necessarily the same person), set out some of the uses to which former owners had put the proceeds:

- Haitana Te Tawhero wanted to go in for milking and bought stock;
- Mokopuna Tirakoroheke also wanted to start milking, at Ōrartoha. She bought cows and milking plant, and was supplying the Raetihi Dairy Factory;
- Tūhau Taura used £30 of his proceeds to buy stock, and put the remainder into building a house on land adjoining the area sold;
- Mataera Rongonui, Rewha Taura, Pare Taura, and Mare Taura joined with Tūhau Taura in building the house, contributing most of the money they had received;
- Pāpara Te Tawhero wanted to buy stores; and
- Herewini Te Tawhero wanted to ‘[effect] improvements on his residential land’.\textsuperscript{205}

Harris commented, however, that ‘[i]n each case the circumstances [were] somewhat unusual’.
Poverty

Many Whanganui Māori in fact struggled to develop their land because of uncertain or fractionated land title, an inability to get loans for capital development, or because of proclamations that prevented alienation. In 1924, Judge Browne, President of the Aotea Māori land board, described Māori who had vested land along the Whanganui River as being in an impoverished state, due mostly to a lack of finance to develop the land. They were, Browne said, ‘unable to do anything’ with the land, deriving no income from it, and ‘getting very short of means to purchase food and other necessaries’.207

Poor health, poor living conditions, and poverty in general, also affected owners’ ability to develop their land, and made it more likely that they would sell their interests. In the period under discussion, there were events like the typhoid epidemic at Hiruhārama in 1910, the typhoid and dysentery outbreak of 1926, and the influenza outbreak of 1928.208 We saw examples of Māori owners using purchase money to cover debts and basic living costs such as expenses for clothing, food, and timber for building: Riwai Rimitiri’s sale of land at Pākaraka in 1912; Te One Para’s sale of Kai Iwi 6C2A in 1913; Rāina Whitia’s request for the proceeds of her land sale in 1920; and Ngāraihi Rēweti’s sale of Rangiwaia 4F4D in 1924.209

Debt

Mounting debts on land pushed owners to sell. Debts might relate to survey; rates (which from 1 April 1905 were payable on all Māori land except papatupu land); court fees; or mortgages.210 We have referred to the numerous cases where land was forfeited to pay survey costs. Then, as in other periods, there were still the incidental costs of court attendance such as travel, food, and accommodation.

Outstanding rates

From 1925 onwards, another debt that could be registered against Māori land titles was unpaid rates, and responsibility for collecting them was transferred from local bodies to the Native Land Court.

Murimotu 3B1A and B5 were examples of blocks that had substantial outstanding rates and survey fees registered against them when they were sold. And in 1927 the Native Land Court granted a charging order in favour of the Taumarunui Borough Council for £3 18s for unpaid rates on Ōhura South C12B.211 We do not know how large a part the rates debt paid in motivating this particular sale, but Neville Fox told us that mounting rates debt on various Ōhura South blocks forced sales later in the century.212

Tūpapanui was another block where there was rates debt. When the Crown had its interests in the block partitioned out in 1907, owners’ remainder interests went into Tūpapanui 2B, which in the same year was partitioned between the owners to create Tūpapanui 2B1 and 2B2. Owners unanimously rejected the Crown’s offer to purchase 2B2 in 1912, opting instead to lease the land via the Aotea land board to a Mr DH Sinclair. However, after a summons was served on Mr Aropeta Makitōnore for rates due on the block, and with rates also owing on 2B1, a majority of owners decided to sell 2B2 to Mr Sinclair. Ten owners objected.213

The effect of proclamations

The Crown’s use of proclamations severely limited owners’ ability to derive any kind of income from their land, and made them more vulnerable to mounting debts – especially where prohibitions were in place over several years.

Hearn explained how this put pressure on owners to sell to the Crown:

If you could not borrow to develop your land, if you could not turn your land to productive account then you were vulnerable to charging orders, for rates, you had survey liens still accumulating simple interest at the rate of five percent per annum, and so many Māori – it seems to me – gave up and sold their land as a way of discharging accumulating debts.214

Landholdings fragmented

Some areas had been partitioned and fragmented to such a degree that they were not economic to use or to develop. The uneconomic nature of the partitioned Murimotu block was demonstrated when the private purchasers of five sections made it a condition of sale that they would
not pay until they got title ‘for all the blocks at the same time’.\footnote{215}

\textit{(7) Land of poor quality and without access}

Land was often of poor quality and lacked effective access. These were other reasons cited for wanting to sell.

The Crown solicitor, CA Loughnan, wrote to James Carroll in 1910 regarding the Maraekōwhai 2B2 block. He noted that the block was difficult to reach, being 20 miles from the nearest road and 70 miles from the railway station at Ōngarue. It was also ‘covered with dense . . . bush which is not suitable for milling purposes’. Loughnan reported that the owners were anxious to sell, and he had advised them to look for ‘a European purchaser’.\footnote{216}

\textit{(8) Owners had moved away}

Lastly, some owners moved out of the district, and wanted funds to use elsewhere. For example, Rōpiha Rangihaukori’s sale of land was motivated by her desire for money to help build a meeting house near Pātea.

Then there was the case of two owners in Kaitangata 122 who married Northland landowners and moved away. When they advanced that reason for wanting to sell their interests in Kaitangata, the Aotea land board allowed the sale to proceed, noting that, although Kaitangata was their only remaining land in the district, they no longer lived locally and wanted to sell.\footnote{217}

\textbf{15.4.9 Prices for Māori land increase from 1910 to 1930}

We know that the average price per acre for Māori-owned land in Whanganui from 1906 to 1910 was some 50 per cent higher than it was pre-1900, despite inflation running at no more than around 2 per cent a year.\footnote{218} In 1909, the Native Land Act cleared the way for private purchasing again. However, it was not passed until 24 December, so could have had no impact until the following year. The issue, then, is: did the price increases continue after 1910; and if so, what were the contributing factors?

\textit{(1) Crown versus private prices}

Hearn compared prices paid by the Crown and private purchasers for selected land blocks under the Aotea land board. He found that the price that private purchasers paid often matched the Government capital valuation, and in some cases exceeded it by a third or more, as table 15.3 shows.\footnote{219}

Correspondence about the Raetihi block shows that the absence of a Crown prohibition order allowed private competition to push up the Crown’s offer price. In 1918, the commissioner of Crown lands recommended an offer of 30 shillings an acre for Raetihi 5B2. After the owners’ solicitors notified the Native Department that two of them had sold their shares to a private company for £3 an acre, the Crown indicated it was willing to increase its price. In the event, the remaining owners also sold to the private company, but the example illustrates how private competition affected what the Crown was prepared to pay.\footnote{220}

\textit{(2) Government valuations}

The Aotea District Māori Land Board appears to have ensured that private parties paid prices that were not less than the Government valuation – even where owners...
would have been willing to accept lower prices because they needed to sell. There is no evidence, however, of the land boards or other Crown officials trying to gauge a market price for Māori-owned land. Hearn told us that Government capital valuations were never designed to reflect market value accurately, because they were created for taxation purposes. The valuer-general informed a 1915 commission inquiring into valuations in New Zealand that he kept values ‘under what may be called the actual market value’, explaining that the Government could not afford to pay market prices. Furthermore, the value of Māori land was sometimes discounted by as much as 25 per cent because of the perceived additional complications and costs involved in purchasing it – even though the Native Land Act of 1909 theoretically reduced these. Hearn noted that it was only after 1918 that unimproved Māori land was valued on the same basis as general land. Even so, it is likely valuations did not always properly account for timber. In 1922, the valuer-general found it necessary to remind all his valuers that indigenous timber of commercial value was to be included as part of the unimproved value of the land.

(3) ‘Land boom’

As well as the price-inflating effect of Government valuations, the years 1916 to 1929 saw a ‘land boom’. Walter Nash, speaking as Deputy Prime Minister and Minister of Finance in August 1943, said that the boom saw land prices – both rural and urban – increase more than fourfold. In only four years between 1917 and 1921, said Nash, ‘the price per acre of all land sold doubled.’ We do not know whether ‘all land’ included Māori land, but we saw no evidence that the price the Crown was willing to pay grew at this rate. Rather, Hearn expressed the view that for the period 1910 to 1930 ‘[i]t is difficult to escape the conclusion that . . . the Crown failed to pay fair market prices for lands purchased from Maori’.

As to whether the re-emergence of private purchasers in the Māori land market increased prices, we have too little evidence to be certain of the impact of the various elements in the higher prices evident in this period. Clearly, there were a number of factors at play, and the behaviour of markets would tend to suggest that more competition from private parties was one of them.

15.4.10 Stout and Ngata’s advice on Whanganui land

Earlier, we discussed Stout and Ngata’s 1907 conclusion that most Whanganui Māori could ill afford to sell any of their remaining land, which they calculated as ‘about 500,000 acres, at a liberal estimate’. From their report, however, it is clear that in this total are these areas that the Crown had purchased but had not yet partitioned out: 50,389 acres in Whakaihuwaka; 18,048 acres in Taumatamāhoe; 2,955 acres in Rangiwhaea; and 727 acres in Whitianga. Adjusting for these purchases (although not for promised seller reserves in Whakaihuwaka, which had no defined area), the figure is more like 428,000 acres. We list the most substantial areas in table 15.4.

Averaged across the whole Whanganui Māori population, including children, Stout and Ngata calculated that this residual landholding represented about 250 acres per person – although they noted that across the district actual holdings varied considerably, from 30 to 40 acres to 3,000 to 4,000 acres per head. They named particular areas that Māori needed to retain for their own use, whether for occupation or for farming: Te Autumutu (Waha rangi 6); Paekākā (Waharangi 7); 4,340 acres in Whaka ihuwaka; 5,550 acres in Taumatamāhoe; part of Whitianga 2; 6,000 acres in Maraekōwhai A3, A4, and A5; 4,000 acres in Waimarino A; Waimarino E; Waimarino F; 8,600 acres in Waimarino 3; 1,450 acres in Waimarino 4; and Waimarino 8.

They recommended that, if Māori did not use these areas themselves, they should nevertheless be retained in Māori ownership and leased out, to earn income. Crown purchasing in Whakaihuwaka and Taumatamāhoe should cease. These were important and specific recommendations. Did they affect the Crown’s view of how much land should remain in the hands of Whanganui Māori, or as to how much land it should purchase in the area?

15.4.11 ‘Sufficiency’ and ‘landlessness’, 1910–30

As we saw, the 1905 Maori Land Settlement Act defined ‘sufficiency’ as a minimum of 25 acres of first class land,
Section 2 of the 1909 Act replaced this definition with a subjective provision that defined a ‘landless’ Māori as one whose ‘total beneficial interests in native free-hold land ( . . . whether at law or in equity) are insufficient for his adequate maintenance’.

The new provision was problematic in a number of respects. For instance, even if ‘total beneficial interests’ was intended to include use of native reserve land held communally, there was no guarantee that those reserves would remain immune to alienation: we have already seen that under section 232(5) their status could be revoked by an order in council. Also, even if a person’s interests were insufficient for his adequate maintenance, there was a ‘get-out’ clause: section 425 stated that the Native Land Court or land board could recommend to the Governor that an alienation proceed even if a Māori became ‘landless’ as a result. The only proviso was that, before carrying out the confirmation, the Governor had to satisfy himself that the person was ‘able to maintain himself by his own means or labour’.

This unlinking of land retention and means of support for Māori went further in the Native Land Amendment Act 1913. Now, under section 91, the Native Land Court or a Māori land board could waive the landlessness provision and confirm an alienation on its own initiative, as long as it deemed the land in question ‘not . . . likely to be a material means of support’ and ascertained that the seller had an alternative means of earning a livelihood, such as qualifications in a trade or profession. The Central North Island Tribunal found that this marked a distinct departure from the concerns expressed by the Kotahitanga Parliament and the Stout–Ngata commission about land retention.
(1) The effects on Whanganui land retention

The Crown's minimalist view of how much land Whanganui Māori needed to retain meant, quite simply, that it allowed purchases to continue apace.

Between 1911 and 1920, the landholdings in the Waimarino block of those owners who did not sell their interests to the Crown in the nineteenth century diminished by 9,850 acres, or 24 per cent. Over three-quarters went to private buyers, and the rest to the Crown either as purchases or compulsory acquisitions for scenery preservation, roading, and the like. In the so-called 'seller reserves', landholdings diminished even more – more in fact than in any other decade – with over 18,000 acres going out of Māori ownership. That represented around 55 per cent of the area originally set aside for the sellers after the Crown's nineteenth century purchases in the block. Of those 18,000 acres, Crown acquisitions accounted for just under half. We look at this in more detail in chapter 20.

In Taumatamāhoe, the sizeable 2B2B block comprised 25,163 acres in 1907. By 1920, almost all of it was in Crown hands, including the 470 acres taken for a scenic reserve in 1917. The Crown was similarly active in the Whakaihuwaka block, acquiring almost all of Whakaihuwaka C (some of it for Public Works) by 1920. Obviously, this ran counter to Stout and Ngata's specific recommendation that the Crown should stop purchasing land in these two blocks.

(2) Recommendations had no discernible effect

It may be arguable that the Crown purchased slightly less land in the blocks that the Stout–Ngata commission specifically cited for retention. The difference is not sufficiently marked really to derogate from the general position that Stout and Ngata's views and recommendations went unheeded.

There were many blocks in the district where the Crown simply had no regard to the extent of alienations, whether before or after the Stout–Ngata commission.

For example, the Crown already owned most of the Ahuahu block – which Stout and Ngata did not specifically mention – before 1910, but then in 1912 it took the entire area of Ahuahu A and B (50 acres each), apparently for scenery preservation, excluding only two acres in B block, which it returned to Māori owners as an urupā. At the same time, it also took part of F2 and, in May 1914, the Crown took 199 acres in Ahuahu F2A, this time for survey debt. The same month, a private purchaser bought F2B (724 acres). By 1920, almost 75 per cent of the 1910 acreage was gone. The percentages were even higher for some other blocks: 90 per cent for Tūpapanui, and 100 per cent for Te Kahakaha, Taonui, Puketarata, and Waipuna. By 1937, the Crown had purchased approximately 1,979 acres of the land vested in the Aotea District Māori Land Board (see sections 17.6.5(1) and 18.4.1(1) for Crown purchases of vested land in Taumarunui and Tauakirā).

Commenting on the period from 1907 to 1930, Cross and Bargh said that the combination of land sales through and by the Aotea Māori land board, and the taking of land for scenery preservation purposes, 'severely reduced' Māori land ownership in the district. They estimated that sales of Māori land directly to the Crown, sales by and through the Aotea board, and acquisitions for scenery preservation purposes, accounted for alienations of around 250,000 acres. Thus, of the 500,000 acres that Stout and Ngata identified as remaining in Whanganui Māori hands in 1907 – which, as we showed, was more accurately about 430,000 acres – more than half was sold or taken by 1930, and of the other half, two-thirds was under lease, most for little profit.

(3) How was the law administered, in practice?

To meet the requirement under the 1909 Act that land boards ensure Māori were not left landless by a sale, boards had to seek confirmation from intending vendors that they had other land available for their use. Ensuing confirmations usually included a list of the interests retained. In this section, we look at evidence that indicates the priorities of the time.

The local board might sometimes have cut corners. We know of one instance in 1924, when the Crown wanted to purchase land in the Ōhotu blocks and asked the board to compile a list of the owners' other land interests. To do
this for the 2,000-odd owners, the registrar replied, would involve ‘a very great amount’ of work. He queried whether it would be necessary to set out this detail. Would it not be sufficient if the area only were given? The under-secretary responded ‘[t]he course suggested by you would not give the information to the Minister which he desires’, and the registrar was to give as much detail as possible.

In terms of first creating, and then respecting, papa-kāinga and reserves, the Crown’s performance was more mixed. In 1907, as we saw earlier, the chief land purchase officer, Sheridan, turned down a request for an urupā reserve in the Taumatamāhoe block, at the mouth of the Tāngarākau River, because the land was likely to be needed for settler infrastructure. He did, though, indicate that any graves found would be ‘fenced in and reserved from sale’.

In July 1916, the president of the Aotea District Māori Land Board, J B Jack, asked the under-secretary of the Native Department to purchase Whakaihuwaka C subdivisions 13A to H. His priorities were other than ensuring that Māori owners retained land:

although they [Whakaihuwaka C13A–C13H] are nominally papakainga areas, I have no hesitation in suggesting that, if the Natives are willing to sell, the areas should be bought, as their present condition as seen from Pipiriki House is quite an eyesore to all tourists travelling on the river.

On 14 October, the acting under-secretary informed Jack that the Minister was happy for the purchase to proceed. In July of the following year, the under-secretary instructed the native land purchase officer, C T H Brown, to ‘re-open’ the purchase of interests in both Whakaihuwaka and Taumatamāhoe, but cautioned: ‘It will be necessary to see that none of the vendors are left landless.’

Where the Crown wanted to purchase land where Māori owners had invested in developments and dwellings, purchase agents had to be particularly careful to make sure they purchased those owners’ interests first, ‘otherwise they may object to outside Natives being paid for improvements which they were not entitled to’. As to the dwellings, the agent was instructed to ‘inquire about insurance against fire, and see that the Crown’s interests are protected.’

We know of occasions when land boards tried to protect Māori land from mortgagee sales. One example was when the Aotea board intervened to prevent the sale of Kōiro 6, which the owner mortgaged in 1920. He got into difficulties a year or so later (we explore the reasons in our farming chapter), and the Aotea board twice managed to rescue him from having to sell Kōiro 6 to pay off his debt. (This was not, however, to be the end of the matter, as we shall see later, in section 15.5.4(1).) There was another case where the board was ready to step in to prevent sale – the block was Pākaraka 2B1 – but there, the owner extricated himself from his difficulties without the board’s assistance.

In the far north of our inquiry district, a study of alienation in Ōhura South concluded that, after 1906 and especially from 1910 onwards, the Waikato-Maniapoto Māori land board generally fulfilled its statutory obligations to Māori, but its focus was on streamlining the process and enabling alienation, particularly sales. Another study of the Waikato-Maniapoto Māori land board’s role in the 1910s concluded that it was unable to exercise much more than cursory oversight of sales. Underfunding played a large part, again reflecting the Crown’s policy focus on facilitating alienation.

**15.4.12 Conclusions for the 1910 to 1929 period**

A major driver of the Crown’s purchasing policy in this period was the desire to free up and use for settlement as much remaining Māori land as possible, and to do it as economically as possible. This translated into opening up land to private buyers, while preserving to the Crown an advantage in areas where it wished to purchase, like when it acquired land for soldiers returning from the war.

The 1909 Native Land Act and amendments underpinned these objectives, even going to the lengths of conferring powers on land boards to sell interests in vested land, when the scheme was conceived as a means of *protecting* land from sale. The Act also allowed the land
boards to confirm the decisions of meetings of owners concerning their land – including its sale. On the surface, meetings of assembled owners making decisions about their land has the appearance of empowering the collective. That may have happened in some cases, but the legislation did not require the presence at such meetings of a decent number of owners representing a majority of the shareholding. The quorum provisions instead made it possible for a tiny minority, and people exercising proxies, to carry the day – and there was no avenue for dissenting owners to get decisions reviewed. Then came the 1913 Act, which not only removed Māori from the land boards (all Native Land Court judges were Pākehā), but provided those same boards with means to sell land without a meeting of owners. Meanwhile, the practice continued of negotiating with individuals, and Crown agents sometimes actively subverted the decision of meetings of owners not to sell by picking off individual owners’ interests in the aftermath of the meeting.

The evidence shows that where there was no private competition, the Crown tended to pay lower prices. The negative effects of prohibition orders on private dealing were compounded where they were repeatedly extended, as in the Kai Iwi, Whakaihuwaka, and Taumatamāhoe blocks. Although difficult to assess its dimension, the difficulty for owners of being unable to use or develop land under Crown proclamation also appears to have been instrumental in decisions to sell. Moreover, perceived complications with the Māori title system meant that Government valuations of Māori land were sometimes depressed by as much as 25 per cent, compared with general land. It was not until around 1918 that Māori land began to be valued on the same basis as general land – and even then, the value of standing timber was not always included.

As in the 1900 to 1909 period, the evidence, though limited, suggests that Māori sold land for many reasons, but mostly because they had few other options for obtaining money to develop remaining land, pay debts like survey liens, or for day-to-day living. In this connection, it must be observed that better prices would have enabled them to part with less land for the same financial return. The tendency to sell increased where interests were fractionated or blocks fragmented, where the land was of poor quality, or where there was poor access.

Although the Crown was generally careful to ensure the observance of landlessness provisions for individuals, it failed to monitor the overall extent and effect of land loss, especially as it applied to kin groups. This was despite Stout and Ngata’s emphasis on the communal nature of Māori land in their 1908 report to Parliament:

Maori lands are communal lands and the Maori owner has a duty to successors different from that of an ordinary European landowner towards his family. The State has a right to see that the Maori unused to . . . our individual system, shall not deprive himself of the land that belongs to him and his tribe.254

Overall, the Crown’s main failure in this period was that it ignored the information, advice, and recommendations relating to the Whanganui district contained in the report of the Stout–Ngata commission. Previously, the Crown arguably pursued land purchase policies in ignorance of how they would affect tangata whenua. It commissioned Stout and Ngata’s work specifically to put it in a position of knowledge that could have been – and should have been – a game-changer. But it did not heed the commission’s recommendations about how much land Whanganui Māori needed to retain and where. On the contrary, it accelerated its purchase activities in Whakaihuwaka and Taumatamāhoe, two blocks where the commission recommended that purchasing should cease altogether. It bought land intended as reserves for Māori, and large acreages in almost all available areas. Of the 430,000 acres that remained in Whanganui Māori hands in 1907, more than half was sold or taken by 1930, and of the other half, two-thirds was under lease, most for little profit.

When it actively acquired Māori land interests, and put in place policies that allowed others to purchase Māori land indiscriminately, the Crown showed disregard for Māori wellbeing in an era where ideas of advancement
and prosperity were still closely linked with land ownership, and at a time before it was understood that the quality and isolated location of the land in Whanganui made it largely unsuitable for pastoral agriculture.

15.5 Impacts on Māori Landholdings since 1930

15.5.1 Introduction

To be a landless person is to be a tree without a root system.
—Tūrama Hāwira, August 2007

Mitchell and Innes told us that, in 1930, Māori retained 392,371 acres in the Whanganui inquiry district. But they told us that this figure was almost certainly an overestimate, as it included 129,146 acres of land that they were unable to account for. They postulated that these acres were probably the subject of undocumented and undated alienations that occurred in the nineteenth century. Most were probably completed prior to 1930. The real figure for land still in Māori hands in 1930 was therefore more like 300,000 than 400,000 acres, and very possibly fewer than 300,000.

Crown purchasing in the Whanganui district declined sharply after 1930, and by 1940 had almost ceased. Indeed, in the four decades from 1930 to 1970, total Crown purchases barely exceeded 3,000 acres, and after 1970 dwindled away to almost nothing. Takings for scenery preservation also largely ceased after 1930, apart from a couple of hundred acres in the 1950s. Meanwhile, private purchasing peaked at over 17,500 acres in the 1960s, but dropped right away by the 1980s.

In terms of legislative changes, the Native Land Amendment Act 1932 transferred responsibility for confirming alienations from the land boards to the Native Land Court. Then in 1952, the Maori Land Amendment Act brought an end to land boards, and transferred their powers to the Māori Trustee. The following year, the Maori Affairs Act 1953 reduced the quorum for meetings of assembled owners from five to three. In this section, we discuss the effects of these changes.

There were two other main influences in the 1950s and 1960s. First, a large number of the long-term leases negotiated in the first two decades of the twentieth century were coming to an end, and the lessees often sought to buy the land they had been leasing. Secondly, the Maori Affairs Amendment Act 1967 allowed for Māori land to become general land. Mitchell and Innes estimated that this change affected just under 14,000 acres of land in the Whanganui district (not including land that subsequently reverted to Māori title).

There were only about 237,200 acres of Māori land left in this inquiry district by the end of 2004.

15.5.2 The Crown focuses less on buying Māori land

As we noted in the previous section, the First World War put a strain on the New Zealand economy, which did not end with the war. Around 5 per cent of the country’s men aged 21 to 49 years were killed during the conflict, and many of those who returned could not immediately contribute to the economy. Then came the Depression and high unemployment. As part of its response, the Crown passed the Small Farms (Relief of Unemployment) Act 1932–33, with a view to putting unemployed men to work clearing Crown land for farming.

In our inquiry district, this happened on land around Raetihi, but by November 1936 the work was running out and men risked being laid off. The district engineer wrote to the head of Public Works in Wellington urging the Crown to purchase blocks for clearing ‘if it is wished to keep the men in continuous employment’. He intimated that the local member of Parliament, Frank Langstone, was taking a close interest in the matter. Langstone was also Minister of Lands. In August the following year, preparations were underway for the purchase of over 1,000 acres at Mākaranui, in the Raetihi block. More than 500 acres were used to grow vegetables for the armed forces during the Second World War, and afterwards returned servicemen were settled in small farms on the land. We expand on this in chapter 19.

Meanwhile, reduced manpower was again an issue during the Second World War, leading to a push to make
existing farmland more efficient, particularly through mechanisation.\textsuperscript{273} There was less focus on acquiring Māori land. Indeed, the under-secretary of the Lands and Survey Department specifically commented in August 1943, in relation to a suggestion that the Crown should purchase more land at Mākaranui, that ‘the general policy today’ was to discourage the alienation of Māori land, which would ‘eventually be required for the settlement of the Natives themselves.’\textsuperscript{274} However, the Government did pass the Servicemen’s Settlement and Land Sales Act in 1943, to ensure it could supply land at a reasonable price to returned servicemen.

By the time the economy began to pick up again, the Government’s thinking about the economy was changing. Pastoral products still provided the bulk of export earnings, but focus was more on growing the manufacturing and construction sectors.\textsuperscript{275} By this time, too, the Māori population was on the increase, a trend which accelerated in the 1960s.\textsuperscript{276} It was in the 1960s, too, that many Māori moved to town, as part of the urban drift that began after the war. For those who stayed on Māori land in rural areas, though, real investment was required for development. This had the dubious advantage of making Māori land less desirable to buyers.\textsuperscript{277}

With the national trend towards urbanisation, manufacturing, and construction, it was now more likely to be Māori land in and around urban centres that was sought for purchase both by the Crown and private individuals – or for compulsory acquisition, especially after the middle of the century. The population of Wanganui more than doubled in this time. This put pressure on surrounding land for subdivision and public works, as we discussed in section 7.5.5 on the fate of the Whanganui purchase reserves.

Rural areas also continued to see some Crown purchases and compulsory acquisitions. The Crown purchased land at Maraetaua (around 571 acres, in 1930) and Murimotu (647 acres, in 1930 and 1931).\textsuperscript{278} Of particular interest to the Crown was land suited to large-scale State projects such as hydroelectric power development or exotic forestry. Its purchase of Murimotu 3B1A, discussed in a separate section in this report, was for such a purpose (see matapihi 3).

15.5.3 The Crown legislates for Māori land

We observed that both the Crown and private purchasers bought much less Māori land after 1930. In this inquiry district, though, private purchasing continued in the period from the 1950s to the 1970s, with a noticeable peak in the 1960s.\textsuperscript{279} We look into this here, and also in our later chapter on Waimarino.

(1) ‘Uneconomic’ shares under the Maori Affairs Act 1953

By mid-century, the Crown was trying to come to grips with the issues of a burgeoning Māori population on the one hand, and, on the other, Māori land in fragmented parcels with many owners. It introduced various ‘title improvement’ mechanisms through the 1953 Maori Affairs Act, which aimed to eliminate ‘uneconomic’ shares as far as possible, and to reduce the number of owners in multiply-owned blocks.

At Parikino, we saw some of the effects of sections 181 and 445 of the Act, which allowed the Māori Land Court to recommend the transfer to the Māori Trustee of any interests worth less than £25, at a price to be fixed by the court.

Parikino 7 was partitioned into two in 1914. The northern part was supposed to become an inalienable urupā reserve, but it did not. The land was partitioned again in 1919. The part that included the urupā remained in Māori ownership, although without reserve designation.

In 1967, a shareholder in the block arranged with the Māori Trustee to have shares in the subdivision declared uneconomic, under the Maori Affairs Act 1953, and vested in the Māori Trustee. Most – perhaps all – of the shares were ‘uneconomic’, enabling the shareholder to acquire the land from the Māori Trustee for grazing. There was no meeting of owners to discuss either the conversions or the sale: none was required by law. Three owners did attend the court hearing to object to the conversion, but were overruled. The existence of the urupā received almost no consideration. In 1975, the shareholder, now sole owner
and living elsewhere, sold the block to a non-Māori, and it became general land. The Māori Land Court confirmed the alienation without comment.280

(2) The Hunn and Prichard–Waetford reports
In the middle of the century, with an eye to how the situation for Māori was changing, the Crown commissioned Jack Hunn to report on the work of the Department of Māori Affairs – a report which, when it came out in January 1961, included discussion of Māori land and the land title system. Among other things, it revealed that the Whanganui district had the second highest number of separate Māori land titles in the country, and the highest average increase in owners per succession order.281

Hunn's report was followed in 1965 by the Prichard–Waetford report on the Māori Land Court and Māori land law. Both reports urged the greater integration of Māori into European society, and the removal, as far as possible, of legal distinctions in land ownership. The upshot was the Maori Affairs Amendment Act 1967.

(3) Status changes under the 1967 amendment Act
The 1967 Act's most controversial provision was the clause allowing the Māori Land Court registrar, with or without the permission of affected owners, to declare any Māori land owned by four or fewer owners to be general land.282 This measure was not expressly aimed at facilitating private purchasing, but it had the effect of removing the land concerned from the remaining protections of the Māori land regime. Much Māori land was declared general land before the provision's repeal in 1973. In 1970 alone, there were 3,410 status declarations nationwide by which Māori land became general land, of which owners requested only 17 per cent.283

It was after this Act that most private purchases of land in the Waimarino block took place, although the extent to which title status changes were a direct factor is not clear. Other contributing factors might have been that the increased prosperity of the period enabled private purchasers to buy land, and Māori moving to urban centres perhaps decided, as a result, to sell interests in traditional rural land.284

Where Māori managed to retain their land, and in Māori title, the 1967 Act promoted its better use and administration through measures such as incorporation and the creation of land trusts. These mechanisms offered owners the prospect of deriving a better economic return from their land.

Then came Te Ture Whenua Maori/the Maori Land Act 1993, which conceived Māori land policy in an entirely new way, as these words from the preamble foreshadowed:

it is desirable to recognise that land is a taonga tuku iho of special significance to Maori people and, for that reason, to promote the retention of that land in the hands of its owners, their whanau, and their hapū.

15.5.4 Why some Māori continued to sell after 1930
As for earlier time periods, there is no comprehensive study and little evidence about why Whanganui Māori sold land after 1930, but Walzl’s figures show that sales for the entire remaining seven decades of the century appear to have been less, in total, than for just the years from 1921 to 1930.285

(1) Land yields too little income
We have seen that much Māori land in the Whanganui district was vested in the Māori land boards, but as the local Māori population increased, income from the vested land did not.286 For example, when the profits for the Morikau station were shared among the station’s 2,000 owners in 1934, they yielded an annual income of £1 per person.287 Landowners’ difficulties were compounded by the requirement that they compensate lessees for any ‘improvements’ made to the land, no matter how disproportionate the value of those improvements were to the capital value of the land. The owners of the Ōhotu block would later describe this requirement as being ‘tantamount to confiscation.’288

Owners of land that was not vested in the land board also often struggled to derive sufficient income from their land, especially during the Depression years, and this sometimes resulted in land having to be sold. Kai Iwi 5b1 was one such instance. The sale of Kōiro 6, too – rescued
twice from sale in a previous decade – finally occurred during this period, in 1938.²⁸⁹

(2) The Crown acquires Raetihi land for multiple reasons
Then there was the land in Raetihi 2B (in a mixture of titles) and 3B1 (vested). The Crown used most of this land to create the Mākaranui Land Development Scheme, which in turn became part of the Raetihi Development Scheme.²⁹⁰ The circumstances of the land’s alienation, however, are not straightforward and bear some discussion, especially since, in one or two instances, the owners appear to have had no say in the loss of their interests. Claimant counsel raised questions about the Crown’s methods of purchase, highlighting its acquisition of minors’ interests, and also, he submitted, its quick purchase from the Bank of New Zealand land that came into the bank’s hands as mortgagee.²⁹¹

By the 1930s, Raetihi 2B in particular was very fragmented, with numerous awkwardly shaped blocks that were quite small and therefore unprofitable for farming.²⁹² In 1933, however, the Crown set up a Small Farms Board, as part of its strategy to address the unemployment situation, and the board saw the Raetihi land as ideal for an integrated small farm development scheme. It set about approaching Māori owners with a view to purchase. Plans had to be abandoned temporarily when several owners refused to sell, but the effects of the Depression gradually began to take their toll. With lessees unable to pay their rent, owners in a number of Māori land blocks around the district fell behind with their mortgage payments to the Bank of New Zealand. Thus it was that the bank acquired a number of Māori interests in the Raetihi 2B and 3B1 blocks, which it then sought to onsell to the Crown.²⁹³ The Native Land Court partitioned out the interests, and the Crown duly acquired them in 1937.

(a) Robert Cribb’s evidence about Mokopuna Tirakoroheke:
Robert Cribb, speaking for the Wai 2203 claimants, told us about how his grandmother lost her interests in one of the Raetihi 2B blocks. Mokopuna Tirakoroheke signed an agreement to transfer her shares in Raetihi 2B2C2A1 to the Bank of New Zealand.²⁹⁴ In return, she was to receive a cash payment and some other land.²⁹⁵ She later had second thoughts, and tried twice to get the transfer cancelled. First, on 4 January 1938, she wrote to the Aotea District Māori Land Board claiming that the bank had not provided fair consideration, giving her only 26 acres in return for her 97 acres in Raetihi 2B2C, and asking that the transaction be stopped.²⁹⁶ She was told that the exchange must proceed as the Native Land Court had already confirmed it.²⁹⁷ In July, she went to the Native Land Court, but the registrar likewise informed her that it was too late to change anything:

you transferred your interest in this block and received in exchange £45 and the Bank’s interest in Part Section 4 Block VIII Manganui Survey District.

The exchange cannot now be re-opened and as you agreed to the arrangement and signed the transfer, I would advise you to complete the form and return it to the Bank as otherwise you cannot get the title to Section 4 and you will thus be doing yourself an injury.²⁹⁸

Mr Cribb told us that Mokopuna did not speak English, and he believed that when she signed the transfer papers, she did not understand their implications.²⁹⁹ He thought the Crown should have legislated to protect vulnerable people signing documents to alienate Māori land.³⁰⁰

(b) The Raetihi 2B interests of Mere Rora Kupa and others: We were told about Crown acquisitions of shares from other owners in Raetihi 2B blocks.

Under section 540 of the Native Land Act 1931, the Native Land Court could appoint the Native Trustee to deal with land that was unleased, unoccupied, and infested with noxious weeds; or where the beneficial owner could not be found; or where ‘any beneficial owner is in a position which renders it necessary or advisable that his land should be dealt with under this section.’ In these situations, the Native Trustee had the power to act as if he were the owner. Subsection (2) then went on to state ‘No owner shall have power to revoke an agency created under this section.’

The Native Land Court appointed the Native Trustee as
agent for Mere Rora Kupa and two minors in November 1938, for the purpose of transferring their shares to the Crown. Whether Mere Rora Kupa knew about the transfer is unknown. The Native Trustee was also appointed as agent for absentee owner Ennis Cooper, to transfer his interests in the land to the Crown.

(c) The purchase of other interests in Raetihi 2B and 3B1: In appears that the Crown was sometimes directly involved in negotiating the purchase of Māori interests in the Raetihi 2B and 3B1 blocks, and in other cases the Bank of New Zealand, wanting to recoup losses on failed mortgages, arranged for the Crown to buy the interests it
acquired as mortgagee. The bank and others might have pressured Māori owners to sell, but the usual external factors might also have been present – including, in this period, local bodies’ increasing preparedness to enforce rates demands; and the difficulty of complying with regulations relating to noxious weeds and the like.\textsuperscript{303}

For the decades from the 1940s onwards, we have very little evidence. Sometimes, a more strategic approach to sale was evident. Owners in Kaiwhaiki 1c1A, for example, mentioned wanting to sell their shares to finance housing in town or farming on land elsewhere.\textsuperscript{304}

\textbf{15.5.5 The fate of the Whanganui purchase reserves}

Of the 7,400 acres reserved for Māori out of the 1848 Whanganui Crown purchase, only 530 acres remained as Māori freehold land in 2002.\textsuperscript{305}

Two reserves, which together made up one-third of the reserves’ total area, were entirely sold prior to 1900. Āperahama Tipae sold Waikupa (2,272 acres) to the Crown in 1872; a Pākehā buyer bought Ngāturi (124 acres) in two segments in 1887 and 1891.\textsuperscript{306} John Bryce purchased slightly more than half of the Waipuna reserve (114½ acres) in 1870.\textsuperscript{307}

In 1900, 11½ of the original 14 land reserves remained in Māori hands, and comprised close to 5,000 acres. But this land moved progressively into other ownership: the Crown took it for public works; its Māori owners changed its status to general land; and private purchasers bought it up. For example, the whole of Te Korito (118½ acres) was sold to Charles Smith in 1902; a meeting of owners voted to sell Waipuna 1 in 1911.\textsuperscript{308} Private purchasers also bought 222 acres of Waipākura (2,347 acres), and all of the Pūrua reserve (two acres), in this period.\textsuperscript{309}

Of the 32 original subdivisions of the Pūtiki reserve, private European buyers bought 92 acres of Manawakōara (174 acres); 74 acres of Ngātarua (84 acres); and all of Iwiroa (53 acres) and Te Riri a te Hore (169 acres) between 1910 and 1925.\textsuperscript{310} In 1904, the Crown compulsorily purchased two areas from the Onetere and Whakapaki subdivisions for a rifle range, which was defined as a public work. One taking was 57 acres, and the other 6½ acres.\textsuperscript{311}

Between 1910 and 1918, Wikitōria Keepa (daughter of Te Keepa Te Rangihiwini) and Waata Wiremu Hipango had the court change the status of land in which they had interests from Māori to general land. The blocks concerned were Waitahanui (174½ acres); Kohipō (164½ acres); Kaiate (48 acres); Kirikiri (23¾ acres); Manawatiare (18 acres); and Wahataua (4¾ acres).\textsuperscript{312}

Whanganui purchase reserves that remained Māori land diminished further in a new round of alienations in the 1960s. In 1961, 278 acres of Kaitoke were sold to private buyers, leaving only the lake portion of the reserve in Māori hands.\textsuperscript{313} In 1969, 418 acres of Waipākura were also purchased privately.\textsuperscript{314} The Crown took an additional three acres from the Ngongohau subdivision (18½ acres) in 1961 for the construction of the Wanganui–Levin motorway.\textsuperscript{315}

Māori ownership of what was left of the reserved land declined again as a result of compulsory conversion from Māori to general land under the Maori Affairs Amendment Act 1967. This happened to Waipākura 2A (111 acres); Waipākura 2B (76 acres); and Waipākura 7A (151 acres) in 1970.\textsuperscript{316} In the same way, a number of subdivisions of the Pūtiki reserve were changed from Māori freehold to general land between 1968 and 1974. They were: all of Matawerohia (38½ acres); portions of Ngongohau (one acre); Paranuiamata (17 acres); Parawahe (half an acre); Pariotumaiinga (32¾ acres); Te Opearourou (6½ acres); Ti Kahu (4½ acres); and Whakamaru (8½ acres).\textsuperscript{317}

And so it was that, by 2004, of the 14 reserves created under the 1848 purchase, only Motuhou (118 acres) and Ōmanaia (5.2 acres) remained entirely in Māori ownership.\textsuperscript{318} In addition, most of the Kaiwhaiki block (1,687 of 1,945 acres), into which the 100-acre Kaiwhaiki reserve was merged in 1869, was still predominantly Māori land.\textsuperscript{319} Of the 32 Pūtiki subdivisions, all of Matahiwi (three-quarters of an acre) and Wharepapa (one acre); almost all of Kōpuaruru (56 of 57 acres); and most of Ngāparāoa (four of five acres) retained their status as Māori land.\textsuperscript{320}

\textbf{15.5.6 Conclusions on the period from 1930 on}

The period since 1930 has seen considerable change for Māori, and indeed for the country as a whole. Once New Zealand emerged from the Depression and the effects of the Second World War, its economy began to diversify.
The Māori population began to increase. Although the Crown continued to purchase some Māori land – especially for large-scale projects such as forestry and hydroelectric power – its focus shifted to improving Māori land titles so that they could better use the land they still retained. That said, some of the provisions we have talked about – those relating to so-called ‘uneconomic interests’ which permitted expropriation of land rights; and those that enabled a compulsory change in status from Māori to general land – cut across the ownership rights of Māori. Later legislation made it possible to change land back to Māori title, but this did not always happen.

The Crown permitted the private purchase of Māori land without effective safeguards to ensure that Māori did not sell too much land, and that they received a fair price. The conversion of titles to general land may have facilitated private purchases, because general land has no safeguards for Māori owners. The Crown also did nothing to

Kaiwhaiki on the Whanganui River. Almost 90 per cent of the original Kaiwhaiki block remains in Māori ownership today.
prevent the situation where, of over 9,000 acres formally reserved in the nineteenth century for the maintenance and well-being of Whanganui Māori, only about one-quarter still remains in Māori freehold title. Much of that loss, certainly, occurred before 1930, but it is of concern that sales were allowed in more recent times.

15.6 Findings
In this chapter, we have investigated land loss. In arriving at our findings, therefore, we return to the text of article 2, which guaranteed to Māori that they could keep their ‘Lands ... Estates [and] Forests’ for as long as ‘it is their wish and desire to retain the same in their possession.’ We also bear in mind treaty principles and duties such as the need to balance kāwanatanga and rangatiratanga, the principle of mutual benefit, and the Crown’s duty of active protection, along with its duties to govern well and for the benefit of all citizens, and to act reasonably, honourably, and in good faith.

15.6.1 A promising start soon compromised
At the opening of the twentieth century, things looked promising. The Crown acknowledged as a national concern the potential for Māori to become landless, engaged with Māori on land issues and how to address them, and passed legislation that they supported. Under the legislation passed in 1900, the Crown could complete purchases already underway, but otherwise placed a moratorium on purchasing Māori land that lasted for five years. The evidence presented to us provides no clear evidence that the ‘completion’ process was misused in the Whanganui district.

In 1905, in response to settler pressure, the Government scrapped the moratorium and reintroduced Crown pre-emption. We acknowledge that the Crown had to address settlers’ needs as well as those of Māori, but when it resumed the purchase of Māori land so quickly, the Crown was prioritising the wishes of settlers — and seeking their votes in the forthcoming election. For Māori in Whanganui, who entrusted more land to the district Māori land councils for leasing out to settlers than Māori of any other district, it was particularly disappointing.

15.6.2 Crown prices for land too low
For the first decade of the twentieth century, the Crown had a monopoly on purchasing Māori land and there was no system of independent valuation. The Crown and its agents could really dictate price. ‘Absurdly low’ was Stout and Ngata’s 1907 evaluation of the prices paid for Whanganui land. In this respect, we find that the Crown acted inconsistently with the principle of mutual benefit and breached its duty of active protection of Māori interests.

The Crown’s self-conferred position of privilege in the market over the next few years carried with it an extra duty to ensure that, when purchasing Māori land, it complied with a high standard of care for Māori interests. It did not meet that standard. Certainly, it was positive that the law required independent valuations of Māori land from 1905, but evidence suggests that while the Crown kept the market closed to competition, Māori land prices suffered. Nor did prices, or later, valuations, have to take account of resources such as millable timber — another situation that attracted adverse comment in the Stout–Ngata commission report.

It was sometimes said that lower prices for Māori land were to be expected, because it was hedged around with restrictions and complications. There are a number of reasons why this argument is fallacious. First, the Crown created the restrictions and complications when it designed the Māori land tenure system so poorly, and it had the power to change it. It should not have paid Māori less for their land on account of negative features it created. Moreover, where the Crown acquired freehold title without restrictions, that is what it should have paid for. This was the finding of the Supreme Court in 1905, in a case relating to Pūtiki reserve land taken for public works. Justice Cooper found that the level of compensation should have been based on the fee simple value, irrespective of any restrictions in place before purchase. As he explained, the Crown must pay ‘for what it gets.’
Crown may have had a general duty to procure land as efficiently as possible for settlement and the benefit of the country as a whole, but it surely cannot follow that Māori should fund that objective.

We find that the Crown's payment of lower-than-market prices for Māori land breached its fundamental duty to recognise Māori ownership of land, and to treat Māori properly when they decided to sell. That involved setting a price in an equitable way, so that there was a true meeting of minds on the bargain in every case. Any other arrangement breached the Crown's duty to act in the utmost good faith.

15.6.3 Serial partitions detrimental
The Crown's piecemeal purchase of individual interests, and its failure then to manage the ensuing rounds of partitioning so as to minimise disruption, uncertainty, and cost for owners, was iniquitous. We accept that the Crown did not set out deliberately to disadvantage Māori by its actions, but disadvantage certainly resulted. Where the Crown took land in lieu of payment for surveys, it amounted to little more than expropriation, and breached article 2.

15.6.4 Stout and Ngata unheeded
The appointment of Stout and Ngata to carry out an audit of Māori land was a resoundingly positive step but was completely undermined by the fact that their report was substantially ignored. The Crown carried on buying Māori land in our inquiry district – conduct which, in the Hauraki inquiry, the Crown acknowledged was ‘problematic in Treaty terms’. The Crown could helpfully have extended that acknowledgement to Whanganui.

15.6.5 1909 Act facilitated land loss
The Native Land Act 1909 and its amendments contributed to the whittling away of the landholdings still in Māori hands. This legislation looked as though it provided for collective decision-making, but in fact the quorum provisions made it possible for a tiny minority, sometimes voting only by proxy, to carry the day. We agree with past Tribunals that these provisions, coupled with the lack of any avenue for dissenting owners to get decisions reviewed, were in breach of the Crown’s duty to actively protect the interests and authority of Māori over their land.

We also note and deplore the fact that some Crown agents, unchecked by the Crown, actively subverted collective decisions against selling by approaching individual owners to persuade them to sell. For the Crown to recognise collective decisions to alienate land but not to uphold those to retain it, was inconsistent and lacked integrity. Furthermore, the 1913 amending Act left the land boards without Māori representation, and at the same time provided them with mechanisms for selling land without the agreement of all its owners. These acts and omissions breached the Crown's duty to act reasonably, honourably, and in good faith.

We welcome the Crown's concession that the broad definition of 'alienation' under the 1909 Act prevented the productive use of land under proclamation. Proclamations put unreasonable pressure on owners to sell, and created a market that unreasonably favoured the Crown. The Crown argued that the provision was intended to protect itself and Māori owners from land speculators. However, where it bought at low prices and then on-sold at a significant profit, the Crown itself behaved like a speculator. Proclamations, and conduct that exploited them to the detriment of owners of Māori land, breached the Crown’s responsibility to act reasonably, honourably, and in good faith. This was particularly the case where proclamations were extended, sometimes repeatedly.

There was also the fact that many Whanganui Māori had entrusted land to Māori land councils (which became Māori land boards) for leasing out, in order to generate income for them. Under part xiv of the 1909 Act, the board could sell that land in certain circumstances. It could also revoke the status of reserves so that they might be sold. These changes undermined entirely the purpose for which the owners had requested the vesting or reservation of their land – namely, to protect them in the hands of their customary owners. This conduct of the Crown also breached its duty to act towards Māori in the utmost good faith.
15.6.6 Ensuring Māori kept sufficient land

In terms of ensuring that Māori retained sufficient land, the limited evidence we received on this issue suggests the Crown and its agents were generally careful to observe the strict letter of the law with regard to individuals’ ownership of a certain number of acres. What was lacking was any sense of the overall extent and effect of land loss on a hapū or iwi basis.

As we discussed in chapter 9, there are many aspects of the Crown’s Treaty duties to Māori that are similar to fiduciary duties at law, but we do not need to frame those duties in terms of trust law because, for us, the Treaty and its principles are a source of obligation. We can also agree – and this is an allied but different point – that as Stout and Ngata observed, Māori saw themselves as having a fiduciary duty towards their descendants to hold on to ancestral land, and with those commentators’ belief that the State had a role in ensuring that Māori held on to the land that remained to them and their tribe.324

Advancing the position that the Crown was not a fiduciary for Māori, it argued that the essence of the Treaty relationship is a ‘respect for the other party’s autonomy.’325 Treaty partners respecting each other’s autonomy is certainly a noble ideal, but actually the Crown consistently acted to undermine the authority of te iwi Māori in the nineteenth century, so that by the twentieth century their ability to act autonomously was negligible. When it came to selling their land, then, the conduct of Whanganui Māori did not usually look like that of a proud tribal people forging their own economic path into a prosperous future. Sales were much more often a case of individuals forced into parting with ancestral land because they lacked personal and family resources to do anything else. Sometimes, individuals’ interests were bought (or taken) without their knowledge. Selling land in situations like these was not an expression of autonomy.

The Tauranga Moana Tribunal stated that, if Crown policy or practice impeded Māori ability to choose freely, it would regard that as a breach. It agreed that individuals had the right to sell land, and also to seek a living not through the land, but it believed that the notion of ‘sufficient endowment’ should be taken to apply in a collective sense as well as an individual one, and should take account of the cultural as well as economic value of land.326 We agree. We find that the Crown, in breach of its duty to actively protect Māori interests, failed to monitor the ongoing effects of its policies, and whether Māori retained sufficient land at a collective and cultural level, as well as at an individual and economic level.

Given the widespread alienation of Māori land in the nineteenth century, and the warnings that Māori leaders and the Stout–Ngata commission sounded, we might have expected that, in the twentieth century, the Crown would take more care both when it purchased land in Whanganui itself, and when it allowed others to do so. It was not until the last quarter, though, that purchase of Māori land in Whanganui land fell away and almost ceased. And only upon enactment of Te Ture Whenua Māori / the Maori Land Act 1993 was there explicit recognition that it was desirable for the Crown to actively promote the retention of land ‘in the hands of its owners, their whanau, and their hapū.’

Notes
1. Document A66 (Mitchell and Innes), pp 61–62. According to Mitchell and Innes, of the inquiry area of 2,146,897 acres, 237,238 acres were in Māori ownership as at 2004: doc A66(a) (Mitchell and Innes summary), p 10; doc A66(e) (Innes supplementary evidence), p 3.
2. Calculation based on total alienation of 406,436.3 acres for the period 1900s–2000s of which 176,282.4 acres were private alienations: doc A66 (Mitchell and Innes), p 62. When we talk about private purchasing, we include Māori land alienated to private interests by the Aotea District Māori Land Board (under part XVIII of the 1909 Act): doc A18 (Cross and Bargh), p 99.
3. Submission 3.3.55, pp 21, 42–43, 56, 89
4. Ibid, p 21
5. Ibid, pp 21–24
8. Ibid, pp 22, 36–37, 51, 53
9. Ibid, pp 36–37
10. Ibid, p 23
11. Submission 3.3.52(a), p 62
12. Claim 1.2.53, p 3
13. Submission 3.3.46, p 1
14. Submission 3.3.97, para 3.3
15. Ibid; submission 3.3.46, para 3.1.2; doc A54(s) (Innes), p10
16. Submission 3.3.97, para 3.12
17. Submission 3.3.55, pp 20–21, 89
18. Submission 3.3.52(a), p 62; doc A64 (Bassett and Kay), pp 179–181
19. Submission 3.3.49, p 99; submission 3.3.52, pp 13, 15–18, 21–24, 38, 42–44
20. Submission 3.3.125, pp 1, 23; submission 3.3.130, pp 3–4, 19
21. Submission 3.3.125, p 32
22. Ibid, pp 25–28; submission 3.3.130, p 23
23. Submission 3.3.130, p 22
24. Submission 3.3.125, pp 4–5
25. Submission 3.3.130, p 22
26. Ibid, p 17
27. Submission 3.3.125, pp 1–3; submission 3.3.127, p 2
28. Submission 3.3.127, pp 3–4; submission 3.3.125, pp 3–4; submission 3.3.130, p 20
29. Submission 3.3.127, p 2
30. Submission 3.3.125, p 35
32. Ibid, p 1; submission 3.3.130, p 21
33. Submission 3.3.130, p 7
34. Native Land Laws Amendment Act 1899, s 3
35. Maori Lands Administration Act 1900, ss 22–24, 34–38
37. Document A66 (Mitchell and Innes), p 63. The remaining 6 per cent was alienated by a combination of private purchasing and compulsory Government takings for public purposes.
38. Document A51 (Walzl), pp 117–118; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1900, G-3, pp 7–8; 'Lands Purchased and Leased from Natives in North Island', AJHR, 1901, G-3, pp 7–8
39. Document A51 (Walzl), pp 120–121. Walzl's list includes 'Pukewhakapu'. This block is called Ngāpukewhakapū in Mitchell and Innes' report (doc A66, p A87) and Berghan's report (doc A37, p 432). The 1905 figure in Walzl's report has been adjusted to reflect the fact the Urewera block has since been included in the National Park inquiry.
40. Document A19 (Marr), p 148
41. Document A110 (Hearn), p 15; doc A51 (Walzl), pp 171–172; doc A42 (Oliver), p 115
42. 'Obituary', Press, 1 August 1916, p 10
43. 'Minutes of Evidence taken in Connection with Petitions relating to the Proposed Native Lands Settlement and Administration Bill', AJHR, 1899, 1–3A, p 8
44. G Hutchison, 23 October 1899, NZPD, 1899, vol 110, p 898
45. R McLean, 23 October 1899, NZPD, 1899, vol 110, p 909
46. J Carroll, 23 October 1899, NZPD, 1899, vol 110, p 910
47. Native Land Laws Amendment Act 1899, s 3; Maori Lands Administration Act 1900, s 34
48. Alfred Fraser, 12 October 1900, NZPD, 1900, vol 115, p 178
49. Document A37 (Berghan), pp 765, 776–778; AJHR, 1901, G-3, p 7; doc A51 (Walzl), p 118
50. AJHR, 1901, G-3, p 8; doc A37 (Berghan), pp 865–866; doc A51 (Walzl), p 119
51. AJHR, 1901, G-3, p 5
52. Document A59 (Oliver and Shoebridge), p 98
53. Document A37 (Berghan), pp 556–557; doc A37(o) (Berghan supporting documents), p 8651
54. Document A37 (Berghan), pp 980, 998, 1100
55. Document A87 (Loveridge), p 183
56. Document A51 (Walzl), pp 121–122
57. Document A37 (Berghan), p 557; doc A37(o) (Berghan supporting documents), p 8651
58. Document A37 (Berghan), pp 1100–1101
59. Document A51 (Walzl), p 122
60. Robert Stout and Apirana Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 10
62. Document A59 (Oliver and Shoebridge), p 100; doc A110 (Hearn), p 107
63. Document A59 (Oliver and Shoebridge), p 86
64. Document A110 (Hearn), p 189
65. Robert Stout and Apirana Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 10
66. Section 24 of the Native Land Act 1873 defined sufficiency as being no fewer than 50 acres per head of 'every Native man and child resident in the district'.
67. 'Government valuation' was defined in the Government Valuation of Land Act of 1896.
68. Stout and Ngata, 'Native Lands in the Rohe-Potae (King County) District', AJHR, 1907, G-1B, p 15; doc A11 (Ward), p 99
69. Document A51(e) (Walzl supporting documents), p 1766
70. Document A166 (Loveridge), p 50
72. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 16
73. Stout and Ngata, 'Native Lands and Native Land Tenure (General Report on)', AJHR, 1907, G-1C, p 9
74. Document A87 (Loveridge), p 195
75. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, pp 3–5; doc A42 (Oliver), pp 70, 115
76. Document A51 (Walzl), p 182
77. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 4
78. Ibid
79. Submission 3.3.55, p 30
80. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 4
81. Stout and Ngata, 'Native Lands and Native Land Tenure (General Report on)', AJHR, 1907, G-1C, p 9
82. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, pp 15–16
83. Document A51 (Walzl), p 121
84. Document A37 (Berghan), pp 339–342
85. 'Report on Maori Land Purchase Operations', AJHR, 1907, G-3A, p 1
86. Ibid, p 2
87. Ibid, pp 1, 8
88. Document A37 (Berghan), p 1074; Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 3
89. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 4
90. Document A42 (Oliver), p 115
91. Ibid; doc A110 (Hearn), p 118
92. Document A42 (Oliver), pp 75–76, 115
94. W H Grace, 20 May 1907, 'Reports of Native Land Purchase Officers', AJHR, 1907, G-3A, p 3
95. Document A18 (Cross and Bargh), pp 93–94
96. Document A67 (Shoebridge), p 35; doc A110(e) (Hearn supporting documents), pp [54]–[55]
97. Document A37 (Berghan), pp 982–983
98. Document A48 (Bayley), p 122
99. Document A67 (Shoebridge), p 36
100. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 10
101. Document A13 (Marr), p 42
102. Submission 3.3.55, p 46
103. Submission 3.3.160, p 8
104. Submission 3.3.130, p 23
105. Document A18 (Cross and Bargh), p 87
106. Document A87 (Loveridge), p 67
107. Document A110 (Hearn), pp 147–148; submission 3.3.130, pp 22–23
108. Document A110 (Hearn), pp 160–161, 198
109. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, pp 15–16; doc A18 (Cross and Bargh), pp 84, 87
110. Document A51(f) (Walzl supporting documents), p 2199
111. Document A18 (Cross and Bargh), pp 87–88
112. Document A51 (Walzl), pp 119–121
113. Document A87 (Loveridge), p 192
114. Stout and Ngata, 'Native Lands and Native Land Tenure (General report)', AJHR, 1907, G-1C, p 8; doc A110(f) (Hearn brief of evidence), p 7
115. Document A51(e) (Walzl supporting documents), p 1733
116. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 4; doc A37 (Berghan), p 908
117. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 4
118. Ibid
119. Document A110 (Hearn), p 198
120. Stout and Ngata, 'Native Lands and Native Land Tenure (General report)', AJHR, 1907, G-1C, p 8; see also doc A11 (Ward), p 97.
121. A Fraser, 22 August 1907, NZPD, 1907, vol 140, pp 388–389
122. W H Grace, 20 May 1907, 'Maori Land Purchase Operations', AJHR, 1907, G-3A, p 4
123. Document A51 (Walzl), p 118; AJHR, 1901, G-3, p 7; Whanganui Native Land Court, minute book 55, 19 June 1907, fol 357
124. Document A51 (Walzl), p 118; AJHR, 1901, G-3, p 8; Whanganui Native Land Court, minute book 61, 16 May 1911, fol 282
125. Document A37 (Berghan), p 118
126. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 9
128. 'Report on Native Land Courts, Maori Land Boards, and Native Land Purchase Boards', AJHR, 1920, G-9, p 2
129. Ibid, pp 2–3
132. Document A18 (Cross and Bargh), p 100; doc A13 (Marr), p 55
133. Document A110 (Hearn), p 14
134. Ibid, pp 207–208; doc A51 (Walzl), pp 186–187
135. Document A51 (Walzl), pp 221–222; doc A66(a) (Mitchell and Innes), app A, p 4
136. Document A66 (Mitchell and Innes), p 61; doc A66(a) (Mitchell and Innes), app A, p 4
137. Submission 1.1.86, pp 1–2; submission 3.2.719, pp 4–5
138. The hospital site was in Raetihi township; it was first purchased by resident Thomas Haydon, the former headmaster, then from Haydon by the Whanganui Hospital and Charitable Aid Board. The board acquired section 53 for £550 on 13 February 1920; see doc A165(dd) (Dawson, Devereaux, and Stowe supporting documents), p 13829; Merrilyn George, Ohakune: Opening to a New World (Wanganui: Wanganui Newspapers Ltd, 1993), p 297; 'Frightful Freights', Feilding Star, 22 March 1918, p 2; commissioner of Crown lands to Under-Secretary for Lands, 7 January 1937, Wellington, AFIE W5681 619, box 101 8/5/344, Archives New Zealand, Wellington.

Māori Land Purchasing in the Twentieth Century

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140. Submission 3.2.316, p 2; submission 3.2.719, p 4; Office of Treaty Settlements, 'OTS Managed Properties as at 31 December 2011', p 3

141. Stout and Ngata, 'Native Lands and Native Land Tenure (General Report on)', AJHR, 1907, G-1C, p 9

142. Document A166 (Loveridge), pp 85–86; doc A110 (Hearn), p 234

143. Document A110 (Hearn), pp 209–210

144. Document A166 (Loveridge), p 116

145. Document A64 (Bassett and Kay), p 123

146. Ibid, pp 123, 186, 191–192

147. Document A64 (Bassett and Kay), pp 39, 122–125, 291–292; doc A66 (Mitchell and Innes), p A36; doc A110 (Hearn), p 188. Note that Bassett and Kay's table of 'Europeanised' blocks also lists Aramoho 1, but this was on the opposite side of the river and has not been included in our figures.

148. Document A64 (Bassett and Kay), p 122

149. Document A51 (Walzl), p 183; doc A87 (Loveridge), p 198

150. Document A18 (Cross and Bargh), p 99

151. Document A51 (Walzl), pp 239–240

152. Ibid, pp 231–232. See also the table showing the slowing rate of lease-arrangements for Whanganui blocks.

153. Document A18 (Cross and Bargh), p 114

154. Section 112 repealed section 370 of the Native Land Act 1909.

155. Document A13 (Marr), p 54

156. Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage One, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, pp 666

157. Petition no 306 (1914), AJHR, 1914, I-3, p 17

158. Document A110 (Hearn), p 235; Native Land Amendment Act 1913, s 111; Native Land Amendment and Native Land Claims Adjustment Act 1916, s 8

159. Document A110 (Hearn), pp 209–212; doc A110(e) (Hearn supporting documents), pp [178]–[186]

160. Document A110(e) (Hearn supporting documents), p [180]

161. Ibid, p [178]

162. Ibid, pp [176]–[177]

163. Document A51 (Walzl), p 221

164. Document A110 (Hearn), p 210

165. Submission 3.3.55, p 56

166. Native Land Act 1909, s 361

167. Document A110 (Hearn), p 237

168. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1907, G-1A, p 9. The remaining sub-division had not had its title ascertained.

169. Native Land Act 1909, s 370

170. Document A51 (Walzl), p 240

171. Document A110(d) (Hearn supporting documents), pp [302]–[303]

172. Document A110 (Hearn), p 210


175. See, for example, doc A55 (Clayworth), pp 144–146, 183; doc A55(m) (Clayworth supporting documents), pp 70–71, 92–93; doc A55(v) (Clayworth supporting documents), pp 17–18, 76, 79.

176. Boast, Buying the Land, Selling the Land, pp 306–307; doc A110(f) (Hearn brief of evidence), pp 10–11; doc A110(e) (Hearn supporting documents), pp [188], [194]

177. Document A110(e) (Hearn supporting documents), p [193]

178. Document A110(d) (Hearn supporting documents), p [323]

179. Ibid

180. Document A110(e) (Hearn supporting documents), pp [85]–[86]

181. Document A37 (Berghan), pp 1074–1079

182. Document A4 (Cribb), p 8

183. Document A37 (Berghan), pp 1074–1081

184. Document A110(d) (Hearn supporting documents), pp [324]–[325]

185. Document A66 (Mitchell and Innes), p A1; doc A37 (Berghan), p 18

186. Document A67 (Shoebridge), pp 25, 26–28

187. Ibid, pp 36–37

188. Document A110 (Hearn), p 236

189. Document A110(f) (Hearn brief of evidence), pp 12–13

190. Native Land Act 1909, s 2


192. Document A110(e) (Hearn supporting documents), p [102]

193. Document A110 (Hearn), pp 220–221; doc A110(e) (Hearn supporting documents), p [73]

194. For a list of the Whakaihuwaka blocks the Crown proclaimed over this period, see document A37 (Berghan), p 1077.

195. Document A42 (Oliver), pp 53, 73, 78

196. Ibid, p 90; submission 3.3.55, p 83

197. Document A42 (Oliver), pp 83, 116

198. Document A110(e) (Hearn supporting documents), pp [211]–[214]

199. Ibid, p [208]

200. Ibid, p [206]

201. Document A51(a) (Walzl supporting documents), p 24


203. Ibid, p 189

204. Ibid, p 184

205. Document A37(s) (Berghan supporting documents), p 11014

206. Document A110 (Hearn), pp 210–211

207. Document A51(b) (Walzl supporting documents), pp 374–375

208. Document A42 (Oliver), p 87; doc A51 (Walzl), p 482


210. Document A56(a) (Bayley), p 204; transcript 4.1.3, p 109; Native Land Rating Act 1904
211. Document A56(a) (Bayley), pp 204, 210; doc A67 (Shoebridge), pp 38–39
212. Document K4 (Fox), pp 11–12
213. Document A51 (Walzl), pp 227–228; doc A66 (Mitchell and Innes), p A221
214. Transcript 4.1.3, p 109
215. Document A56(a) (Bayley), p 203
216. Document A110(d) (Hearn supporting documents), p [293]
217. Document A51 (Walzl), p 227
218. Document A110 (Hearn), p 161; submission 3.3.160, p 8; Reserve Bank of New Zealand, 'What is Inflation?' (fact sheet, Wellington: Reserve Bank of New Zealand, [2006]), p 1
220. Document A51 (Walzl), p 193
221. Document A64 (Bassett and Kay), p 126; doc A110 (Hearn), p 242
222. Ibid
223. Document A110(f) (Hearn), p 13
225. Document A110 (Hearn), pp 245–246
226. Ibid, p 247
227. Ibid, pp 246–247
228. Document A169(k) (Beaglehole, Devereaux, Innes, and Stowe supporting documents), p 5627
229. Document A110 (Hearn), p 247
230. Stout and Ngata, 'Native Lands in the Whanganui District (Interim Report on)', AJHR, 1908, G-1F, p 2
231. Ibid, pp 3, 10, 19, 21, 22
232. Ibid, p 16
233. Maori Land Settlement Act 1905, s 22(1)
234. Waitangi Tribunal, He Maunga Rongo, vol 2, pp 689–692
236. Document A42 (Oliver), pp 73–84; doc A51 (Walzl), pp 243, 327
237. Document A51 (Walzl), pp 211, 327
238. Document A37 (Berghan), pp 13–18; doc A37(a) (Berghan supporting documents), pp 20, 22
239. Document A37 (Berghan), pp 12–19
241. Document A18 (Cross and Bargh), p 113
242. Ibid
243. Document A51(a) (Walzl supporting documents), p 16
244. Ibid, p 15
245. Document A37 (Berghan), pp 908–909
246. Document A110(e) (Hearn supporting documents), pp [85]–[86]
247. Ibid, p [83]
248. Ibid, p [178]; doc A110 (Hearn), p 208
249. Document A110(e) (Hearn supporting documents), p 179
250. Document A37(e) (Berghan supporting documents), p 2613
251. Document A51 (Walzl), pp 488–489
252. Document A67 (Shoebridge), pp 30, 39–40
253. John L Hutton, 'The Operation of the Waikato–Maniapoto District Maori Land Board', in D M Loveridge, Twentieth Century
255. Transcript 4.1.2, p 258
256. Document A66(a) (Innes and Mitchell), app A, p 2
257. Ibid
258. Ibid, p 1
259. Ibid, p 11
260. Cross and Bargh estimated that approximately 250,000 acres of the Whanganui district remained in Māori ownership in 1930: doc A18 (Cross and Bargh), p 113.
262. Ibid, pp 5800, 5865, 5924
263. Document A110 (Hearn), pp 230; doc A66(a) (Innes and Mitchell), app A, p 4
264. Document A18 (Cross and Bargh), p 100
265. Maori Affairs Act 1953, s 309(1)
266. Document A66 (Mitchell and Innes), pp 17, 19
267. Ibid, p 17
268. Document A66(e) (Innes), p 3
270. Document A169(k) (Beaglehole et al supporting documents), pp 5697, 5766
271. Ibid, p 5732
272. Ibid, pp 5800, 5865, 5924
274. Document A169(k) (Beaglehole et al supporting documents), p 5926
277. Document A110 (Hearn), pp 230–231
278. Document A51 (Walzl), p 480
279. Ibid, p 479; doc A66 (Mitchell and Innes), p 63
280. Document A22 (Bennion), pp 3–4, 14–17; doc A13 (Marr), p 44
282. Maori Affairs Amendment Act 1967, s 6


286. Ibid, p 755

287. Ibid, pp 756–757

288. Ibid, pp 538–539


291. Submission 3.3.97, para 3.13–3.20; memorandum 3.2.345, para 3(i)–(iv)

292. See, for instance, document A169(k) (Beaglehole et al supporting documents), pp 5732, 5942, 5954; doc A54(i) (Innes supporting documents), pp 146–149, 195.


294. Document N17 (Cribb), para 1.11

295. Document A37(s) (Berghan supporting documents), p 11034

296. Ibid, p 11036

297. Ibid, p 11035

298. Ibid, p 11034

299. Document N17 (Cribb), para 1.11

300. Ibid, para 1.13

301. Submission 3.3.97, paras 3.24–3.25

302. Ibid, paras 3.26–3.27; doc A169(k) (Beaglehole et al supporting documents), p 5770


304. Document A64 (Basset and Kay), p 224

305. Ibid, pp 179–181

306. Ibid, pp 245–247, 258

307. Ibid, pp 241–242

308. Ibid, pp 243–244

309. Ibid, p 274


311. Ibid, pp 343, 413

312. Ibid, pp 287–288, 290, 292, 393, 396

313. Ibid, p 202

314. Ibid, p 274

315. Ibid, p 339

316. Document A66 (Mitchell and Innes), p 237


318. Ibid, p 180

319. Ibid, p 179

320. Ibid, pp 179–181

321. Ibid, p 132


323. Waitangi Tribunal, *Te Urewera: Pre-publication, Part II*, 4 vols (Wellington: Waitangi Tribunal, 2010), vol 2, p 803

324. Stout and Ngata, ‘Native Lands and Native-Land Tenure (Report on)’, AJHR, 1908, G-1f, p 2

325. Submission 3.3.125, p 3


**Graph sources**

**Graph 15.1**: Document A66 (Mitchell and Innes), p 63

**Table sources**

**Table 15.1**: Document A59 (Oliver and Shoebridge), p 78; doc A110 (Hearn), p 106

**Table 15.4**: Document A18 (Cross and Bargh), p 89; AJHR 1907, G-1a
THE INTERESTS IN MĀORI LAND OF MERE KŪAO

A vignette of the vicissitudes of Māori land ownership in the twentieth century

M3.1 Introduction

This case study is about the land interests of a Ngāti Rangi kuia called Mere Kūao (also called Mere Te Aowhakahinga or Aowhakainga).

What befell Mere Kūao’s various landholdings is paradigmatic – that is, her experiences as a Māori landowner were typical of the experiences of countless Māori who lived in the first half of the twentieth century and saw their land interests steadily diminish, even though they never really formed the intention to part with them. The story is also about the difficulty of managing land that was not sold and retaining access to important places.

Mere Kūao’s story is ordinary in the sense that many others’ land interests were similarly affected, but it is also distinctive for the fact that her Ngāti Rangi whānau remember her, and what happened to her land, as something to be handed down and lamented. We have little biographical information about this kuia, but the piecing together of events that affected her land yields a narrative that speaks of personal loss, bewilderment, and resentment. These feelings go beyond her to her whānau, and have persisted into the present day. We think the emotional experience of Mere Kūao and her descendants is also typical of many whose landholdings dwindled like hers.

Mere Kūao had land in two Murimotu blocks, 5B2A and 3B1A, situated near Tangiwai. Her whānau blamed their loss or degradation on the individualisation of title through the Native Land Court; the non-customary operation of succession rules; determined efforts on the part of the Crown to buy Māori land for the expansion of Karioi Forest; and the disastrous results of the Crown’s introduction of Pinus contorta. Ngāti Rangi claimants (Wai 569, Wai 151, Wai 277, Wai 554, and Wai 1250) lamented these losses and sought the return of land and the payment of compensation.¹

The Crown made submissions only in relation to Pinus contorta.²

M3.2 The Murimotu Block

The Murimotu Plains, located to the south of Mount Ruapehu and to the west of Waiōuru township, are the domain of Ngāti Rangituhi and Ngāti Rangipoutaka, hapū of Ngāti Rangi.³ The name Murimotu came from a famous tupua (one versed in the sacred arts)
who, Che Wilson told us, was so tapu that the only part of his body that people could hongi was his knees. Murimotu also gave his name to the maunga tapu (sacred mountain) Ngā Turi o Murimotu (also called Te Turi o Murimotu) in the western corner of Murimotu 5. This maunga tapu is a rerenga wairua (place where spirits depart) for uri (descendants) of Whanganui Māori.

Ngāti Rangi, and Whanganui Māori generally, prized the Murimotu Plains for their fertile soil, forests, and waterways. People came from far and wide to gather food: the plains were a ‘summer supermarket’ and the ‘great pātaka [food store] of the district’. Where the Whangaehu River and the Wāhianoa Stream met (on Murimotu 3B1A), the water was known to be therapeutic. Prior to the arrival of Pākehā in the district, there was a kāinga nearby where travellers stayed when moving between Murimotu and Rangipō. For centuries, Ngāti Rangi used the wai tōtā (sulphuric waters) of the Whangaehu River, known as the ‘sweat gland’ of Ruapehu, for healing (see section 25.8). In 1874, the Native Land Court awarded the 46,365-acre Murimotu block to Ngāti Rangi. Individual interests were defined in 1882, when Murimotu 3 went to descendants of Rawhitiao and Murimotu 5 went to descendants of Tamarua. Each covered about 13,000 acres. In chapter 12, we explained how the Crown took control of Murimotu land, forcing private interests out of their leasing arrangements with Māori owners. This caused significant opposition, which came to the point of conflict in 1882. Having prevented Māori from entering into beneficial leasing arrangements, the Crown proceeded to purchase individual interests in land. In 1900, the Crown obtained title to the interests it had purchased, which amounted to 66 per cent of the block (see sections 12.6 and 15.3.1).

The claimants told us that Hoani Moutoa was an in-law and that the Native Land Court should not have awarded him absolute interests in Murimotu 5B2A: he should have had only a life interest and should not have been able to sell the land. However, our investigations indicate that the facts here were not as the claimants believed. Hoani Moutoa did not sell his interests in Murimotu 5B2A. His successors, Rangi and Hinurewa Whakapū, sold them after Moutoa died in about 1917. Hinurewa (and probably Rangi also) was the grandchild of Naima Whakapū and Hami Te Riaki, both of whom were Ngāti Rangi and owners in Murimotu 5. Te Riaki was one of Ngāti Rangi’s leading whakapapa experts. Claimant evidence suggests Moutoa may have been Hinurewa and Rangi’s great-uncle. Even if Hoani Moutoa was not himself of Ngāti Rangi descent, his successors certainly were. Rangi and Hinurewa Whakapū would have been entitled to sell those interests if they chose. In this case, therefore, nothing turned on whether Hoani Moutoa held interests in Murimotu 5B2A absolutely or by way of a life interest.

Aterea Te Rāroa died in the following few years, and in 1911 Mere Kūao, together with her siblings Amīria Tamehana and Hēnare Aterea, succeeded to his interests. As noted, Rangi and Hinurewa Whakapū inherited Hoani Moutoa’s shares after his death in 1917, but they did not keep them for long. That same year, Rangi Whakapū applied to the Native Land Court for confirmation of the transfer of his shares to David Strachan, a Pākehā farmer and long-term lessee of the block. The transfer was confirmed on 17 June 1918, and Strachan paid Rangi Whakapū £238 for his 118-acre share of Murimotu 5B2A.

Then, in November of 1918, Hinurewa Whakapū also applied for confirmation of a transfer of her shares in Murimotu 5B2A to Strachan, who paid her the same amount (£238) for her similarly sized share of the block. Because Murimotu 5B2A had fewer than 10 owners, the Native Land Act 1909 did not require a meeting of owners to agree to the sale.

By the end of 1918, then, Strachan owned all of the shares in Murimotu 5B2A that the Native Land Court

M3.3 Murimotu 5B2A

M3.3.1 Discussion
When the Native Land Court partitioned the sections in October 1905, one of the resulting partitions, Murimotu 5B2A, comprised 534 acres and had three owners. Most of the shares went to Aterea Te Rāroa and Hoani Moutoa. The claimants told us that Hoani Moutoa was an in-law and that the Native Land Court should not have awarded him absolute interests in Murimotu 5B2A: he should have had only a life interest and should not have been able to sell the land. However, our investigations indicate that the facts here were not as the claimants believed. Hoani Moutoa did not sell his interests in Murimotu 5B2A. His successors, Rangi and Hinurewa Whakapū, sold them after Moutoa died in about 1917. Hinurewa (and probably Rangi also) was the grandchild of Naima Whakapū and Hami Te Riaki, both of whom were Ngāti Rangi and owners in Murimotu 5. Te Riaki was one of Ngāti Rangi’s leading whakapapa experts. Claimant evidence suggests Moutoa may have been Hinurewa and Rangi’s great-uncle. Even if Hoani Moutoa was not himself of Ngāti Rangi descent, his successors certainly were. Rangi and Hinurewa Whakapū would have been entitled to sell those interests if they chose. In this case, therefore, nothing turned on whether Hoani Moutoa held interests in Murimotu 5B2A absolutely or by way of a life interest.

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By the end of 1918, then, Strachan owned all of the shares in Murimotu 5B2A that the Native Land Court
had awarded to Hoani Moutoa in 1905. In February 1925, the Native Land Court partitioned out the interests in Murimotu 5B2A that Strachan had bought, and the new partition, which comprised a little over 236 acres, became Murimotu 5B2A1.

The process of locating the partition had adverse consequences for Mere Kūao and Ngāti Rangi.

Strachan got the Native Land Court to partition out as Murimotu 5B2A1 the area adjacent to the maunga tapu, Ngā Turi o Murimotu. In the words of Che Wilson, ‘Therefore, the whanau lose another significant association to the iwi that they were entrusted with to protect for the greater populace.’

Not only did Murimotu 5B2A1 have important ancestral connections for Ngāti Rangi, but historian Nicholas Bayley told us that Strachan’s area was better land than that left for the descendants of the other original owner of Murimotu 5B2A, Aterea Te Rāroa. Those descendants were Mere Kūao and her siblings.

The final blow was that, although the court ordered a right of way over Strachan’s land to afford access to Murimotu 5B2A, the block that Mere Kūao and others owned, it never eventuated. Murimotu 5B2A was therefore left without legal access.

Ngāti Rangi’s broader contention was that all these adverse consequences came about as a result of the individualisation of title. The real owners of Murimotu 5B21 were Ngāti Rangi: Hoani Moutoa and Aterea Te Rāroa were the men to whom the shares were awarded, but the land was properly regarded as customary land of the tribe.
By allowing individuals to deal with the land atomistically, the Native Land Court and its creators were denying the reality of customary land. If there had been collective decision-making – or even reference to the wider group – Ngāti Rangi would not have lost access to its wāhi tapu, and access to the remainder block (Murimotu 5B2A) would have been secured.

As it was, as at 1925, Mere Kūao and her siblings still owned the shares in Murimotu 5B2A (now 297 acres) that they had inherited from Aterea te Rāroa. But now the area they retained had no legal access, was the poorer quality land, and was not near the maunga tapu, Ngā Tūri o Murimotu.

**M3.3.2 Findings and recommendations**

The sale of Rangi and Hinurewa Whakapū’s shares in Murimotu 5B2A in 1917 and 1918 to a local farmer, and the subsequent location of his partition Murimotu 5B2A1, caused longstanding problems for the owners of the balance block, and for Ngāti Rangi. The balance owners were left with the poorer land and no legal access, and both they and Ngāti Rangi lost to a farmer culturally important land near their maunga tapu.

This is an example of how private purchasers acquired land interests in undivided blocks, and then got the Native Land Court to partition out the proportion of the block that corresponded to the interests they had purchased in a way that advantaged them and disadvantaged the owners of the balance block. There was no requirement to establish the iwi or hapū connections of the sellers to the land or other owners. The owners of the balance block were not required to be present, or represented. There was no inquiry into whether parts of the block might be culturally significant or whether the private purchaser was gaining an unfair share of the better quality land.

These sales and subsequent partition illustrate the fundamental problems with the Native Land Court’s individualised titles and partition process. Those with wider interests in the block – the balance owners, and also the hapū traditionally connected to it – should have been informed and involved. Their exclusion negated whaka-papa and customary ownership.

This flawed system was at odds with the article 2 guarantee of te tino rangatiratanga. This case should be taken into account in the Treaty settlement negotiations between Ngāti Rangi and the Crown.

**M3.4 Murimotu 3B1A**

**M3.4.1 Discussion**

Murimotu 3B1A, 949 acres, also emerged from the 1905 partition of the Murimotu block. This partition went to Mere Kūao, Aterea Te Rāroa, and another Māori owner.

Che Wilson told us that, according to Ngāti Rangi oral history, so many whānau living at Raketāpāuma died in the 1918 influenza epidemic that a mass grave was dug. Many ‘left the large kainga to live independently’. This was both a reaction to the trauma, and also ‘a sign of quiet resistance’ to land loss. Mere Kūao and her brother went to live on Murimotu 3B1A.

In 1926, Mere Kūao’s relative Hōri Ēnoka Te Māreikura returned home to Ngāti Rangi to share the good news of the māramatanga, a spiritual movement based on the teachings of Te Kooti Rikirangi. Both Mere Kūao and her husband’s Ngāti Rangihouia whānau supported Hōri Ēnoka Te Māreikura’s māramatanga, and her daughter Hēpēra went with her husband’s people of Ōtoko to Whakatāne. That was where Te Kooti Rikirangi’s māramatanga was based.

Che Wilson talked about the new adherence to the māramatanga in the context of what was happening to people’s Māori land at the time:

> Therefore their attention was on keeping the land that they could and the attainment of te ao marama – the world of light through various māramatanga as it was believed that their spirituality could never be taken and it was a means to maintain and nurture their mana Māori.

Seven owners were listed on the title of Murimotu 3B1A in 1928, and it was about then that the Crown formed the intention to purchase land here in order to extend the nearby Karioi Forest. Murimotu 3B1A shared a boundary with Karioi Forest, and was regarded as particularly
suitable for forestry.\textsuperscript{22} The Crown’s native land purchase officer was instructed to purchase 540 acres from Murimotu 3B1A and 1B2, of which 390 acres would come from 3B1A.

Seeking to purchase the 257-acre Murimotu 1B2 block, the Crown offered £32. The owners turned this down, but counter-offered £64, which the Crown accepted.\textsuperscript{23}

Negotiating to purchase Murimotu 3B1A, the Crown offered to pay outstanding rates and survey charges, but was not flexible on price – it would pay only 10 shillings an acre.\textsuperscript{24} By December 1929, the purchase officer had succeeded in buying shares equivalent to 237 acres, but Mere Kūao and other owners resisted.\textsuperscript{25}

Matters had stalled, and the director of forestry was not happy. In 1931, he raised the possibility of abandoning negotiation in favour of compulsory purchase under the Public Works Act. He instructed the native land purchase officer to make a ‘special effort’ to complete the acquisition.\textsuperscript{26} The officer responded:

I have to inform you that I am again calling on Mere te Aowhakahinga [Mere Kūao] at Ohakune, sometime during the coming week. She may change her mind and sell portion of her interest to complete the sale. There are three non-sellers, and they have all refused to sell.\textsuperscript{27}

The director of forestry’s exhortation achieved the desired effect, because by the end of May 1931 the purchase officer had apparently persuaded Mere Kūao to sell a portion of her interests in Murimotu 3B1A, and the Crown reached its target of 390 acres.\textsuperscript{28}

The Crown applied to the Native Land Court to have its interests partitioned out at that point, and told the court:

The total area of this block is 949 ac 3r 00p and its value £475. The Crown has purchased 39\%\% shares for £195. On an acreage basis the Crown is entitled to 390 acres. I ask that this area be located to the north of the Whangaehu River.\textsuperscript{29}

There were no objections; no owners were recorded as being at the hearing.\textsuperscript{30} The court granted the Crown’s application in the terms requested.\textsuperscript{31}

The court’s order made the Whangaehu River the boundary between the Crown’s 390-acre Murimotu 3B1A, and the non-sellers’ 559-acre Murimotu 3B1A2. Access to the Wāhianoa Stream is only possible from the Crown’s Murimotu 3B1A1, so that the owners of Murimotu 3B1A2 lost proper access to their wāhi tapu site at the confluence of the Whangaehu River and Wāhianoa Stream.\textsuperscript{32}

Nicholas Bayley’s evidence was that

Unlike the situation in Murimotu No 1B2, where the Crown had shown willingness to pay considerably more for land it wanted [in Murimotu 3B1A], there was more focus on acquisition without negotiation, except to sell or not to sell. When some Māori did not sell, the Crown used its privileged position to purchase interests, then had them located in the blocks to its advantage. The Crown obtained what it had sought, but the Māori who had not wanted to sell, were manoeuvred out of the way, with further loss of Māori land.\textsuperscript{33}

As handed down to Mere Kūao’s whānau and Ngāti Rangi, the story about this sale of Mere Kūao’s interests in Murimotu 3B1A is that it happened without her knowledge or consent.\textsuperscript{34} Che Wilson recounted oral history that their kuia ‘never signed any court papers and she could not even write.’\textsuperscript{35} Because the area was so important culturally, it is impossible that Mere Kūao would have agreed to its sale: ‘all key Ngāti Rangi wāhi tapu have been maintained in Ngāti Rangi ownership except where they have been taken from us by the Crown by force.’\textsuperscript{36}

We know no more than set out here, so can make no definitive statement about what Mere Kūao did or did not know about the purchase. However, we suggest that a possible scenario is that the land purchase officer did somehow persuade Mere Kūao to sell, but of course what she agreed to sell were undivided interests. We think that Mere Kūao almost certainly did not know what part of Murimotu 3B1A the Crown would seek to have partitioned out as its share of the block. The land purchase officer, seeking to make the purchase, would have had no incentive to tell Mere Kūao anything that might dissuade her from selling. No owners were present when the Native Land Court made the partition. She may not have learned
until much later that the interests in the block that the Crown purchased from her and others would be located so as to materially affect Ngāti Rangi's access to, and relationship with, their wāhi tapu site at the confluence of the Whangaehu River and Wāhianoa Stream. She might quite reasonably have believed that she did not sell that land, and would not have dreamed of doing so.

We note that the land purchase officer was under considerable pressure to secure the Crown's target of 390 acres in this block, and what he might have said or done to get Mere Kūao to sign on the dotted line – or, more accurately, to make her mark – we have no means of knowing.

M3.4.2 Findings and recommendations
As regards Murimotu 3B1A, claimants told us that their kuia Mere Kūao did not want to sell her interests to the Crown. The Crown purchase officer's letter confirms that there were owners in the block who did not want to sell, that Mere Kūao was one of them, and that he was hoping to change her mind. He evidently did, and we do not know how. We think it most unlikely that Mere Kūao would have known what part of the block the Crown would seek to have partitioned out, and without that knowledge she could not secure Ngāti Rangi's access to the wāhi tapu on Wāhianoa Stream.

We consider that the Crown was obliged to consider carefully whether Māori owners had sufficient remaining land; not pressure owners to sell land; and to make clear where it wanted to locate its partition before buying the interests. However, in the absence of detailed evidence before us as to the circumstances behind the sale of her interests, we cannot definitively state that it did not fulfil those obligations.

This case highlights once more the consequences of individualised titles and the absence of satisfactory mechanisms to enable collective management of land.

We also censure the court's willingness to comply with the Crown's request to locate its share of the block where it did without first understanding what the vendors believed they were selling, and eliciting the views of the owners of the balance of the block. Even if there had been no issues about wāhi tapu, where the Crown's partition was located on the block of course hugely affected the owners of the land that remained in Māori hands. The Crown should not have been allowed to make its choice without furnishing evidence that the vendors and the owners of the balance of the land agreed, or were represented at the partition hearing.

Our findings are therefore limited to this: the legislative requirements for partitions were wanting as to process, and this breached the principles of the Treaty. The Crown's duty of active protection obliged it to enact legislation that ensured that, when interests were alienated, the alienor was represented or present in court when the alienee's partition was defined, and that the interests of the owners of the balance of the block were properly assessed and protected. This failure prejudiced the whānau of Mere Kūao and Ngāti Rangi.

We recommend that this breach of the Treaty is taken into account in the Treaty settlement negotiations between Ngāti Rangi and the Crown.

M3.5 Murimotu 3B1A2
Murimotu 3B1A2 is the block that non-sellers of Murimotu 3B1A retained after the Native Land Court partitioned out as Murimotu 3B1A1 the interests that the Crown purchased from Mere Kūao and others to extend Karioi State Forest.

We now move to consider another chapter in the experience of these Ngāti Rangi landowners: how Murimotu 3B1A2 was overrun by Pinus contorta, a plant that the Crown introduced for timber, but which was later recognised as a noxious weed.

M3.5.1 Pinus contorta at Karioi State Forest
From the late 1920s, the Crown planted an evergreen pine tree species called Pinus contorta (or lodgepole pine) in the Karioi State Forest for production forestry. It turned out not to have the looked-for potential to produce timber, and other kinds of pine were planted instead from 1931 on. Nevertheless, Pinus contorta spread invasively from the 6,200 acres planted in Karioi forest, and the plant was declared a noxious weed in 1983. Crown agencies, local authorities, and private landowners have attempted
to control it, but its rampant regeneration continues in the west of the central Whanganui inquiry district. Its migration from Karioi forest to neighbouring Murimotu 3B1A2 has been an insoluble and costly problem for its owners for many decades.

The claimants raised three issues:

- Was the Crown negligent when it introduced *Pinus contorta* to Karioi forest?
- Does the legislative and policy regime achieve an appropriate balance between the Crown’s and owners’ responsibility for the eradication of *Pinus contorta* from Murimotu 3B1A2?
- Should the Crown fund *Pinus contorta* eradication in Karioi forest from the proceeds of Crown forestry rental returns, when those funds are intended for Treaty settlements?  

At the centre of this case is the Crown’s regime for controlling noxious weeds, which stipulates how the Crown, its delegated authorities, and Māori landowners should respond to *Pinus contorta*. It makes the Crown responsible for eradicating weeds from Crown land, but private landowners are, and always have been, responsible for weed eradication on their own land. However, the Crown assisted in eradicating *Pinus contorta* from Murimotu 3B1A2 in various ways. The Crown considered its assistance was adequate; the claimants did not.  

*Pinus contorta* is a North American pine species that thrives in alpine and sub-alpine areas. In their report to us, Andrew Francis and Tony Walzl found that, before the end of the nineteenth century, horticultural societies, acclimatisation societies, and seed stockists were introducing *Pinus contorta* as a tree suited to New Zealand’s potentially harsh climate and growing conditions. Two varieties of *Pinus contorta* were planted: *Pinus contorta* subspecies *contorta* (‘green’ or ‘coastal’ form) and *Pinus contorta* subspecies *murrayana* (‘yellow’ or ‘inland’ form).
In November 1926, the Government established the Karioi State Forest on approximately 33,000 acres of Crown land in the Murimotu, Rangiwaea, and Rangipō-Waiū blocks, and continued expanding its area until 1944. The State Forest Service (later the New Zealand Forest Service) began planting in 1927, and by 1932 had trees growing on 11,650 acres. The severe winter climate and poor soil made for challenging conditions at Karioi, so the Forest Service chose to plant both species of *Pinus contorta*. By 1931, it was apparent that *Pinus contorta* was not measuring up to expectations, as Conservator of Forests D Macpherson reported to Ōhākune’s forest ranger in 1931:

> Monthly reports show that this year at Karioi, 3,200 acres (planting and blanking) were set out with [*Pinus contorta* subspecies] *P Murrayana*. As this species has everywhere a low yield per acre of saleable timber and consequently cannot be expected to return a profit on planting, it has been decided to curtail operations on a project which will carry from now onwards a preponderance of such an inferior species.

About 6,200 acres, or 19 per cent, of the forest comprised *Pinus contorta* by then. Those trees were left to be harvested at maturity, and became the seed source for the subsequent spread of wilding plants. *Pinus contorta* quickly colonised other areas of the Karioi forest, the Tongariro National Park, defence lands at Waiōuru, and privately-owned blocks that bordered the forest – including Murimotu 3B1A2 – and other blocks of Māori land.

There was another source of *Pinus contorta* infestation in the central plateau region that is difficult to quantify. When its planting at Karioi was curtailed, the Forestry Service had growing in its nurseries many unwanted *Pinus contorta* seedlings. It distributed them widely by way of sale or gift. How many ended up being planted in the central plateau region, but outside Karioi forest, is unknown. Some were documented, though: 1,000 were planted at the Hihitahi railway station, south of Waiōuru township, and various borough council plantings around Raetihi and Ōhākune involved over 2,000 trees.

After the Second World War, the Soil Conservation and Rivers Control Council instructed that 38,000 *Pinus contorta* subspecies *murrayana* be planted on eroded uplands of Waiōuru military reserve. But by 1964, a ‘dense to light infestation’ of *Pinus contorta* wildings covered around an additional 26,000 acres of the Waiōuru military reserve, and by 1966 was acknowledged to be ‘out of control’.  

### M3.5.2 What has been done to tackle the spread
*Pinus contorta* is a plant with legendary regenerating ability. Its seeds are ‘known to blow up to 40 kilometres and this, coupled with its ability to grow up to 2,000 metres above sea level – higher than the natural tree lines – make it a formidable species.’ By the late 1950s, the New Zealand Forest Service was commenting on its potential to constitute a major weed problem, but noxious weeds were not defined to include trees so there was no legal requirement to take action. Moreover, there was reluctance to rule out the use of *Pinus contorta* in certain areas where erosion control was required and other species might not have the necessary vigour. That reluctance continued right through until the 1970s, although guidelines for using *Pinus contorta* became more restrictive. Finally, in 1977, the Soil Conservation and Rivers Control Council reversed its policy supporting the planting of *Pinus contorta* for combating soil erosion. But, by 1972, the *Pinus contorta* infestation of defence lands at Waiōuru had increased to 41,500 acres, and had spread two and a half miles east of Karioi forest. That forest was the principal source of the wilding problem, but soon there were infestations in many other locations that were ‘the repository of seed showers’ carried by wind from stands on Māori land and national park land. It was not until 1980 that plantings in state forests ceased, and seedlings were withdrawn from sale in forest nurseries.

From its inception in 1900, New Zealand’s regime to control noxious weeds has put the onus on landowners or occupiers. The rationale is that landowners or occupiers benefit from weed eradication, and should therefore bear the costs. The Crown was responsible for controlling the spread of *Pinus contorta* on Crown land, and in 1975, the Ministry...
of Works began a sustained eradication programme on defence lands at Waiōuru.\textsuperscript{60} In 1983, the Crown declared \textit{Pinus contorta} a class B noxious weed in the central plateau and began contributing funds towards its control.\textsuperscript{61} At least $200,000 was directed towards eradication and control programmes annually, including a 'significant amount' for control in the Tongariro National Park.\textsuperscript{62}

Beyond Crown land, regional authorities and Government departments acknowledged that \textit{Pinus contorta} was spreading, but there was no coordinated approach to tackling the problem.\textsuperscript{63}

In the late 1980s, the Noxious Plants Council made grants to the Department of Lands and Survey and the Forest Service to fund eradication programmes on Māori land between Karioi State Forest and Tongariro National Park.\textsuperscript{64}

Regional councils have pest management strategies, and these specify the rules that landowners must follow to control weeds such as \textit{Pinus contorta}, and the consequences if they fail to comply. Because \textit{Pinus contorta} poses an extreme risk to the environment, Horizons Regional Council has a specific strategy to control it. It
provides financial assistance to owners of private rateable land, but not to owners of non-rateable Māori land. The implications of this policy are obvious: non-rateable Māori land is among the worst affected. Because Pinus contorta renders the land unproductive, people like the owners of Murimotu 3B1A2 will struggle to fund its eradication. Furthermore, eradicating the weed only on rateable land is perverse: if the objective is to stop the spread of the plant, then every source of seed must be eradicated, whether on rateable land or not. Otherwise, infestation will simply continue.

**M3.5.3 Pinus contorta on Murimotu 3B1A2**

Wilding Pinus contorta particularly affected Murimotu 3B1A2 because it shares a boundary with Karioi forest. Sarah Reo told us that in 1931 Murimotu 3B1A2 was leased out for a 40-year term, extended in 1973 for a further 15 years. Rent was minimal during the whole period, and the land reverted to Pinus contorta and scrub. In 1986, the local authority (presumably the noxious plants authority for Karioi region) paid the lessee $17,000 to eradicate 52 acres of Pinus contorta, but the situation was not monitored. Although the trees were cut down, they
were left on the land and continued to spread their seed. Sarah Reo’s father Pita (now deceased) referred to this as ‘an abject waste of public money and totally irresponsible of the Regional Council’.

That long-running lease expired in 1988, and the Pinus contorta infestation remained. From 1991, officers from the Manawatu–Wanganui Regional Council (later called Horizons Regional Council) pursued the shareholders of Murimotu 3B1A2 to take on the huge task of eradicating weeds on the block. In practice, the burden fell on Pita and Joe Reo, who were then men approaching 60. The Reo brothers’ engagement with the authorities, which included court action against them, appeals, and enforcement action, went on for a number of years.

The requirements of the regional council were considerable. In one letter sent in 1993, the noxious plants officer explained:

I believe the most effective process [for eradication of Pinus contorta] is to cut all the larger trees at ground level plus hand pull all smaller seedling trees. On the completion of this the area should be burnt so as to break down all the trash. This burn will also destroy a large percentage of viable seed present in the ground. The area should then be grazed so as to prevent further establishment of Pinus contorta.

This was a tall order under the circumstances: the land produced no income, because the weed infestation made it impossible to lease; the owners could not gain access to the land, because it was land-locked; it was unoccupied, and the Reo brothers themselves did not live locally. The owners formed a trust to try to address some of these problems, but they had to negotiate access to the block before they could clear it.

The Manawatu–Wanganui Regional Council noxious plants officer knew about these difficulties, but he had a job to do:

under the Noxious Plants Act all occupiers have a responsibility to control noxious plants. You have stated, because of the situation, there would be little work if any, carried out in the foreseeable future. I therefore intend to recommend to the Manawatu–Wanganui Regional Council that a Statutory Notice be served for the eradication of Pinus contorta and gorse from your property.

Unsurprisingly, the owners did not comply with the notice. The noxious plants officer wrote to Pita Reo in July 1994:

The matter regarding the Statutory Notice served on your brother Mr J Reo to clear all the gorse and pinus contorta from the property will now be settled through the Courts as the notice to clear has not been complied with.

I have made your brother Joe Reo aware of the above situation and have advised him to take whatever steps necessary regarding this matter.

In your letter to me the last paragraph states ‘You did mention that the Regional Council could be forthcoming with financial support’. I can only say that at no time have I suggested to you that the Regional Council has funds for such work.

The matter proceeded to court. The penalties for failing to comply with a removal notice could include fines of up to $2,500, or $150 per day. Sarah Reo told us of the strain on her whānau:

Dad’s commitment to the land cost him a lot of time. He was 60 years old when he went to court to defend the family name, and prevent the fining and imprisonment of his older brother Joe Reo, who had received the letter of prosecution.

Following the court hearing, Pita Reo camped on the block and cleared approximately 44 acres with assistance from whānau. In May 1995, the regional council agreed to remove the threat of legal action provided that noxious weed was cleared within six months. It appears that Murimotu 3B1A2 was largely clear by the end of 1995. We are unsure of the current situation, but we note that Murimotu is one of the many Māori land blocks in the district that is classed as non-rateable.
**M3.5.4 Funding eradication from Crown forest rents**

From the late 1980s, the Crown completely restructured the New Zealand forestry industry. Under the Crown Forest Assets Act 1989, the Crown sold its existing tree crop but retained ownership of the forest land. Private companies who purchased former state forests were granted the right to use the land under a Crown forestry licence, and in exchange paid an annual market-based rental to the Crown. Winstone Pulp International purchased the Crown forestry licence for Karioi Forest in 1990. Like other companies holding a forestry licence, Winstone Pulp International makes rental payments to Land Information New Zealand, the Government department that manages Crown property. Land Information New Zealand then transfers the fees to the Crown Forestry Rental Trust, which holds the rental proceeds until the land is used in a Treaty settlement.

According to Keith Wood, a witness for Ngāti Rangi and the operations manager (forestry) for Winstone Pulp International, Land Information New Zealand has granted the company ‘significant’ rent reductions in recognition of the high costs associated with *Pinus contorta* control in Karioi forest. Ngāti Rangi argued that these reductions ultimately prejudice Māori as it reduces the amount that the Crown Forestry Rental Trust receives for future distribution to successful claimant groups. As Mr Wood explained to us: ‘This means that it is not the Crown who is paying for the cost of remedial action, it is us as potential successful claimants, because the cost is coming out of our rental proceeds.’

We agree with this characterisation of the situation. The system of Crown forestry rentals was set up to respond to Māori concerns that if the Crown sold its forestry assets, they would not be available to Māori for Treaty settlements. Until any settlement decisions are made about the Karioi forest, the proceeds from rent are held in trust and do not ‘belong’ to either the Crown or Māori claimants. If the Crown permits forestry licence holders to pay less rent, there will be less money available to successful Māori claimants. (It is likely that ultimately Māori claimants here, as elsewhere, will receive interests in the forests as part of their Treaty settlements.) By incorporating the cost of current *Pinus contorta* control and eradication programmes into the licence agreements with the forest licence holders, the Crown is effectively making yet-to-be-determined successful claimants pay for them. We acknowledge that the rent reduction is an attempt by the Crown to address the *Pinus contorta* problem and incentivise its removal. But it is doing so in a manner that makes it cost-neutral to the Crown, and risks compounding existing Treaty grievances in this region.

**M3.5.5 Findings and recommendations**

We find that the Crown did not breach the Treaty when it planted *Pinus contorta* for plantation forestry in the Karioi State Forest. There is no evidence to suggest that its trials of plantation species yielded results that should have put it on notice that *Pinus contorta* had characteristics that would enable it to infest land far beyond where it was planted. Those characteristics were, however, observed by the 1950s, and should have been acted on sooner. By then, though, *Pinus contorta* had already colonised Murimotu 3B1A2, so earlier Crown action to halt new plantings and embark on the eradication of existing plantings would not have benefited the owners of that block.

The truth is that the enthusiastic importation of exotic plants to New Zealand had many disastrous consequences that were understood too late. AR Entrican, director of the New Zealand Forest Service, wrote in 1959: ‘For some time now the Forest Service has been deeply concerned with the obvious dangers inherent in the indiscriminate planting of trees and plants within New Zealand.’ The context suggests that he said this with *Pinus contorta* in mind. Unfortunately, his predecessors of the 1920s and 1930s lacked this insight. Perhaps it was a case of needing to learn from experience.

We can look back now on the introduction of *Pinus contorta*, and the failure to identify its disastrous potential and control it sooner, and wonder at the folly of our forebears. But hindsight is a wonderful thing, and one only has to think of the ravages of gorse and old man’s beard to know that *Pinus contorta* is by no means alone in threatening our natural environment and causing landowners grief and expense. It is difficult, we think, to view these
events in our past as breaches of the Treaty, because the plant introductions were usually motivated by the intention of adding to the beauty or utility of New Zealand's landscape. In the same way, the Polynesian forebears of Māori brought plants with them from their islands of origin, and the forebears of Moriori took plants with them from Aotearoa/New Zealand when they journeyed to Rēkohu.

Some plant introductions very quickly had a beneficial effect – the potato, for example – whereas others have proved to be extremely detrimental. We find it impossible to distinguish the introduction of *Pinus contorta* from all the other introductions, good and bad.

On the other hand, in our view, for much of the twentieth century, New Zealand's noxious weeds regime prejudiced Māori landowners because it failed to acknowledge that Māori were already at a disadvantage in relation to their land. We have seen how the system designed for Māori land tenure left landowners with a legacy of title difficulties, including fragmentation of title and fractionation of ownership (see sections 10.6.4(6) and 11.9). These were tremendous obstacles to their developing their land to a standard where it would generate sufficient income to cover the cost of a weed control programme. This was the case at Murimotu 3B2A1, as Māori owners could earn nothing from the land, and struggled to arrange meetings of owners or even gain access to their land to address the problem of noxious weeds.

The Crown delegated the control of noxious weeds to the Manawatu–Wanganui Regional Council. The evidence showed that the officers of that authority knew about the very considerable problems that the Murimotu 3B2A1 owners faced, but did not regard themselves as having discretion to take those circumstances into account in administering the noxious weeds regime. The law they administered had no regard at all for the particular difficulties that Māori like the owners of Murimotu 3B2A1 faced, and they were accordingly granted no relief.

The failure of the regime for controlling noxious weeds to engage with, and take into account, the circumstances that were peculiar to the owners of Māori land like Murimotu 3B2A1 breached the Crown's duty of active protection. The situation as regards Murimotu 3B2A1 was particularly egregious because the problem of wilding *Pinus contorta* was clearly of the Crown's and not the owners' making, and failing to make allowances for that in dealing with its owners was very unfair. It caused them expense, hardship, and stress that was unnecessary and wrong.

We are also alarmed that the current regional council regime for dealing with *Pinus contorta* appears to deprive Māori owners of non-rateable land of financial assistance for eradication. This situation compounds the problems of the owners of Māori land in this region, who are particularly ill-equipped to deal with the wilding pine problem because of the nature of their title and its inherent difficulties. The Crown is liable, as the Treaty partner, for this breach of Treaty principles by its delegate, Horizons Regional Council.

In relation to the noxious weeds regime at Karioi and its impact on the owners of Murimotu 3B2A1, the Crown has failed to fulfil its Treaty obligations to actively protect Whanganui Māori interests and has breached the principle of partnership.

The Crown's use of forest licence rentals, to which Māori become entitled as part of Treaty settlements, to meet its own responsibility to remedy the problem it created is also unfair and breaches the Crown's duty to act towards its Treaty partner with utmost good faith. The Crown should stop using rental reductions as a way of reimbursing licensees for *Pinus contorta* control.

We recommend that the Crown:

- develop a strategy, implemented by regional councils, for funding pest management on Māori land, including non-rateable Māori land, which recognises the problems and difficulties faced by Māori landowners in Whanganui as a result of the inherent weaknesses in the Māori land tenure system it enacted;

- take steps forthwith to curtail the practice of reducing Crown forest rental in return for licensees controlling *Pinus contorta*; and

- take into account the amount of money that has been taken out of Karioi forest rental income for *Pinus contorta* control when negotiating the Treaty settlement with Whanganui iwi.
The connection between land loss and dislocation between and within people is a strong theme in Ngāti Rangi thinking. As Che Wilson explained, through the loss of land, the Mere Kūao whānau lost their connection to their Ngāti Rangitanga, their tūrangawaewae, their being and their ability to truly understand the title of this research: 'Hono Whenua, Hono Tāngata, Hono Wairua'. [Connection to land brings connection to people and spiritual connection.]

The evidence of Sarah Reo was very much to this effect. She explained how her father, Pita Reo, became reconnected to land at Murimotu through his efforts to clear the land to meet the requirements of the regional council. She lamented that his reconnection didn't happen earlier, and differently, but nevertheless she and other whānau were inspired by Pita's vision for Murimotu. They hoped that what she called 'dad's dreams', which included the return of land and a forestry business plan, 'will make a difference, not just to this generation, and not to the following generation, but to the next ten generations.'

Hiria Tūtakangahau is another of Mere Kūao's descendants who seeks reconnection to Murimotu. Her sense of dislocation is greater, because her line, descending from Mere Kūao's daughter Hipera, left the Ngāti Rangi rohe in the 1920s, and established themselves at Whakatâne. They married into Mataatua iwi, she told us, and most of Mere Kūao's descendants 'continue to be unaware of their Ngati Rangi connections.' However, their kuia, Hipera, is buried at the Raketāpāuma urupā. 'If it were not for that fact', Hiria told us, 'I believe my whanau would not be secure in going to that marae and therefore pursuing our Ngati Rangi connection.' For, she reflected sadly,

There is no doubt in our minds that we, the descendants of Mere Kuao ki Whakatane are ahika matao [fires gone cold] in regard to Ngati Rangi. There are six living generations of uri from Mere Kuao the majority of which still remain in the Ngati Awa rohe . . . five generations of lost sheep so to speak.

Hiria Tūtakangahau's whānau has only recently learned about their interests in Murimotu 3B1A2, and immediately the association is riven with problems: an unauthorised fence has been built; they are asked to pay for half the cost; their land is landlocked; pine trees have been felled and sold without their knowledge or consent. This is the legacy for landowning whānau in Murimotu:

Our landlocked situation continues although we 'enjoy' access [through permission from Winstone's] the constant threat that it may be taken away, at the will of others, is intimidating. The Mere Kuao Ahuwhenua Trust is making waves through the Māori Land Court system to rectify this issue. Time, costs and resourcing of this process will have a heavy toll on us.

However, in terms of Ngāti Rangi identity, the descendants of Hipera Te Kooro Reo and Mātene Rūpuha are making a come-back. Hiria reported to us that 'My tua-kana are beginning to heal and move away from the influences of gang culture.' They have held many whānau hui, and although they wish to remain physically in Ngāti Awa territory, they intend to improve their links with Ngāti Rangi. They aim to 'set the foundation in place so that the next generations are able to walk tall with pride as Ngati Rangi iwi'.

In conclusion then, the difficulties of owning Māori land in this rohe continue – but the problems flowing from loss of connection are greater. Loss of culture and loss of identity have large human costs. Land loss played a part for sure, but there were many forces that contributed to Mere Kūao's uri leaving their ancestral home: they were trying to cope with the trauma of the 1918 influenza epidemic and the many whānau deaths that resulted; the promise of the māramatanga was a means of responding to that trauma, and to poverty and land problems; and personal issues concerning Hipera's husband's family, and her desire for children after experiencing a succession of still births led her north.

The spiritual and emotional mamae (hurts) of Hiria and her whanaunga are not within the power of the Crown to heal. But it would certainly help if the lot of Māori
landowners were improved in the ways outlined here so that the next generation can enjoy their Māori land rather than simply struggling to stay solvent.

Notes
1. Submission 3.3.105, p 54
2. Submission 3.3.120, pp 62–63
3. Document L16 (Wilson), p 6
4. Ibid
5. Ibid
6. Ibid, p 9
7. Ibid; doc L26 (Wilson), p 6; doc A164 (Ngāti Rangi mapbook), pl 15
8. Document A37(j) (Berghan supporting documents), p 5893
9. Submission 3.3.105, p 54
10. We are not sure why the claimants characterised Hoani Moutoa as being an in-law. Native Land Court minutes show that Hoani Moutoa was Ngāti Rangi, and was an owner in Murimotu 5, being listed (along with Hami Te Riaki, very probably his brother) with Ngāti Rangihāereroa when the Murimotu block was partitioned in 1882. Hoani Moutoa and Hinurewa Whakapū (aged nine) are listed as owners in Rānana as Ngāti Hineaokapua in 1888: doc A37(u) (Berghan supporting documents), p 12172. These suggest to us that Hoani Moutoa’s mother was Ngāti Hineaokapua and his father Ngāti Rangi: see doc A37(j) (Berghan supporting documents), p 5399; doc A37(u) (Berghan supporting documents), p 12172; doc L7 (Waho), pp 24, 29, 34, 35–36.
11. Aotea Māori Land Court, ownership schedule Murimotu 5B2A, not dated; doc A37 (Berghan), p 398; doc A56(a) (Bayley), p 201
12. Document A37 (Berghan), p 398; doc A56(a) (Bayley), p 201
13. Submission 3.3.105, p 52; doc L16 (Wilson), pp 14–15
15. Document A56(a) (Bayley), p 201
18. Document L16 (Wilson), pp 11–12
19. Ibid, p 12
20. Document L16 (Wilson), p 12
21. Document A56(a) (Bayley), p 204
22. Ibid
23. Ibid, p 200
24. Ibid, p 204
25. Ibid
26. Ibid, pp 204–205
27. Ibid, p 205
28. Ibid
29. Ibid
30. Document L16 (Wilson), p 12
31. Document A56(a) (Bayley), p 205
32. Document A164 (Ngāti Rangi mapbook), pl 15
33. Document A56(a) (Bayley), pp 205–206
34. Submission 3.3.105, pp 52–53
35. Document L16 (Wilson), p 12
36. Submission 3.3.105, p 53; doc L16 (Wilson), p 12
37. Submission 3.3.105, pp 70–71
38. Submission 3.3.120, pp 62–63; submission 3.3.105, pp 70–71
39. Document A170 (Francis and Walzl), pp 8–9
40. Ibid, p 8
41. Document A170 (Francis and Walzl), p 12; doc A56 (a) (Bayley), p 18; see doc A164 (Ngāti Rangi mapbook), pl 5; doc A136 (district overview mapbook), pl 31; doc A153 (central claims mapbook), pls 90, 98. Murimotu 182, consisting of 257 acres was purchased in 1930: doc A56(a) (Bayley), p 200. The Crown purchased Murimotu 381A1, a 390-acre block, in 1931: doc A56(a) (Bayley), p 205. In 1944, Murimotu 382 was partitioned, with the Crown acquiring the 122-acre 382C block, which filled in a section between the Karorii State Forest and the Whangaehu River: doc A56(a) (Bayley), p 206.
42. Document A170 (Francis and Walzl), p 18
43. Ibid, pp 20–21
44. Ibid, pp 22–23
45. Ibid, p 43
46. Ibid, p 27
47. Ibid, pp 23–24
48. Ibid, pp 24–25
49. Ibid, p 25
50. Ibid, pp 31–32
51. Ibid, p 27
52. Ibid, pp 29–30
53. Ibid, pp 30–31, 34
54. Ibid, p 35
55. Ibid, p 32
56. Ibid, p 33
57. Ibid, p 35
60. Document A170 (Francis and Walzl), p 47
61. Document A170(a) (Francis and Walzl), p 2
62. Ibid, p 3; doc 01 (Green), p 5
63. Document A170 (Francis and Walzl), pp 28–35
64. Document A170(a) (Francis and Walzl), p 4
66. Document L19 (Reo), p 5
67. Document L16 (Wilson), p 14; submission 3.3.105, p 53; doc L19, app 1, p 1
68. Document L16 (Wilson), p 14
69. Document L19 (Reo), app 1
70. Ibid, pp 3–6, apps A–1
71. Ibid, app F
72. Ibid, app E
73. Ibid, app C
74. Ibid, app H
75. Ibid, apps A, H, I
76. Noxious Plants Act 1978, s 56(2)(b)
77. Document L19 (Reo), p 5
78. Ibid, pp 4–5, app A
80. Document L4 (Wood), pp 11–12
82. Document L4 (Wood), p 52
83. Submission 3.3.105, p 70
84. Document L4 (Wood), p 52
85. Document A170 (Francis and Walzl), p 29
87. Document L16 (Wilson), p 17
88. Document L19 (Reo), p 6
89. Document L14 (Tūtakangahau), p 6
90. Ibid, pp 12–13
91. Ibid, p 14
92. Ibid, pp 10–11
93. Ibid, p 18
94. Ibid, p 20
SCENIC RESERVES ALONG THE WHANGANUI RIVER

16.1 INTRODUCTION
16.1.1 What this chapter is about
This chapter concerns how the Crown went about preserving scenery along the Whanganui River, and how its conduct affected Whanganui Māori.

In the late nineteenth century many Pākehā became worried about what was happening to New Zealand’s beautiful landscapes as European pastoralism and agriculture spread and intensified across the country. A movement to preserve at least some ‘samples of the primeval scenery’ took shape, and soon gained legislative backing. Historic sites such as Māori pā were also of particular interest. Using scenery preservation laws, the Crown protected hundreds of places in the early twentieth century, laying the groundwork for much of today’s conservation estate, including the Whanganui National Park.

The scenery along the Whanganui River was seen as especially beautiful and rich in historic sites, all in need of careful protection so tourists travelling along the river could experience the romantic beauty of its forested wildness, and enjoy ‘picturesque’ Māori kāinga and pā.

Even more importantly, by the early twentieth century the Crown had spent large sums transforming the Whanganui River into a navigable waterway that provided an arterial transport route into the interior of the North Island, at a time when road and rail networks were still rudimentary. Deforestation, however, caused erosion, and so threatened the river’s navigability.

Therefore, by the early twentieth century the Crown had multiple reasons for regarding the preservation of the forest scenery of the Whanganui River as a matter of national importance.

During the early twentieth century, the Crown put around 21,000 acres along the Whanganui River into scenic reserves. About 6,675 of these acres were acquired from Māori between 1907 and the early 1920s, specifically to preserve scenery. The remainder comprised land that the Crown had already bought from Māori and that it now converted into scenic reserves.

In the case of the land bought specifically for scenery preservation, the Crown often, if not always, used its powers of compulsory acquisition. Public works jargon calls compulsory acquisition of land for such a purpose a ‘taking’ of land, and we use the word take in that sense in this chapter.

The kāinga and pā of Whanganui Māori were located mainly beside the Whanganui River or its major tributaries such as the Manganui-a-te-ao River. Māori owners objected
immediately and loudly when the Crown began to take these lands, and their objections continued. They were angry because this whenua (land) was not scenery: it was their home. It was their tūrangawaewae (place for the feet to stand, home), where they had always lived and died; where their children’s placentas were buried; where their ancestors rested in the earth.

To Whanganui Māori, the way the Crown went about protecting scenery – excluding them, and ignoring their values in the interests of conservation – was the beginning of a pattern of behaviour that continues into the present. Most scenic reserves along the river were later included in the Whanganui National Park, and the claimants believed that, in the creation of both the scenic reserves and the park, there was simply no place for Māori. In effect, Whanganui Māori said, the desire to preserve scenery drove them out, and left some hapū ‘virtually landless in a sea of conservation estate’.

Addressing scenery preservation in this inquiry, we are mindful of the Whanganui River Tribunal’s criticisms of the Crown in its report. It said that the Crown assumed ‘arbitrary powers’ to take Māori land for scenery, and that scenery preservation laws breached the Treaty by not protecting Māori rangatiratanga in and over the Whanganui River. These findings were published as long ago as 1999, but when the Crown came to engage in this inquiry, which concerns closely related subject matter, it did not concede that the Crown erred in these ways. As a result, claimants continued to pursue their grievances about takings for scenery before us, not least because of the role those takings played in the still- vexed issue of the creation of, and management regime for, Whanganui National Park. Our inquiry, with its focus on land rather than the river itself, is more detailed than the earlier Tribunal’s.

16.1.2 Tribunal approach to public works takings
When the Crown took land to protect scenery, it did so using public works legislation. The Waitangi Tribunal has a well-developed jurisprudence on public works takings, and we agree with the approach of those previous Tribunals. We apply the same principles, and analyse what happened in Whanganui with respect to scenic reserves in accordance with the same standard.

Compulsory acquisition contravenes the guarantee to Māori in article 2 of the Treaty of te tino rangatiratanga and of undisturbed possession of their land. When Parliament enacted public works legislation that gave to the Crown the power to purchase Māori land whether they wanted to sell it or not, it did so without asking Māori whether they consented to this derogation from their Treaty rights. At the time, Māori were not represented in Parliament, and therefore lacked the means to protect their rights from legislative incursion.

It was in light of all of this that the Tūrangi township Tribunal said:

> if the Crown is ever to be justified in exercising its power to govern in a manner which is inconsistent with and overrides the fundamental rights guaranteed to Maori in article 2, it should be only in exceptional circumstances and as a last resort in the national interest.

These are the principles now established in Tribunal jurisprudence:

- The Crown should avoid compulsorily acquiring Māori land for public works wherever possible.
- Taking Māori land for public works is justified only in

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‘This whole business about scenic reserves can be looked at in different ways. Yes – preserve parts of our natural environment, our ngahere. Yes – keep it for the people of Aotearoa; share it with the rest of the world. Yes – look after it and eradicate the pests. But no – don’t steal it from us. It was ours; it needs to come back to us. Through our own hapū initiatives such as tourism we take people there to see these things and show how lovely they are and then we say, we no longer own them – they were stolen from us.’

—Kenneth Clarke, Ngā Paerangi

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exceptional circumstances – that is, where the national interest at stake, and there is no other option. 

- If there is no viable option but to use Māori land, the Crown should always undertake genuine consultation and seek the land owners’ agreement. This reflects the fiduciary obligation of the Crown, the need to actively protect Māori rangatiratanga, and the duty of reasonableness on both sides. 

- Where exceptional circumstances do demand the use of Māori land, before purchasing the Crown should first explore the suitability of acquiring lesser interests instead. Options include leases, easements, licences, and covenants.

### 16.1.3 How this chapter is organised

After outlining what the claimants and the Crown said to us on this issue we traverse the history of scenic reserves in this inquiry district. Why and how, we ask, did the Crown take land from Whanganui Māori to protect it as scenery?

We then analyse these facts in light of the Waitangi Tribunal’s standards for compulsory acquisition of Māori land outlined above. We ask the broad question ‘Where did the Crown go wrong in preserving scenery on the Whanganui River?’ To answer it, we review compulsory acquisition and the Treaty, and inquire into whether the takings for scenic reserves here were in the national interest, and whether they were for the Crown a last resort. That is to say, did the Crown first exhaust other viable alternatives? We then look at whether in exercising its power of compulsory acquisition, the Crown was procedurally fair, and paid adequate compensation. We conclude with findings and recommendations.

### 16.2 The Parties’ Positions

#### 16.2.1 What the claimants said

The claimants argued that Whanganui Māori values were compatible with the ideals of scenery preservation, so that there was ‘real opportunity for both sets of values to be respected.’ The claimants suggested that the Crown could have ‘readily obtained’ agreements to purchase, for scenery preservation, some of their lands that could not be farmed.

Instead, the claimants said, the Crown straight away resorted to compulsory acquisition. There is no sign that it tried to negotiate purchases, or come to other arrangements such as leasing. The Crown also generally failed to talk to Māori about what it was doing: the little consultation that did occur tended to be lip service after the fact. The claimants said this was inappropriate by general standards, let alone Treaty ones.

Whanganui Māori protested in an effort to retain mana and control over their own land. The Crown’s primary response to Māori protest, the Wanganui River Reserves Commission of 1916, was – contended the claimants – ‘at best a disingenuous public relations exercise and at worst a mechanism to stifle legitimate Maori protest.

The claimants argued that loss of land through compulsory acquisition diminished the economic base of hapū, because acquisitions included farmland. Some settlements were even relocated, taking people away from their wāhi tapu and urupā, and leaving to the Crown protection of places of the utmost importance to tangata whenua. Monetary compensation did not make up for these losses.

The claimants also said that it was a breach of partnership to give Māori so little representation in scenic reserve management. Management of the reserves never encompassed the sacred and spiritual aspects of the land, which were and are important to Whanganui Māori.

In summary, the claimants submitted that the Crown’s use of compulsory acquisition breached the Treaty guarantee of undisturbed possession of land, and also breached the Treaty principles of active protection, partnership, good faith, and equal treatment. Compulsory acquisition of their land negated Māori endeavour to retain mana over that land. It ignored their rights of occupation and use, and hampered their attempts at farming. As well as effects on development, it undermined their mana in wāhi tapu (especially urupā). The Crown’s compulsory acquisitions made them angry at the time, and they remain aggrieved. These negative emotions have been exacerbated by the Crown’s excluding them from the management of scenic reserves: Whanganui Māori have never
had adequate representation in reserve management, and reserve management has never adequately encompassed or expressed their values.

16.2.2 What the Crown said

The Crown denied that it breached the Treaty by acquiring Whanganui Māori land for scenery preservation. It argued that one of government’s legitimate functions is to preserve significant places, and preserving land along the Whanganui River was seen at the time as an appropriate response to environmental destruction in this important area.¹⁹

In its submissions on compulsory acquisition, the Crown said that the Tribunal’s test for justified compulsory purchases of Māori land – ‘exceptional circumstances’ – set the bar too high. It argued that the Crown has rights under article 1 of the Treaty to acquire land compulsorily in the public interest. These rights must be balanced against the rangatiratanga guaranteed to Māori in article 2, but an appropriate balance can be struck where the Crown acts ‘reasonably and responsibly’ in exercising its powers of compulsory acquisition, in particular by considering the implications for Māori of any taking. Acting reasonably and responsibly specifically requires the Crown to consult Māori adequately, to follow due process, to consider alternative sites and forms of tenure for the taking, and to pay fair compensation. It must also consider whether affected landowners will retain sufficient land to cater for their foreseeable needs.²⁰

The Crown acknowledged that legislation did not require the Crown to consult with Māori about the compulsory acquisition of their land for scenery preservation, but maintained that Māori interests were nevertheless taken into account. It pointed to the Scenery Preservation Commission having a policy of consulting Māori, and said that Māori villages, cultivations, and areas suitable for settlement were all carefully excluded from reserves.²¹

The Crown contended that Māori did not object to scenic reserves being created on land that was not suitable for agriculture, and that there is no evidence that scenery preservation prejudicially affected Māori livelihoods or communities.²² Māori land was targeted not because it was owned by Māori but because it was scenic. There was also insufficient evidence to show that compensation was unfair, and all Māori landowners were compensated.²³

The Crown submitted that return of urupā might be appropriate if the land concerned was lost in breach of the Treaty, though this would depend on how the land was lost, and the current status of the land.²⁴ However, the Crown contended that including urupā in scenic reserves did not breach the Treaty, because ‘legislation preserved access and use rights’ and including urupā in scenic reserves was a method of ensuring they were preserved.²⁵

The Crown considered that it responded to Māori protests, and went to considerable lengths to investigate them, especially through appointing the Wanganui River Reserves Commission. The Crown said that it was ‘unfortunate’ that the Commission’s recommendations were not implemented but considered that at least the Commission gave Māori a fair hearing and demonstrated a willingness to meet and talk.²⁶

The Crown also acknowledged that until 1958 there was no official role for Whanganui Māori in the management and control of scenic reserves. It is unclear why occasional suggestions that this be remedied were never implemented. The Crown noted that since 1958 Whanganui Māori have always had representation on the bodies that manage and control scenic reserves, but did not comment on whether this level of input was adequate. It simply argued that there is no evidence that Māori were disadvantaged by their exclusion.²⁷

In summary, the Crown submitted that preserving scenery along the Whanganui River was a necessary and legitimate exercise of its responsibility to protect the public interest, and that there is no evidence that Whanganui Māori suffered any appreciable cultural or economic harm as a result, whether from the loss of land, or from the way their former land has been managed.

16.3 The Crown Acts to Protect the Scenery

16.3.1 Introduction

In this section, we explain why and how the Crown acted to protect the scenery of the Whanganui River. We detail
the development of scenery preservation legislation, and the policy in Whanganui of protecting scenery on Māori land by taking that land. We ask why and how Whanganui Māori protested that policy, and we consider the Crown's response to those protests. Finally, in this section we explain how the Crown managed and controlled scenic reserves, and consider the role of Whanganui Māori in that process.

### 16.3.2 The Crown’s interest in scenery preservation

The Crown had strong economic reasons for wanting to preserve Whanganui River scenery. These hinged on the river’s importance as a commercial route: a navigable river between Taumarunui and the sea opened up a highway to settlement of the whole central North Island. To keep the river navigable, though, erosion had to be controlled, and that meant retaining forest. And the forested river was also a beautiful draw card for throngs of tourists.

There was another force at work. Many Pākehā lamented what settlement had done to New Zealand landscapes. The unspoilt scenery of the Whanganui River was taken up as a cause, something to save for all to enjoy as part of New Zealand’s heritage. Indeed, as we shall see, securing Whanganui River scenery was central to the development of New Zealand’s scenery preservation legislation.

We pause to note that there was some irony in this situation, in that the panic about saving scenery arose from the actions of settlers and the policy of settler governments, but taking Māori land came to be seen as the solution. As Native Minister James Carroll noted wryly in 1910, Whanganui settlers were ‘not fired by scenery preservation’. They were focused on creating farmland, but at the same time the Crown gave ‘no encouragement to preserve the beauty spots on their holdings’. Indeed, said one: ‘If a settler did leave any portion of the forest standing, it was cut out of his [compensation for] improvements.’ The result was such that, as Carroll commented, ‘a great deal of scenery had been unnecessarily destroyed.’ He was outspoken in his condemnation: ‘no sane person could believe that some of the land which had been laid bare on the banks of the river could be used for farming purposes.’

In short, the Crown was heavily implicated in causing the situation that then needed to be remedied by taking lands that were predominantly Māori, because Māori had not felled the forest on their ancestral land.

### 16.3.3 Why the Crown created the Wanganui River Trust

It was with the river’s potential in mind that John Ballance, then member for Wanganui, and Minister of both Lands and Native Affairs, told Whanganui Māori in 1885 that a steamer on the river ‘would make the Wanganui what it was intended to be – a great highway for the people into the interior.’ The notion of the river as ‘a great highway’ would not have struck Whanganui Māori as novel: it had already served them in this way for centuries. But the idea of a steamer met with a mixed reception.

Six years later, in 1891, it was Ballance again – now Premier – who introduced the Wanganui River Trust Act, designed ‘for the Conservation of the Natural Scenery of the Upper Waters of the Wanganui River, and for the Protection of the Navigation of the said Waters.’ The Act created a trust, and empowered it to ‘do all things necessary’ to improve navigation on the Whanganui River from the tidal limit at Raorikia, all the way inland to four miles from the river’s source. As we discussed in chapter 10, it was at Raorikia that Te Keepa had 11 years earlier erected a niu pole to mark where his authority over the river and surrounding land began.

At the time of the Act’s passing, no more than a handful of Pākehā lived in the vicinity, but it was home to well over a thousand Whanganui Māori. Even so, there was no seat for them on the new trust: trustees comprised the mayor of Wanganui, members of Parliament for Wanganui and Waitōtara, the chairman of the Chamber of Commerce, county chairmen, and one person appointed by the Governor. In 1900, three more locally elected officials were added, but still no Māori.

Although no Whanganui Māori sat on the board of trustees, there was a clause in the Act that said that nothing in it was to ‘affect any rights conferred upon the Natives by the Treaty of Waitangi’. This could have been used to protect Māori interests, but it was not. The Whanganui River Report describes how the Trust set about its never-ending task of making the river navigable by removing...
the pā tuna (eel weirs) and utu piharau (lamprey weirs) of Whanganui Māori. The Crown’s only response to Māori opposition was to extend the Trust’s statutory powers still further, so that after 1893 it could remove any rock or earth in the river bed, or alongside it.\(^{37}\) The Trust took rock and gravel from Māori land beside the river, and demolished boulders (some of them wāhi tapu) in the river bed.\(^{38}\)

When Māori members of Parliament protested, Premier Richard Seddon brushed their opposition aside: the river was ‘one of the colony’s assets’, whose navigation was of national importance.\(^{39}\)

The Crown was closely involved in the Trust’s activities. The Government paid the Trust subsidies, and gave it 10,000 acres in the Waimarino block.\(^{40}\) Goods carried by steamer incurred levies, and these too were paid to the Trust. By 1903, the Trust had made the Whanganui River navigable by steamers all the way to Taumarunui.\(^{41}\)

The Trust’s interest in scenery preservation had been very much secondary to its primary focus of making the river navigable for as much of its length as possible. However, the Trust did create the Wanganui River Trust Public Domain (gazetted in 1892). This was a mile-wide strip running along each side of the river through all Crown land above Pipiriki.

(1) The Wanganui River Trust Public Domain

As originally gazetted, the Wanganui River Trust Public Domain amounted to some 33,000 acres in the Waimarino, Kirikau, Rētāruke, Ōpatu, Raoraomouku, and Mangapukatea blocks, all of which had been purchased by the Crown in the 1880s.\(^{42}\) This area of course contained places significant to Whanganui Māori, including large kāinga such as Tīeke and Kirikiriroa (as discussed in chapter 2). Also included was Mangapāpapa, a wāhi tapu where peace was made between Te Kere Ngatāerua and Topine Te Mamaku, and where there are also several urupā.\(^{43}\) The Trust’s Act gave it power to do anything for ‘the conservation of the natural scenery and the prevention of the removal or injury to any trees or shrubs growing thereon, or of anything forming part of the landscape’.\(^{44}\) In short, the domain was effectively a scenic reserve, and later most of it was formally gazetted as such.

(2) Uncertainty and carelessness dealing with Māori land

The Trust’s powers to put land into public domain to preserve its scenery only extended to Crown land. Māori land should not have been involved at all. However, there was public confusion about this, and carelessness that involved both Crown officials and the Trust.

(a) The Ahuahu block: In 1895, for example, the Crown announced that it was revoking the status of public domain over 756 acres of Māori land in the Ahuahu block which had been ‘issued in error’.\(^{45}\) In fact, there is no record of land in the Ahuahu block land ever being proclaimed public domain.\(^{46}\)

(b) Ōhura South and Taumatamāhoe blocks: The Trust also made mistakes. It prepared maps for its annual report of 1908 that reveal its completely erroneous view that its authority extended over very large parts of the river frontage in the Ōhura South and Taumatamāhoe blocks. Much of this area was still Māori land.\(^{47}\)

(c) The Trust’s approach to Māori land: To what extent the Trust disregarded Māori rights is unclear. In 1903, the member of the House of Representatives for Wanganui, Archibald Willis, who was also a trustee, spoke to Parliament about scenery preservation and the domain. What he said reveals two things: that Whanganui Māori were under pressure to adhere to the ideals of scenery preservationists and that Willis did not understand that the land that comprised the domain was Crown land. He congratulated his predecessor John Ballance for securing that land, which he said ‘belongs to the Natives, and although it is reserved it may be very many years before it actually comes into the possession of the State’. He added:

On two or three occasions – not lately, I am glad to say – great damage was done on the slopes of the river, and representation had to be made to the Natives on the subject, with the result that destruction of the kind has to a large extent been stopped. But we never know when the same kind of thing will occur again. I do not know what is the position of this land under our present Native-land laws, but it would be...
a good thing if that land could be purchased and become the property of the people.48

Ironically, it was Willis himself who had remarked some years earlier in the House that bush, though ‘very beautiful for scenery’ was ‘useless for a people to acquire a living upon’ and therefore needed to be cleared if the Whanganui region were to develop.49 But when Whanganui Māori cleared forest on their land to make a living from it, Willis criticised them, and advanced the
idea that scenic Māori land should ‘become the property of the people’. In a further twist, the land he said ought to become Crown land already was Crown land.

By the early twentieth century, the Whanganui River Trust had achieved its goal of making the river navigable to steamers between Whanganui and Taumarunui. The river became one of New Zealand’s premier tourist attractions. So when, in 1902, the Surveyor-General urged that putting ‘forest-clad gorges’ into reserves was ‘advisable from a tourist point of view’, the commissioner of Crown lands for Wellington responded by proposing to reserve ‘A belt one mile wide on each side of the Wanganui River, from Parikino upwards’. This would have extended the land captured by the domain on much of the river’s upper reaches, to encompass all of the middle, and some of the lower reaches also. It was acknowledged that ‘this would include a large number of Native reserves and settlements along the river-banks’. The Wanganui River Trust supported taking further steps to preserve Whanganui River scenery, even where it would necessarily involve overriding Māori property rights. In its 1908 annual report, for example, the Trust commented on a 10-mile stretch of upper river frontage between Paparoa and Te Maire, saying that it would be a pity if ‘the circumstance of being Native land should prevent the preservation of the bush scenery’. As we shall see in the following sections, this approach proved influential in the development of scenery preservation legislation and its application in Whanganui.

16.3.4 Effect of concern for river scenery on legislation
When Premier Richard Seddon introduced the Scenery Preservation Bill in Parliament in 1903, he made it clear that, in large part, the legislation responded to concern about the fate of forest scenery along the Whanganui River. He said that he had initially believed that landowners should be left to decide for themselves how far to preserve forest on their own land. But, after witnessing the progressive destruction of forest along the Whanganui River, his ‘mind was made up that something should be done by way of legislation to preserve the scenery and beauty-spots of our colony’. Preservation of ‘beautiful gorges and bush scenery’ was already vital to the fledgling tourist industry and, Seddon was sure, would become increasingly important to future generations of Pākehā settlers too. Whanganui River scenery featured prominently in the members’ speeches that followed.

The Scenery Preservation Act 1903 was the first legislative measure for scenery preservation, and it passed unanimously. It provided for ‘the Acquisition of Lands of Scenic or Historical Interest, or on which there are Thermal Springs’. The Act gave the Crown power to preserve scenic and historic places on all categories of Crown or private land, including Māori land.

Under the Act, the independent Scenery Preservation Commission was charged with travelling the length and breadth of the country to select for reserves the most scenic and historic sites, and to report to the Governor. Stephenson Percy Smith, a noted ethnographer and former Surveyor-General, chaired the five-member Commission. There was one Māori member, Hoani Paraone Tūnuiārangi, of Ngāti Kahungunu.

Tūnuiārangi’s role on the Commission was to liaise with Māori. He suggested to Percy Smith that the Scenery Preservation Act should be translated and
printed for distribution among Māori. Percy Smith subsequently reported to the Colonial Secretary in 1904 that Tūnuiārangi had ‘been very good in writing to several tribes explaining the objects [of the Act], with the view of disarming any opposition’. Percy Smith asked for a summary of the Act in Māori, believing this ‘would be of great assistance in securing the transference [sic] of many places probably without cost’.

Percy Smith was among the many Pākehā who, at the turn of the twentieth century, believed that Māori were dying out. He wanted to preserve for posterity the vestiges of their culture. These were the emphases he sought in the Māori summary of the Act:

The Maori should be made to include pas, battlefields, tua-hus, wahi ingoa nui, tauranga-waka o mua, wahi tapus, sites of...
famous houses (whare-wananga & whare-kura, tahere-manu, &c, all of which are fairly included in the term historical.58

According to historian Robin Hodge, such a summary of the Act was distributed to some iwi, though it is not known whether Whanganui Māori were among them.59

16.3.5 The Crown’s powers under the 1903 Act

The key to this new Act was to make scenery a public work for which land could be compulsorily acquired. One hundred thousand pounds was voted to fund this significant policy initiative. Once the Scenery Preservation Commission (later the Scenery Preservation Board) recommended that land should be reserved, the Crown could buy the land to preserve it for scenery, just as it did when land was needed for a public work like a bridge or a road.

The Act gave the Crown power to purchase land for scenery whether the landowner wanted to sell or not, but it could also purchase land after negotiating with its owners and arriving at an agreement with them. This was what would usually happen when the land to be acquired was general land. Māori land, though, was mainly acquired compulsorily, as we discuss below.

Taking land compulsorily obliged the Crown to go through a complex procedure. It had to:

› prepare a survey and a plan of the land to be taken;
› deposit a copy of the plan in a convenient place in the area;
› gazette and publically notify the intent to take the land;
› send a copy of the notice to all owners and occupiers;
› issue a call for objections (objectors had 40 days to lodge with the Minister); and, finally,
› set a place and time to hear any objections.60

The Crown had to compensate landowners and lessees affected by takings. General land was valued for this purpose by an independent arbitrator selected for the purpose by both parties. Māori land, however, was always valued by the Native Land Court. This difference attracted comment from the outset.

When the Scenery Preservation Bill was debated in the House, Hone Heke, member for Northern Maori, was the only Māori member to speak to it. He entirely agreed with ‘the object and sentiment’ of the Bill, but thought it was unjust for Māori land to be valued differently from Pākehā land.61 As we shall see, Whanganui Māori too would make this argument.

16.3.6 The Commission’s consultation with Māori

The Scenery Preservation Commission took two trips on the Whanganui River to identify areas of scenic merit for preservation.

In late September 1904, members of the Scenery Preservation Commission ventured up the Whanganui River as far as Pīpīriki. Their purpose was to view the scenery of the river's lower reaches, where, the Wanganui Herald reported, ‘there still remain many beautiful bits of native bush’. It appears that all members of the Commission went on the trip except for the Māori member, Tūnuiārangi.62 Their host was river magnate Alexander Hatrick, whose enterprises dominated tourist and freight traffic on the river. John Stewart, the driving force on the Wanganui River Trust, also went along.63 The Commission visited Whanganui again four months later, in January 1905. This time they took an eight-day excursion upriver to Taumarunui, again in the company of Hatrick and Stewart. It is not known whether Tūnuiārangi was present.64

In all, the members of the Scenery Preservation Commission spent 10 days on the River. There is no evidence of their engaging with Whanganui Māori during that time.65 The commission did note, though, that they would need to consult with Māori ‘hereafter’ when the time came to arrange ‘the boundaries with the owners . . . on the ground’. Then, ‘a give and take policy should prevail, and the wishes of the Maoris [should] be consulted and considered so far as the scenic interest will allow’.66

The commission managed its relationship with the settlers of Wanganui rather differently. At a public meeting called immediately after the second excursion, Percy Smith told settlers not to fear: the Crown would not acquire any land at all that might be suitable for farming.67 In fact, Percy Smith felt, ‘a nicely cultivated farm’ would add pleasing variation to the scenery.68
Alexander Hatrick

Alexander Hatrick – merchant, tourist magnate, and mayor – dominated commerce and politics in Whanganui around the turn of the twentieth century.

Arriving in Whanganui from Australia in 1875 as a young man of drive and determination, Hatrick soon developed a successful shipping business. His association with the Whanganui River began in 1892 when he won the first contract to deliver mail between Wanganui and Pipiriki. By 1903, his fleet of steamers monopolised river traffic, carrying people, produce, stock, supplies, and mail all the way to Taumarunui.

In collaboration with the famous travel agents Thomas Cook and Son, Hatrick publicised the Whanganui River as ‘the Rhine of Maoriland’. The river acquired a world-wide reputation as one of New Zealand’s scenic wonders.

By 1905, Hatrick’s luxurious hotel at Pipiriki hosted 12,000 tourists a year, all plying the Whanganui River aboard Hatrick’s fleet of steamers. Hatrick’s business relied on the River remaining a navigable scenic waterway, so he was a wholehearted advocate for preserving the forest cover in the river catchment. As mayor of Wanganui between 1897 and 1904, he was a member of the Wanganui River Trust; then he was the force behind the founding of the Wanganui Scenery Preservation and Beautifying Society in 1910.

The work of the Scenery Preservation Commission, however, had involved much touring around the country, and the expense involved soon attracted criticism. The Government responded by passing the Scenery Preservation Amendment Act 1906, replacing the commission with a smaller Scenery Preservation Board, comprising Government officials. In 1909, the Board was placed under the control of the Department of Lands.

The following year, 1907, the Scenery Preservation Board hastily inspected the river, and confirmed what it
called ‘the gist’ of the Scenery Preservation Commission’s recommendations. In fact, the Board’s new recommendations increased the proposed reserves by more than half, from just under 30,000 acres to 46,530 acres. Of this, 15,356 acres were listed as Māori land, and a further 16,493 acres were variously defined as ‘Native and Crown land’, or ‘Crown and Native land’. Most of the land in the ‘Crown and Native land’ category was by 1908 Crown land.

Maps 16.2 and 16.3 confirm that the Scenery Preservation Board’s recommendations continued to affect very large areas of Māori land. Also, it should be noted that large areas shown as Crown land had just been acquired.

For example, between 1905 and 1908 the Crown bought substantial acreages of river frontage in both the Whakahuiwaka and Taumatamāhoe blocks.

Like the Scenery Preservation Commission under the leadership of Percy Smith, the Scenery Preservation Board was keen to preserve Māori pā and kāinga, and sites of Māori history. The Board saw Māori themselves as an integral part of the scenic delights of the ‘wild and romantic beauty of the Wanganui River’: ‘the Natives in their long canoes and picturesque costume’ were described as combining with the river and its ‘varied foliage’ ‘to make up a scene of the most enchanting loveliness’.

Advertisement for the Taumarunui to Wanganui ‘tourist route’ on the Whanganui River, 1910s. Pipiriki House and Hatrick’s houseboat feature, along with picturesque scenes of the river.
At this point, however, the legal situation became confused. The Scenery Preservation Amendment Bill 1906 had not been translated into Māori – an omission that drew negative comment from some members when the Bill was debated in Parliament, who pointed out that it was legislation ‘specially affecting the Maori race’. The criticism led to deletion from the Bill of ‘all references to Maori lands’ before it passed into law.79 Minister and officials were then thoroughly confused about whether the Crown could still take Māori land for scenery.

James Thomas Hogan, the member for Wanganui, weighed in to shore up the Crown’s powers. He proposed an amendment of the Maori Land Claims Adjustment and Laws Amendment Bill 1907, to enable Maori Land Boards to reserve land and then sell it to the Crown as scenery. Robin Hodge told the Tribunal that Hogan explicitly sought to restore the Crown’s capacity to acquire Māori land along the Whanganui River.80 But James Carroll intervened and insisted on a further amendment so that, as finally passed, the 1907 Act required the Native
Map 16.2: Reserves on central reaches of Whanganui River recommended by the Scenery Preservation Board, 1908
Map 16.3: Reserves on upper reaches of Whanganui River recommended by the Scenery Preservation Board, 1908
Minister’s consent before a Māori Land Board could initiate the sale of Māori land to the Crown for scenery. Since Carroll himself was Native Minister, this effectively constrained the land boards from making available any scenic Māori land to the Crown. At the end of the year, the Scenery Preservation Board had to report that the ‘acquisition of Native land not being authorised by the Act at present, it is impossible to properly deal with the subject’. This did not, however, deter the Board from recommending more Māori land for reservation, in confident expectation of ‘another amending Act’.

Meanwhile, the 29,628 acres of mostly Māori land that the former Commission had proposed as river reserves remained ‘under consideration’.

16.3.8 The Crown resorts to compulsory acquisition

Without explicit statutory authority to take Māori land for scenic reserves on the Whanganui River at this time, the Crown nevertheless went ahead. It relied on Lands Department advice that it could use the general provisions of Public Works legislation, which allowed land to be taken ‘for forest plantations, or recreation-grounds, or for the preservation of scenery as if such purposes were public works’.

(1) The acquisition of Waiora and surrounding land

In mid-1907, the Crown used the Public Works Act to take the Waiora mineral springs and surrounding land near Pīpīriki. For Māori, these springs were a sacred place. Wai Wiari Southen told us about how tohunga took the sick to be healed there.

Alexander Hatrick instigated this acquisition. He sought the Government’s help to gain the land because of ‘the difficulty of any private persons such as ourselves dealing with the natives. They at once get an exaggerated idea of the value and make it, by reason of their monetary demands, impossible for ourselves or any one else to deal with’. The Crown took the land without consulting its Māori owners, one of whom was actually living on the property. It immediately leased the land to Hatrick, for £5 a year, so that he could develop the springs as a tourist attraction. As early as March 1907, two months before the taking was gazetted, Hatrick was encouraging prospective customers to ‘visit the great health mineral hot spring “Waiora” (living waters), two miles from Pīpīriki’. The terms of the lease required him to erect a drinking fountain and bath house ‘which the public, on payment of a small charge, can use’. We do not know how much he charged, but the venture was probably remunerative. ‘Taking the waters’ was a popular activity at the time, and with 12,000 tourists passing through Pīpīriki each year, there was a ready market. Māori sought considerable compensation for the taking, but received only £45 for the springs and the surrounding 21 acres.
(2) Cabinet funds the purchase of 19,000 acres
In 1908, Cabinet decided to act on the recommendations of the Scenery Preservation Board, and allocated £8,000 for the purchase of 19,000 acres of Māori land along the Whanganui River.89

The evidence suggests that at this stage the Crown was contemplating the negotiation of purchases with Whanganui Māori, which is what the Scenery Preservation Commission had envisaged. It was not at all uncommon at the time for such purchases to be negotiated.90 And, when Parliament approved spending the £8,000 to purchase Whanganui Māori land, Minister of Lands Robert McNab allayed Āpirana Ngata’s concern over whether agreements had been reached with Whanganui Māori, saying that the Scenery Preservation Board ‘met the native owners, and endeavoured to come to terms’.91

In fact, however, Crown officials had already taken more Whanganui Māori land, without consultation, and in the face of considerable opposition.

 Officials had become alarmed at the speed and extent of deforestation as European lessees took up Māori land along the Whanganui River towards Pīpīriki. Acting in haste, in February 1908 the Crown compulsorily acquired some 1,500 acres of Māori land along the Whanganui River between Pīpīriki and Koriniti.92

(3) Poor process
Perhaps because it was done in a hurry, the process was poor. Errors included: a ‘preliminary gazetting’, for which there was no statutory provision; treating land as customary land when it was actually land owned under a fee simple title; proceeding on the basis of ‘sketch plans’ based on a ‘flying visit’, rather than on the basis of a proper survey; and taking lands without even gazetting a notice of intent to take, let alone serving notice on owners. Then, once proper surveys were completed, they did not match the gazetted descriptions, so the land had to be resurveyed, and the takings revoked. Notice of intent to re-take them was promptly issued – but then the Solicitor-General suddenly advised that the Crown could not simply rely on the general provisions of public works legislation to take Māori land for scenery preservation.93 New legislation had to be passed before the process could continue, so it was not completed until 1912. Throughout this shambolic process, Māori landowners protested.

(4) Pōtaka whānau land at Ātene
The Pōtaka whānau, who farmed land near Ātene, were first to object to the Crown’s notice of takings in 1908. They argued that they were intending to add this to the land that they were already actively farming. If the proposed taking of 236 acres went ahead then they would have too little land left to stay and work it as a whānau. Some would have to leave – and this at a time when the Pōtaka whanau were most of what remained of the once-thriving Ngāti Hineoneone settlement at Ātene.94

The Crown commissioned Stipendiary Magistrate Robert Stanford to hear this objection along with several from Pākehā lessees working land vested in trust with the Aotea District Maori Land Board. The Crown took the Stanford Commission seriously, sending officials to explain that the land, although scenic, was not good farmland. An experienced farmer and surveyor, engaged to value the Pōtaka land, countered this. He described their land as ‘fairly good sheep country’, and ‘not particularly good for a scenery reserve’. Stanford dismissed all the objections, finding that no private injury would be done for which compensation was not available under the Public Works Act.95 The taking from the Pōtaka farm and from the Aotea District Maori Land Board lands therefore went ahead.

As noted above, these takings were revoked in 1910, and a process to re-take the land was embarked upon. Unsurprisingly, this prompted renewed objections from the Pōtaka whānau, from whom it was now proposed to take an even bigger area, of 306 acres. Hōne Pōtaka’s expressed concern was again that the proposed takings for scenery were too large, and would scatter his family. He also objected that the proposed taking now included an urupā.96

(5) Preserving forest for scenery and for flood prevention
Meanwhile, the Crown found itself in 1908 unable to proceed any further with its scenery preservation programme because there were no surveyors available to define the
proposed reserves. And, now alerted to the imminent loss of their land for scenery preservation, Māori landowners and Pākehā lessees moved quickly to fell and clear the forested Māori land along the river in an effort to stave off its compulsory purchase.\textsuperscript{97}

Alexander Hattrick and other prominent settlers in Whanganui raised a storm of protest as this situation unfolded.

Hattrick’s advocacy of scenery preservation had increased after large floods in 1904 threatened his operations. He wanted to stop the felling of bush throughout the Whanganui River catchment area, to manage the flood risk.\textsuperscript{98} The Scenery Preservation Board proposed retaining strips of forest along the riverbanks, but although this would secure scenery visible from the river, it was inadequate for flood prevention purposes. Hattrick recognised that scenery preservation had broader public appeal than catchment protection. He rallied friends and associates into a Wanganui Scenery Preservation and Beautifying Society, wrote letters about scenery preservation to Ministers and other members of Parliament, and animated the press.\textsuperscript{99} Editorial in the \textit{Wanganui Chronicle} and \textit{Wanganui Herald} between 1907 and 1910 condemned the Government for its ‘unpardonable apathy or wanton indifference’ in ‘permitting one of the best and most valuable scenic assets of the Dominion to be gradually but surely demolished.’\textsuperscript{100}

\textbf{(6) Conflict}

This brouhaha pressured the Crown to act. Surveyors were commissioned to begin work in early 1910 – but their instructions were flawed. On the one hand they were to use ‘discretion’ and avoid friction with Māori; on the other, they were to survey first the areas that Māori would most want to lease or sell to Pākehā for farming, so that they could be saved as scenery.\textsuperscript{101}

The Scenery Preservation Commission had already selected the land for scenery preservation, and the Scenery Preservation Board had confirmed those selections. If the terms of the purchases were ever to be negotiated with Māori landowners, now was the time.

The board met only in Wellington, but Inspector of Scenic Reserves Edward Phillips Turner was a board member, and he had charge of the survey. His instructions left little room for discussion with Māori over any aspect of purchases – neither boundaries nor price. And that Māori would feel hostile towards Phillips Turner was assured once he started laying survey lines over their land, often before they knew anything of the Crown’s plans.

Whanganui Māori were angry about the whole situation, and some felled forest in protest. Hattrick felt that Māori were ‘very spiteful’, and invited Crown officials to agree with him that they had alienated any ‘sympathy and consideration.’\textsuperscript{102} Under-Secretary for Lands William Kensington agreed, and told Thomas Mackenzie, Minister

\hspace{1cm}'The preservation of the beautiful scenery with which Nature has clothed the towering hills through which the Wanganui River threads its way is a national obligation. There is nothing in the wide world to rival the beauties of our river, and its reputation extends to the farthest ends of the earth…. It has come to us as a heritage, not as a free gift, but as a trust, a precious possession, to be sacredly preserved and handed down unblemished to our children and our children’s children. And how are we respecting that trust? Go and look at the bruised and blackened patches, ugly, repulsive, shameful, which axe and fire have wrought in some of the fairest places. Go and see the cruel wounds by which – here and there – a picturesque hillside has been laid bare. If the rata were in bloom its rich red blossoms would blush for very shame of the civilisation we as a people represent, a civilisation which tolerates vandalism in the name of progressive settlement. In these places – places which are far too numerous and which will become increasingly numerous unless a halt is called at once – the patient work of measureless time has been swept away by the swing of an axe and the fatal flare of a soulless match!'

—Editorial, \textit{The Wanganui Chronicle}, 22 February 1910\textsuperscript{3}
in Charge of Scenery Preservation, that Māori were 'falling the bush purely out of spite.' As a result, Minister Mackenzie authorised Phillips Turner to issue Whanganui Māori with this ultimatum: no matter what they did to the forest, the Crown would take their land.

At this point, however, the Department of Lands and Survey decided to ask the new Solicitor-General, John Salmond, whether Māori land could be compulsorily taken for scenery. He took the view that because of the terms of the 1906 Scenery Preservation Amendment Act, the Crown had entirely lost its power to take Māori land for scenery preservation purposes.

(7) The Scenery Preservation Amendment Act 1910
This was the situation that gave rise to the Scenery Preservation Amendment Act 1910, which not only reinstated the Crown’s power to compulsorily acquire Māori land, but also retrospectively legalised all the takings of ‘Native or other land’ from 1894 onwards.

The 1910 Act did, however, make some provision for Māori interests. It allowed the Governor to grant Māori the right to take birds from reserves on land that had been theirs, and to continue to bury their dead in established urupā. It is unlikely that any Whanganui Māori were granted the right to take birds: according to the late historian Geoff Park the provision was ‘scarcely used’, and we have uncovered no evidence of its use in Whanganui.

Whanganui Māori were, however, allowed to continue using urupā in four scenic reserves.

The Act also provided for the Under-Secretary of the Native Department to sit on the Scenery Preservation Board as a protector of Māori interests. Between 1910 and 1917 – the peak period for taking Māori land for scenery – this person was Thomas Fisher, former president of the Aotea District Maori Land Board. As we discuss in chapter 14, Fisher’s record of protecting the interests of Whanganui Māori was poor.

Although it applied over the whole country, the 1910 Scenery Amendment Act ‘had been found necessary chiefly on account of the scenery on the Wanganui River’, the Minister in Charge of Scenery Preservation, Thomas Mackenzie, said. He reacted angrily when the opposition’s leading spokesman on Māori affairs William Herbert Herries suggested the Government’s retrospective validation was designed to cover up mistakes. Mackenzie countered that it was Herries himself who had created the confusion over the Crown’s power to take Māori land – a reference to Herries’s role in excluding Māori land from the compulsory takings provisions of the 1906 Scenery Preservation Amendment Act. This, in Mackenzie’s view, had allowed ‘a lot of the finest scenery in the Wanganui River district to be destroyed – forest scenery which could never be replaced – and which it was most desirable they should have preserved.’ ‘If anything was commendable, Mackenzie concluded, then ‘surely it was commendable to secure the beauty spots on that river.’

With empowering legislation now firmly in place, the Crown hastened to survey and buy the Māori land it wanted for scenery. In the course of 1911 and 1912, much of the scenic Māori land between Whanganui and Pipiriki was taken, including land in Tauakirā that became the Murumuru Reserve. By 1914, the surveys were finished. Edward Phillips Turner, Inspector of Scenic Reserves, urged land purchase ‘without delay, as settlement is fast increasing up this river, with the consequence that the acquisition of the land is thereby complicated and made more expensive.’ By this time, however, Māori protest was the chief obstacle.

16.3.9 Māori protests and the Crown’s response
Whanganui Māori protested the loss of their land for scenery frequently and vigorously. Geoff Park described Whanganui Māori opposition to scenery preservation as the ‘most vociferous and constant’ in New Zealand.

As we have already seen, Whanganui Māori had objected in various ways to the first compulsory takings of their land. They lodged complaints with the authorities and, at times, they also took direct action by felling forest. When compulsory acquisition recommenced on a larger scale in 1910, Māori continued to protest in the same vein. They felled more forest, and lodged eight complaints about takings with the authorities – mainly about land between Ātene and Rānana from the Te Tuhi, Ahuahu, Ōhoto, and Tauakirā blocks. The Pōtaka whānau
Hipango Park

In 1910, as grave disquiet arose among Whanganui Māori over the Crown's plans to take their land for scenery preservation, Waata Hipango took the initiative of gifting some significant land for scenery. He approached Hatrick and the Borough Council, volunteering to gift as public domain 30 acres along the Whanganui River at Pūtakataka. The land contained Pūtakataka pā, built by Tukarangatai of Ngā Paerangi, and set among beautiful bush, ferns, and open space. The gift was gratefully accepted, and Hipango Park proved very popular with sightseers.¹

Waata Wiremu Hipango presents the deed to Hipango Park, 1939
renewed their objections, and Kireona Rūpua of Koriniti made a plea regarding a proposal to take land near Ātene from the Tauakirā 2N block – land that included part of the Puketapu maunga and urupā. A ‘large number’ of people were buried on this land, Rūpaha wrote, including his parents and other relatives. For this reason, he had not cleared the land, and ‘it will always remain as it is now, a scenic spot. In conclusion I ask you to leave its mana in my own hands’.114

In 1911, Phillips Turner, having surveyed many of the reserves himself, assessed objections to them. He dismissed all but one of the Māori objections. That one related to an area that had been cleared, and was therefore presumably no longer suitable for a scenic reserve. (He also granted an exception to a European lessee explicitly on the basis that the lessee had damaged the forest on the land in question.115) Rūpaha’s objection about the taking of the Tauakirā land – an area that Phillips Turner saw as ‘a picturesque hillside’ – was dismissed on the basis that the Act allowed Māori to continue using their urupā.116

(1) The Pōtaka whanau protests again

The Pōtaka family made one last effort, writing to the Minister of Public Works to plead that they could not afford to relinquish so much land, and nor would the whanau give up its urupā. They offered a compromise: ‘What may be treated as scenic I will willingly allow, but let me have back the purely grazing grounds’.117 The Crown simply took the land.118

(2) Protest by petition

The Crown and Māori now became locked in a dismal spiral of action and reaction. As takings accelerated throughout 1911, Whanganui Māori continued to fell more forest.119 They also lodged a series of petitions, some of them supported by long lists of signatories. In 1912, Te Whatahoro Jury presented to Native Minister Herries a petition signed by 424 Whanganui Māori. This petition complained that the Crown had taken as scenery their cultivations, urupā, and pā. The owners’ especial grievance was over urupā, but they also protested that farming land was being taken. Yet the owners again ‘did not object to the real scenery being taken’.120 We also have Pikihuia Pākau’s assertion, mentioned earlier, that he and Te Maari Matuaahu filed a petition about Whakapapa Island at this time (see section 20.5.3).

Eruera Hurutara was another who lodged a petition. Over 1910 and 1911 he wrote twice to the Native Minister to complain that papakāinga were included in proposed scenic reserves in the Whakaihuwaka block near Pipiriki.121 The taking proceeded regardless. In 1913, Hurutara and nine others petitioned that they were actually living on this papakāinga, and running stock there. Land ‘upon which the feet of livestock stand’ should never be taken as scenery they argued; they refused the money sent to compensate them, and returned it to the Government. They too, however, were willing for other pieces of land to be taken by arrangement between owners and officials.122

That year also, Te Weri Haeretiterangi and 196 others petitioned, saying that ‘a great number of lands along the course of the Whanganui River have been seized by the Government as Scenery Reserves, and sorrow has consequently fallen upon us, the hapus [sic] owning the said lands which have been slaughtered’. They argued that good lands had been taken, and felt that ‘Properly speaking, it should be for us ourselves to point out the portions suitable for scenery purposes’.123

(3) Holding on to what was left

Much Māori opposition also arose from the fact that the Crown had previously purchased most of their land in blocks such as Ahuahu (11,640 acres), across the river from Rānana. Between 1879 and 1901, the Crown had bought interests that amounted to almost 90 per cent of the block, leaving the remaining owners with just over 1,000 acres.124 In 1912, the Crown took Ahuahu A, B, and F2 blocks (246 acres). This was land the owners had particularly reserved because it lay beside the river where they had always lived (Ahuahu B and F2), and where they had urupā (Ahuahu A and B).125 The Crown did set aside two acres of Ahuahu B as an urupā, but it is unclear from the information available whether it remains in Māori ownership today.126
By 1914, Whanganui Māori almost universally opposed the Crown’s policy of preserving scenery by compulsory acquisition. Phillips Turner’s report for the year remarked on the fact that while some ‘public-spirited’ Māori had gifted lands, including Waata Wiremu Hipango’s gift of Hipango Park, ‘generally the Maoris are opposed’. Irritated at the situation, he asked why, given a thousand years of ancestral use of forest ‘every plant of which they knew’, would Māori not want to preserve ‘even small portions’ for their descendants to enjoy?\(^{127}\)

Asking such a question at this time indicates a degree of obtuseness. It was Waata Hipango himself, who in 1914, only four years after his gift of Hipango Park, felt compelled to head another large petition, with 406 signatories. It complained that the Crown had taken land that Whanganui Māori had vested in the Aotea District Maori Land Board ‘so that our descendants and their generations may not be landless’. Furthermore, most of the scenic reserves were also suitable for farming and raising stock. The owners felt it was up to them to say what parts of their land were best suited for scenery. They asked for a commission of inquiry to look into the lands taken for scenery preservation.\(^{128}\)

Bolstered by further representations by Māui Pōmare, the petitions eventually elicited a favourable response: in 1916, the Crown agreed to appoint a Royal Commission to investigate scenery preservation on the River.\(^{129}\)

### 16.3.10 What Māori told the River Reserves Commission

The Wanganui River Reserves Commission was to report on three matters: whether any of the existing scenic reserves should be cancelled; what proportion of the proposed reserves should be acquired; and whether any other forested areas should be set aside. The chairman was Thomas Duncan, a farmer from Rangitīkei. The other commissioners were Edward Phillips Turner and, at Māui Pōmare’s request, Te Hikaka Takirau, of Ōeo, Taranaki.\(^{130}\)

In December 1916, the Commission sat at Wanganui, Pipiriki, Hiruhārama, Rānana, Taumarunui, and Parinui to hear Māori evidence, and went with Māori owners to inspect the gazetted and proposed reserves. Crown officials and other interested parties gave their evidence in Wellington on 18 December, and the Commission presented its report the next day.

1. **Agricultural land should not have been taken**

   Whanganui Māori told the Commission they expected it to fulfil the promises of Wī Pere and James Carroll that ‘only such portions as birds alone could negotiate would be taken’ and that ‘such parts that cattle and sheep could graze would be left’.\(^ {131}\) Hōri Puhehika spoke on the first day of hearings ‘with the full authority of my people’ to state the basis on which Whanganui Māori were prepared to relinquish land for scenery:

   We do not ask that some matters should be altogether upset or put aside, but in regard to certain portions of our land, which are under cultivation and a food source supply we have come here to thoroughly discuss them. We feel that some of our lands have been taken in a most arbitrary way. Lands on which our stock was running. We condemn that attitude altogether. As regards to the general system of scenic arrangements we have no complaint to make. We hope that the commission will hear what we have to say and weigh our objections. We are prepared to prove that some of the land is farming land where our stock have been running. We hope that the commission will land [sic] and inspect these portions objected to, and which as I have said are really capable of being farmed.\(^ {132}\)

2. **Māori land targeted for compulsory acquisition**

   Puhehika went on to suggest, however, that Māori land had been targeted unfairly:

   It has been our experience and still is that in almost every place it is the Maori land that has been annexed for scenic purposes, and that the pakeha escaped. Why is this distinction made? The pakeha have acquired land on the river and promptly felled the scenery. This still goes on. Now the government step[s] in.

3. **Too much was gone and Māori needed what was left**

   This evidence of Rongoence Te Whitu, of Parinui, typifies the objections of the Māori witnesses:
the parts we ask to have returned to us have been worked by our people, are being worked by us, and they are necessary to us. I can only add further we have contributed very largely towards this scenery system, and now our surroundings are very much cramped. It is necessary to us to strive to get as much elbow room as we can, and for this purpose we ask only for a small proportion of each reserve and that a workable one.

(4) Wāhi tapu should be returned
Crown acquisition of wāhi tapu was most deeply felt. Six takings included urupā, and there were also pā, and the ancestral maunga Pukemanu.

In several instances, the Crown had provided for Māori to have ongoing burial rights in the urupā concerned. This was the case for the urupā in reserves made from the Te Tuhi 5 and Paetawa North blocks, as well as from the Ahuahu A and B blocks mentioned earlier.

Nevertheless, Māori generally made a point of asking for the return of urupā. Both Raita Tukia and Whareware Tōpine, for example, asked that the several urupā in the Ahuahu takings be given back.

Kaiwhare Kiriona of Ngāti Hineoneone reminded the commission of his people’s previous objections in 1910 to the taking of their urupā in the Tauakirā 2N block near Ātene. He said: ‘My father [Kireona Rūpuha] expressly stipulated it should not go under the mana of the Government, but should remain with us under our mana.’ Phillips Turner assured him that reservation would help preserve his people’s urupā, and that they would retain the right to use it (though it appears that the Crown did not provide for ongoing burial rights in this reserve).

Kiriona then crystallised their position on urupā:

The question I am afraid raises a point of Maori custom, which we are deeply interested in. I am afraid I would not be able to withdraw my objection. If it was controlled by others than ourselves, then our custom would be abolished and set at naught, and not only that, in this case we would be charged by some of our people with having sold the bones of our dead. These are obstacles which prevent my withdrawing my objection to any guarantee offered.

(5) Māori landowners should have been consulted
Several witnesses criticised the Crown’s processes, in particular the lack of consultation. Hēnare Keremeneta of Pihipiri chided that it would have been ‘far more economical on [the] part of the Government to have had an agreement with the Natives before expending money on surveys.

More particularly, many owners asserted their right to help set reserve boundaries. Hakiaha Tāwhiao, described as ‘Head Chief’ of Taumarunui, for example, reasoned that ‘I was not only not notified that they were cutting up and disposing of my land, but in my opinion I should have been consulted and invited to accompany them on the ground.’

(6) Compensation unfair
Many witnesses called for fairer compensation for the land. Te Iringa Te Pikikōtuku of Kōkakonui shrewdly reckoned: ‘If these beauty spots are so interesting to a multitude of people, and if as I personally know so many people photograph and paint these beauty spots for money, then these beauty spots have intrinsic value, notwithstanding that they are cliffs and we expect to be paid for them.’

Several witnesses also stated that they had refused to accept the compensation paid by the Government, and had sent it back.

(7) The mana in the river was theirs
To Whanganui Māori, the issue of scenery preservation along the Whanganui River was inseparable from the question of control and authority over the river itself. As one witness put it, ‘the question of our river rights has completely overshadowed that of the scenic reserves.’

The river’s significance was likewise central to the evidence of the officials and prominent settlers who appeared as witnesses. All concurred that, as Hakiaha Tāwhiao put it, ‘If the river waters fail there will be no longer travellers to visit and admire the scenic beauties.’ This naturally brought him ‘to the great question of the river itself.’ The commission, however, steadfastly refused to discuss the question of Māori rights to the river.

In sum, Whanganui Māori had made it very clear that
they were prepared to relinquish some land for scenery preservation, but wanted to participate in deciding which land that was. They were not prepared to sacrifice any culturally significant or workable land. In short, the Crown ought not to trample on their mana by making unilateral decisions.

16.3.11 The River Reserves Commission’s report

The Wanganui River Reserves Commission began its report by saying it was ‘somewhat embarrassed’ that Whanganui Māori held the ‘firmly rooted’ belief that Ministers of the Crown Wi Pere and James Carroll had promised that no land suitable for running stock would be taken from them. Such a standard would be ‘totally inadequate’ to preserve the scenery of a river ‘of interest not only to the people of this country but to the whole of the civilised world’. If the scenery were spoilt for the sake of ‘a few cattle and sheep’, it would be ‘a calamity’ that would rob posterity of ‘a precious asset’ of the nation. Even river flats and easier land had to be taken, because otherwise fire might spread from these areas into the reserves. Even river flats and easier land had to be taken, because otherwise fire might spread from these areas into the reserves. Even river flats and easier land had to be taken, because otherwise fire might spread from these areas into the reserves. Even river flats and easier land had to be taken, because otherwise fire might spread from these areas into the reserves.

The commission recommended retaining almost all of
the existing scenic reserves and proceeding with almost all of the proposed reserves. It also proposed reserving some additional areas of Crown and Māori land.\footnote{147}

The commission further recommended rationalising reserve management by vesting much of the Wanganui River Trust Domain in the Crown, and transferring control to the Scenery Preservation Board.\footnote{148} The Trust would retain control of the rest of the domain – less-scenic land north of the Rētāruke River – which it had already begun to lease to farmers. It had gained statutory power to do so in 1912, fulfilling a long-held desire to gain some revenue from land in the domain.\footnote{149} Land advertised for lease included Winter’s Island in the middle of the Whanganui River at Taumarunui, between Victory Bridge and Ngāhuihuinga. Until it was put up for lease, local Māori had not known that the island was considered part of the Crown estate, nor that it was under the control of the Trust.\footnote{150} (Whether or not it was leased out is not clear, but by 1947 an official was commenting that it was ‘useless for farming purposes and should be made a scenic reserve.’\footnote{151})

(1) Modest concessions to Māori concerns
The commission did make some concessions to Māori concerns. In particular, it recommended redrawing the boundaries of some gazetted or proposed reserves, to exclude in total some 850 acres of land.\footnote{152}

The commission took care to address the concern of Whanganui Māori to ‘retain their ownership or “mana” over the graves’ in urupā, having ‘very carefully investigated and considered’ this subject.\footnote{153} As a result, it recommended that Māori regain title to urupā on Ahuahu land, on Tauakirā 2N, and on Wahrangi 2.\footnote{154} The commission also recommended that the proposed reserve at Tikee exclude 25 acres containing the old kāinga, and the urupā Ōkirihau.\footnote{155} Oddly, the report does not mention the urupā that Hakiaha Tāwhiao had identified in the Kōiro block.\footnote{156}

Whanganui Māori would regain some past and present cultivations and have more assured access to their remaining land.

The commission saw its recommendations as ‘concessions,’ made ‘mainly for the purpose of conciliation.’ Māori should reimburse the Crown for land returned.\footnote{157} It recommended that Māori land should be valued like European land – by arbitration, rather than by the Native Land Court.

(2) Minority report
Hikaka Takirau submitted a minority report. Although he agreed with the majority view for the most part, he sought the exclusion of another piece of land from the Morikau block. Takirau concurred with its owners’ view that it was suitable for raising stock. If they did not want to sell ‘these remaining fragments of land’ to which they had ‘the right (mana)’, and wanted to keep them for their descendants, then their wishes should be respected. Takirau also made a general case that if and when land was no longer suitable for scenery, it should be returned to Māori.\footnote{158}

16.3.12 The Crown’s response to the report
The Crown considered the Royal Commission’s report so controversial that it was neither presented to Parliament, nor published.

The problem with the report, clearly, was not the commission’s recommendations regarding Crown land and land in the Wanganui River Trust Domain, since most of these were implemented during the 1920s (though the Wanganui River Trust succeeded in maintaining control over scenic reserves created on land in the Domain).\footnote{159}

It was the commission’s recommendations regarding Māori land that were controversial, and few were ever carried out. The Department of Lands demanded that, in return for the Crown’s agreeing to the commission’s recommendations, Whanganui Māori must promise to make no further protests, and allow the Crown to complete its programme of acquisitions without further disturbance.\footnote{160} The reason given for this approach was that Crown officials feared the commission’s ‘concessions’ might ‘only serve as a preliminary to further requests and objections and the unique scenery of the Whanganui River may be ultimately sacrificed through the objections of the Native owners being generally upheld’.\footnote{166} Māui Pōmare, who was asked to promise on behalf of Whanganui Māori, felt quite
unable to do so. Though pressed several times on the matter, he could only say that he thought that if Whanganui Māori were fairly dealt with, ‘no future trouble is likely to arise’.

And there it sat. While the recommendations for Crown and Wanganui River Trust land were largely implemented by the early 1920s, Whanganui Māori gained almost nothing from the commission they had fought for: a little land was returned from one reserve, and access provided over another. Robin Hodge suggests that one of the urupā, from the Waharangi block, may have been returned (but if so, it is no longer in Māori ownership).

In the event, the Crown’s plans to acquire from Māori the rest of the proposed reserves were not fulfilled. This was largely because most of the £100,000 voted for scenery preservation was by now spent, and few further funds were made available. Thus the many more reserves on Māori land originally proposed by the Scenery Preservation Board never came to fruition.

It remains possible, although unlikely, that more Māori land will be acquired for scenery preservation in the future. To this day, the Government retains statutory power to take any private land, or an interest in land, for scenery – including Māori land. Today, the power is contained in the Reserves Act 1977. However, Māori protest about the use of their land for scenery preservation did not fall on deaf ears. Since 1953, any reserve of Māori land for scenery preservation required the approval of the Minister of Māori Affairs, and owners also have the chance to confirm or contest a proposal before the Māori Land Court.

16.3.13 Amount of land taken for scenery preservation

Over the course of the twentieth century, very significant tracts along the Whanganui River have become part of the Crown’s conservation estate. Of course, all of this land once belonged to Whanganui Māori. The Crown acquired most of it through its large purchases of Māori land, but in this chapter we are principally concerned with land acquired directly from Māori specifically for scenery preservation, and it is necessary to distinguish what those areas were. For this purpose, both the Crown and claimants relied on figures prepared for this inquiry by historian Robin Hodge. She estimated that the Crown acquired about 7,500 acres of Māori land along the Whanganui River for scenery preservation. Of that 7,500 acres, she thought that 5,613 acres were compulsorily taken. Hodge calculated this figure using a Department of Lands and Survey report on Crown land acquisitions that was produced in the 1980s as part of preparations for the Whanganui National Park.

These figures were not disputed by Crown or claimants. However, our cross-examination revealed that Robin Hodge had not found any evidence about how the Crown had acquired any land other than through compulsory acquisition. To ensure that the evidence on this point was as comprehensive as it could be, we consulted further official records. A thorough search of entries in the New Zealand Gazette has allowed us to refine Hodge’s calculations (see table 16.1 and maps 16.4 and 16.5). It shows that in total the Crown acquired from Whanganui Māori some 6,678 acres along the Whanganui River for scenery preservation.

Even after completing this task we remain unsure whether any of the takings were achieved without using compulsion. Put another way: despite our best efforts, we have uncovered no evidence that the Crown ever acquired any of the 6,678 acres without using its powers of compulsory acquisition.

16.3.14 A legacy of bitterness

The protests of Whanganui Māori about the land taken from them for scenery preservation did not end with the Royal Commission. In 1927, they sent a series of petitions to the Crown about loss of title to, and control over, the Whanganui River itself – but the land takings for scenery reserves were part of the complaint.

In July 1927, Te Ākina Rangitaroia and 224 others claimed compensation for (among other things) ‘areas of land acquired for scenic purposes situated on the banks of the Wanganui River commencing from Taumarunui and ending at Wanganui’.

In August, Te Pikikōtuku and 125 others sent a more strongly worded petition. They wanted additional compensation because their ‘[l]ands
### Scenic Reserves along the Whanganui River

<table>
<thead>
<tr>
<th>Block</th>
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| Total                  |        | 2,751.767 | 6,677.75 |

**Table 16.1: Māori land along the Whanganui River acquired as public works takings for scenery preservation**

*Downloaded from www.waitangitribunal.govt.nz*
Map 16.4: Scenic reserves gazetted from Māori land on central reaches of Whanganui River
Map 16.5: Scenic reserves gazetted from Māori land on upper reaches of Whanganui River
on the banks of the Wanganui River’ were ‘ancestral lands’ that ‘were practically confiscated for scenic purposes’. Moreover, the benefits from preserving the scenery flowed not to them but to ‘the company controlling the steamers plying on the Wanganui River because tourists come to see the beautiful scenery on the river’. They asked Parliament to legislate so that ‘all burial grounds and pas under occupation situated on the banks of the Wanganui River be reserved and vested in the owners thereof’.174

The Crown’s response was to authorise the chief judge of the Native Land Court to inquire into the claims and report back to Parliament. As the Whanganui River Report relates, when this was not done, Titi Tihu applied to the land court for an investigation of title to the Whanganui riverbed, so commencing an extraordinary legal battle involving five court decisions and a royal commission.

That crusade was all-consuming and lasted for several decades, so focus diminished on whether Whanganui Māori had been adequately compensated for scenery takings, and the return of their wāhi tapu.175

16.3.15 Reserves administration and management
In this section, we describe the Crown’s administration and management of scenic reserves on the Whanganui River. Whanganui Māori had no involvement at all in reserve management before 1958, so our treatment is brief. We also look at whether there was other protection of Māori interests.

(1) Protection of Māori interests
The Scenery Preservation Amendment Act 1910 enabled the Minister to grant Māori the right to take certain birds from scenic reserves that were previously Māori land.176 However, this provision seems to have been little used.177

Up to the 1920s, active protection of Māori interests was not really on the agenda of either the Wanganui River Trust, in administering the Domain, nor the Scenery Preservation Board, which was responsible for the scenic reserves. Both bodies had financial constraints, and the Trust’s first priority was always its ongoing struggle to maintain the Whanganui River as a navigable waterway. This meant that land in the Domain and the scenic reserves was left to its own devices. Both Māori and Pākehā were effectively free to cut wood, light fires, graze stock, and hunt, while plant pests like gorse, ragwort, and blackberry, and animal pests such as pigs, goats, and possums ran rampant.178 Arguably, though, in this laissez-faire era Māori were able to continue to use the land in various ways that probably suited them at the time.

(2) The permanent ranger and honorary rangers
That situation changed when, in 1921, the Wanganui River Trust appointed Thomas Downes as a permanent ranger to protect land in the Domain. Downes fenced out stock, removed weeds, and helped preserve bush, birds, and historic remains, including urupā.179 Downes had a long association with the Whanganui River and was particularly interested in its Māori history. The Scenery Preservation Board at around the same time appointed part-time honorary rangers to work with Downes, and to monitor scenic reserves occasionally. By 1932, there were at least 12 of these rangers.180

Historian Robin Hodge told us that the efforts of Thomas Downes and the honorary rangers made a difference: ‘so many watchful eyes about’ helped reduce illegal activity, and the reserves were reportedly in ‘good order’ when a Lands Department Field Inspector visited in 1927 – although problems with pests and stock incursions were later to re-emerge.181

Downes also made considerable efforts to protect Māori sites. With the owners’ permission he fenced off several urupā, for example, and restored ‘Kemp’s Pole’ at Raorikia.182 But Whanganui Māori had an uneasy relationship with Downes, who sometimes angered them by doing things like handing over Māori carvings to the Wanganui Museum, and taking photographs of kōiwi.183

(3) No representation
Downes’s efforts were all that there was to protect Whanganui Māori interests, though, because they were not represented on the Wanganui River Trust Board. Nor were any of the Scenery Preservation Board’s honorary rangers Māori. In 1922, the law was changed to add three ‘occupiers’ of rateable property to the River Trust’s Board.
This responded to the spread of Pākehā settlement along the upper reaches of the Whanganui River, but did nothing to advance the participation of tangata whenua, who had of course lived there all along.

Sporadic proposals that Māori too might play some role in reserve administration and management all came to nothing. It had been suggested within government as early as 1906, for example, that honorary Māori rangers might protect reserves created on Māori land. But this suggestion lapsed after the provisions relating to Māori land were excluded from the Scenery Preservation Amendment Act 1906, and was not renewed after the Scenery Preservation Amendment Act 1910 permitted the taking of Māori land again.[185]

Whanganui Māori came closer to a real role in reserve administration in the early 1930s, when they were offered...
two places on the Wanganui River Trust. However, in return Māori were required to vest in the Trust Māori land in the Whakaihuwaka block beside the Whanganui River, so that the Trust could develop a nursery there. The proposal also involved the Trust taking responsibility for protecting a number of urupā and other historic sites.\textsuperscript{186} At meetings held to discuss the Trust’s proposal, Whanganui Māori said that they did want their historic sites protected, but they were not prepared to relinquish control over their land.\textsuperscript{187} Some noted that scenic reserves were not well cared for by the Trust, and that they could do a better job of caring for their land themselves.\textsuperscript{188}

\textbf{(4) Deteriorating state of the scenic reserves}

The state of the reserves had in fact improved somewhat since the mid-1920s, thanks largely to Downes’s efforts, but Māori comment about the standard of care may have reflected the fact that the Wanganui River Trust was losing ground at this time. As roads advanced, the Whanganui River became less important both to tourists and to
settlers. Forest clearance on farms in the upper watershed was also causing large floods that congested the river with timber and boulders. Keeping it navigable became more expensive as a result. Labouring under financial difficulties, the Wanganui River Trust was in rapid decline by the 1930s, and was abolished in 1940.

The Lands Department then assumed overall responsibility for the Domain as well as the scenic reserves. However, for almost 20 years it did no more than make an occasional inspection, and the scenic reserves gradually deteriorated. When interest in the recreation and tourist potential of the River began to pick up again, the question arose as to how to improve administration and management of the reserves. It was decided in 1958 to form the Wanganui River Scenic Board as a single body to control all of the reserves.

(5) The Wanganui River Scenic Board
The new board comprised representatives of all the various local bodies along the river, and – for the first time in scenic reserve administration – one representative of Whanganui Māori. The woman appointed was Iriaka Rātana, the member of Parliament for Western Māori. She stayed in the role until 1972, when Rangi Mete Kingi succeeded her, remaining in office until his death in 1981. One Māori ranger was now also employed in managing the reserves.

Although there was now a Māori member on the board, the concerns of Whanganui Māori gained little traction when the Wanganui River Scenic Board considered its stance on the key issue that confronted it in its first years: a Ministry of Works proposal to dam the Whanganui River at either Kaiwhaiki or Ātene. The board decided to support this proposal. It considered that a dam would help with flood control, improve views of the bush, and allow deer cullers better access to the back country. These considerations mattered more than the inundation of many Māori historic and sacred sites. However, no satisfactory site was found, so the dam did not proceed.

The board’s primary concern remained tourism and recreation. It developed a strategy to make the river a ‘scenic waterway’, and this involved buying as much Māori land as possible. The board’s chairperson wanted the board to acquire all land along the Whanganui River up to the skyline that was still ‘locked up’ in Māori ownership. Nothing came of this rhetoric, because although scenic reserves were made in the 1970s, they were created from unoccupied Crown land.

Meanwhile, management of the reserves slowly intensified. Alongside increased inspections, and pest and weed control, the board built five huts along the river, including the John Coull and Tieke Huts. Later, when the John Coull Hut was replaced in 1981, there was concern over its placement near a burial site, but the Historic Places Trust reported it was ‘not significant as a burial ground’. We discuss Whanganui Māori concern over the location of these huts in chapter 22, on the Whanganui National Park. The board also restored and protected Māori sites, including one of the historic niu poles at Maraekōwhai.

(6) A new era in reserve management
In the late 1970s the Government began to overhaul protected areas legislation, and as a result the administration and management of the scenic reserves went through a series of rapid transitions.

The first change came in the wake of the Reserves Act 1977, which reorganised scenic, historic, scientific, and nature reserves under a single classification. The Wanganui River Scenic Board was then briefly reconstituted, in 1980, as the Wanganui River Reserves Board.

At the same time, Whanganui Māori organised a new body, variously called Te Tikanga Commission for Evangelisation Justice and Development, or the Wanganui River Reserve Trust. The Trust, as we shall call it, was the forerunner to the Whanganui River Māori Trust Board. Its executive comprised kaumatua Titi Tihu, Chairman Hikaia Amohia, Eugene Morgan, and Father Mikaere. Other members were: Taitoko Tawhiri, Paul Māreikura, and Joan Akapita, as descendants of Tamaāpoko; Archie Tairaoa, Kevin Amohia, and Linda Henry, as descendants of Hinengākau; and Heemi Bailey, Rangi Mete Kingi, and Sir Hepi Te Heuheu, as descendants of Tūpoho.

The Trust was an illustrious group, representative of Māori communities from the source of the Whanganui
River to its mouth. Through the Trust, Whanganui Māori tried to exert more influence over scenic reserve management. Their submission to the Wanganui River Reserves Board, on its 1981 management plan, called for more Māori membership on the Board, and argued that the Trust should control both the river and all of the lands under the Board’s control. The whole length of the Whanganui River was sacred, and the emphasis in its management needed to be on its spirituality. The Trust asked to speak on their submission when the Wanganui River Reserve Board held its hearing about the plan in November 1981, but the Board declined, saying that the Trust’s submission did not address management considerations as defined by the Reserves Act. Nor were the Trust’s views included in a written summary of submissions.

(7) A move away from local control of scenic reserves
More administrative change was afoot. The National Parks Act 1980 reorganised how protected areas were to be administered, and in 1982 authority over Whanganui River scenic reserves passed to a new regional Wellington National Parks and Reserves Board.

Members of the Wanganui River Reserves Board objected to this loss of local control, claiming that only they had the necessary experience in dealing with problems such as Māori land ownership. Jennie Tolhurst, for example, said that the acquisition of Māori land ‘has only been possible by careful and deliberate negotiations by members of the River Board who know and understand the Wanganui River Māoris’. It is not clear what acquisitions Tolhurst was referring to. Perhaps it was a reference to the board’s aspirations, because the year before, it was advocating the acquisition of a further 50,000 acres of Whanganui Māori land for scenery. Robin Hodge said this idea was discarded only because it would have required the consent of the Minister of Māori Affairs. Then the board asked Whanganui Māori to provide a plan of areas that they were prepared to vest in the board, but it is unclear how they responded. Certainly, no areas were proposed immediately.

Though Whanganui Māori retained a place on the wider regional body, they too objected to the change. Their representative, Rangipō Mete Kingi, wrote to the Secretary for Māori Affairs seeking to convey to the Government his ‘strongest possible objection’; Whanganui Māori, he said, wanted control to remain in the hands of local representatives. By then, however, the Government was planning a national park on the Whanganui River, and this was the focus of the Lands Department. The Director-General of Lands and Survey therefore suggested telling Mete Kingi that the establishment of a park was under investigation – though just, he wrote, as ‘a public relations move aimed at possibly defusing Māori objection at a later date’.

In 1986, the Crown did establish the Whanganui National Park, which encompassed most of the scenic reserves along the Whanganui River. The issue of the Crown’s conduct in creating the park is the subject of a separate chapter. There, we also look in detail at the role of the Department of Conservation as day-to-day manager of all of the conservation estate, including the many scenic reserves that still lie outside the park.

Since 1990, there has been one Whanganui Māori representative on the Taranaki–Whanganui Conservation Board, which comprises up to 12 members. This regional body provides for the wider public to have input into the Department of Conservation’s work in managing and controlling the conservation estate.

In 1990, the Crown also amended the Reserves Act so that anybody administering a reserve along the Whanganui River must ‘have regard to the spiritual, historical, and cultural significance of the river to the Whanganui iwi.’

16.3.16 Summary of historical facts
Saving the scenery along the Whanganui River played an important role in the development of New Zealand’s scenery preservation legislation. The Crown initially proposed making large areas of Whanganui Māori land into scenic reserves. Ministers’ and officials’ statements suggest that, at the outset, the Crown intended to negotiate the purchase of this land with its owners, with compulsory purchase to be used only as a last resort. However, that intention did not bear fruit. One of the Crown’s earliest actions, in 1907, was to acquire compulsorily an important area of land near Pipiriki that included the mineral spring
Waiora, so that Alexander Hatrick could develop a tourist attraction. There was no looking back. By 1908, the Crown was worried by the speed and spread of Pākehā settlement on Māori land and the accompanying bush clearance. It responded by taking more land: after a brief pause while it reorganised its statutory powers, the Crown in 1910 commenced a sustained programme of compulsory acquisition of Whanganui Māori land that lasted until at least 1917.

In total, the Crown acquired some 6,678 acres of Whanganui Māori land for scenery preservation. Most if not all of it was taken compulsorily. Whanganui Māori vigorously protested its loss. They were angry about the Crown’s use of compulsion, and considered that culturally significant places, and land that they needed to support themselves, should not have been taken. They were also aggrieved about the levels of compensation – a matter we investigate further below. Although the Crown went to some lengths to hear Whanganui Māori grievances, very little was done to respond to them. However, financial constraints meant that the Crown’s full programme of land acquisition for scenery preservation was never completed.

In the end, the Crown put about 21,000 acres along the Whanganui River into scenic reserves in the early twentieth century. This total was made up of the 6,678 acres of Māori land compulsorily acquired for the specific purpose of scenery preservation, plus large acreages that the Crown designated as scenic reserve after having bought them from Māori in the general course of its drive to purchase Māori land.

Whanganui Māori had no involvement in the management of scenic reserves until 1958. Since that date, they have always had a representative on whichever body was responsible for managing scenic reserves. They retain the right to continue using urupā in four scenic reserves.

16.4 Crown Wrongs in Preserving Scenery

16.4.1 Compulsory acquisition and the Treaty

We introduced the Tribunal’s jurisprudence on compulsory acquisition for public works at the beginning of this chapter. It is time now to return to this topic, because the Crown compulsorily purchased most if not all of the 6,678 acres of Māori land that it acquired along the Whanganui River for scenic reserves, treating scenic reserves as if they were public works.

The Crown has argued in successive inquiries, including this one, that the Tribunal’s ‘last resort in the national interest’ test for public works sets the bar too high. It unreasonably fetters the Crown’s ability to implement reasonable policy.

The Crown’s argument does not come to grips with the principled basis for the standard the Waitangi Tribunal has set: compulsory acquisition cuts across the basic Treaty guarantee in article 2 of the Treaty (te tino rangatiratanga/undisturbed possession) and is therefore presumptively an illegitimate use of Crown power. The Crown’s right to implement policy that unilaterally negates that fundamental Treaty guarantee should be limited to very, very few situations. Compulsory acquisition might sometimes be justified, for example, in circumstances of exigency like war or other emergency. Even in those circumstances, it should be the chosen means of effecting nationally important policy only where other alternatives have been identified, explored, and found unworkable. The Waitangi Tribunal in the *Turangi Township Report* accepted the submission in that inquiry that if the Crown seeks to use Māori land for nationally important purposes, it must show minimum possible interference with the Treaty partner’s rangatiratanga.

We uphold and affirm this principled approach of previous Tribunals.

16.4.2 ‘In the national interest’?

In the early twentieth century, the Crown – both Ministers and officials – saw protecting scenery along the Whanganui River as a matter of national importance. Under-Secretary for Lands James Mackay captured this thinking when he said, in 1914, that he ‘need hardly point out that the preservation of the bush on the banks of the Wanganui River is a matter of great importance to the whole Dominion as the scenery on this river is unique and it would be a national loss if it were destroyed.”
The Crown’s actions matched its rhetoric. The beauty of the Whanganui River perhaps more than scenery at any other location drove the development of scenery preservation policy and legislation at a national level. Crown expenditure on land purchase for scenic reserves here was higher than anywhere else in New Zealand.\(^{211}\)

There is no doubt that the Whanganui River was a forested place of unique and special beauty, and because the settlers’ practice of clear-felling bush was by the early twentieth century making such places rare, its preservation as scenery was certainly desirable. But was scenery preservation a policy of such national importance that it met the Tribunal’s standard for justifying compulsory acquisition of Māori land? There is certainly a case for that proposition.

It is instructive to consider here the approach of the Tribunal in the Tūrangi township inquiry, where the public work for which Māori land was taken was similar to the scenic land on the Whanganui River in that it also arguably served interests at a level of national importance.

**1. The acquisition of Māori land for the Tūrangi township**

In that inquiry, the Tribunal looked into the compulsory acquisition of Māori land to build a town at Tūrangi as an adjunct to the Tongariro hydro-electric power project. It accepted that the power project was in the national interest. It accepted too that a town was needed to house the project’s large workforce. But a permanent town was not necessary, because a temporary construction town would have sufficed to service the power project. The Crown could have built such a town on its own land at Hautū rather than on the claimants’ land at Tūrangi. The Tribunal accepted that urgency was a factor in the planning for the town. It concluded:

> We believe an important factor in deciding to acquire the Ngati Turangitukua land was that the Crown considered it could invoke the unfettered power of the Public Works Act 1928, enabling it to enter and acquire the land without notice or objection and compulsorily take the land by Order in council. In other words, it had statutory authority to disregard its Treaty obligations. In all the circumstances, we are not satisfied, given the availability of an alternative site which it owned, that the Crown’s decision to take the Ngati Turangitukua land was justified by exceptional circumstances as a last resort.\(^{212}\)

Thus, although the township was needed for a power project that was in the national interest, compulsory acquisition of Māori land for the construction town did not meet the bar. The Crown had options that the Tribunal considered were viable, but which the Crown elected not to pursue.

**2. The acquisition of Māori land for the Maraetai Dam**

The Wairarapa ki Tararua Tribunal looked into another compulsory acquisition of Māori land at Maraetai (located on the Pouākani block, owned by Wairarapa Māori). There, the Crown took 800 acres for the construction of a dam to generate hydro-electricity, and leased a further 700 acres for the construction of the workers’ town that became known as Mangakino.\(^{213}\)

In that case, there was no evidence about the Crown exploring alternatives to taking the claimants’ Pouākani land, so the Tribunal said it could not determine whether the compulsory acquisition for the Maraetai Dam was ‘in the last resort’:

> Thus, we make no finding as to whether the taking of the Pouākani land meets the ‘last resort in the national interest’ test. However, the land was taken, and the only Treaty justification for that is that it was required for a national exigency and that no other land would do. (We reject the Crown submission that the test should be less stringent than this.) If no other land would do, it must mean that there was something special and unique about this land, because it must have had qualities (hydrological, geological) that were unmatched by any other. This in turn must mean that the land was worth more, and the owners should be compensated accordingly. In our view, this is a logical development of the ‘last resort in the
national interest’ test. In Treaty terms, the compulsory acquisition of Māori land is repugnant, and land that meets the test ought to fetch a high price.  

Both these cases are useful comparisons for a situation like this, where the taking of land for scenic reserves served policy interests that were at, or nearly at, a level of national importance.

(3) Scenery preservation and the national interest
This Tribunal considers that a national interest was served by the preservation of scenery on Whanganui River. But did it meet the Tribunal’s standard for justifying compulsory acquisition? Preserving scenery – even where that scenery is very fine, and where it is endangered by encroaching settlement – is not an exigency of the same kind as war, where lives might be at stake. It is not an emergency in the ordinary sense of the word, because emergencies too endanger lives. Nor would taking extreme steps to preserve scenery be a course that is obviously and plainly necessary to all: the importance that people accord scenery varies considerably. Some people would not regard its preservation as very important, and would therefore not see as justified the infringement of the property and Treaty rights of Māori citizens. By contrast, most would see the generation of electricity as nationally important, especially when, as was the case in the middle decades of the twentieth century, existing means of generation were inadequate to meet the nation’s needs.

We think that compulsory acquisition of Māori land is justified only when it is required to enable public policy that is immediately and obviously recognisable as necessary and of the very highest importance. If preserving Whanganui River scenery was such a policy, which frankly we doubt, despite the high importance accorded it at the time, and even though preserving scenery brings with it ecological benefits that we now recognise as very desirable for people and for the planet, it would meet the bar with nothing whatever to spare.

For current purposes, we admit the possibility that preservation of Whanganui River scenery had the necessary characteristics of national significance to meet the test. As we explain in what follows, however, the Crown’s conduct did not meet the standard in any other respect.

16.4.3 A ‘last resort’?
We now turn to the question of whether the Crown used its power to take Māori land for preservation of Whanganui River scenery only as a last resort, as the Tribunal’s standard requires.

It is implicit in the standard that taking Māori land is wrong in all but a very few circumstances. Where the land that the Crown took was for any reason especially valuable to Māori, the Crown’s conduct in taking it will be scrutinised very closely. The Crown must explore alternatives to compulsory acquisition in every instance, and it follows that when the land in question is especially significant to its owners, the onus on the Crown to exhaust other options before depriving them permanently of its ownership will be correspondingly greater.

Now, we look at:
- whether, before compulsorily acquiring Māori land, the Crown informed itself about Māori landholdings, and considered Māori needs;
- whether Māori could afford to lose the land the Crown took from them; and
- whether there were alternatives to compulsorily acquiring the claimants’ land; what the alternatives were; and whether the Crown considered them.

(1) Did the Crown inform itself about Māori landholdings?
The early twentieth century was a period when the Crown was still intent on purchasing and developing Māori land, and its interest in how this might adversely affect Māori people was sporadic. There is no evidence that, before embarking on the purchase of Māori land for scenery, the government of the day turned its mind in any serious way – or indeed, at all – to the question of whether the Māori whose land would go into scenic reserves could do without it. The save-the-scenery imperative was very strong.
in people’s minds, and other concerns were pushed to the side.

The Stout–Ngata Commission was the main example of the Crown making a serious attempt to inform itself about what land North Island Māori could spare. A contemporary concern was that landlessness would make Māori indigent (lacking food, clothing, and other necessities of life because of poverty), and therefore not self-reliant. This was an outcome that settler governments wished to avoid.

(a) The Stout–Ngata Commission: In 1907, the year when the Crown began compulsorily acquiring Māori land for scenery, the Government also charged the Stout–Ngata Commission with undertaking a detailed ‘stocktaking’ of Māori land in the North Island. The Commission was to tell the Crown precisely what land Māori required, and what land could be used for Pākehā settlement. The commissioners were given to understand that their recommendations would underpin legislation and policy in the immediate future.

In their first report, Stout and Ngata reminded the Crown that in buying land to provide for a growing (Pākehā) population, it was essential to do ‘no injustice to any portion of the community’ – and least of all to Māori, to whom the State had ‘peculiar obligations and responsibilities’. As the tribunal that inquired into the central North Island claims pointed out, the commissioners here issued a very clear reminder that the Crown must have regard to the practical outcomes for Māori of its land purchase policies: the Crown was obliged to protect the tribal land base.

Stout and Ngata argued that the critical issue for the Crown was to make sure that individuals could not sell what remained of Māori land, for ‘[t]o allow the present possessors to destroy the tribal land means that they should destroy the tribe.’ To ensure that Māori iwi and hapū retained sufficient land, they strongly recommended that the Crown stop purchasing ‘under the present system’ of negotiating with individuals, which had resulted in tribal estates being sold piecemeal. No land sales at all should proceed until the present and future land needs of tribes had been ascertained and provided for.

Stout and Ngata particularly singled out for mention the blocks Whakaihuwaka and Taumatamāhoe, where Māori still held reasonable acreages along the river. The owners in these blocks were unanimous that no more land there should be sold, and the commissioners specifically recommended that the Crown not purchase land in these blocks. As we shall see, the Crown did not heed this advice.

(b) Wanganui River Reserves Commission: As we have already seen, the Crown did pause for thought when it was in the process of acquiring land for scenery reserves. In 1916, this three-man commission heard and reported on, inter alia, the land takings from Māori that were involved in existing and proposed scenic reserves. The commission’s report recommended modest reductions in acreages to be acquired from Māori, but it never saw the light of day. The report was considered too controversial to be tabled in Parliament or published.

(c) Interests other than scenery preservation not prioritised: The importance that the Crown accorded scenery preservation at the time meant that other interests were simply regarded as much less important.

The interests in the mix apart from preserving scenery were Māori property rights and cultural interests, and ensuring that land suitable for Pākehā settlement was available for that purpose.

James Mackenzie was variously commissioner of Crown lands, chairman of the Scenery Preservation Board, Under-Secretary for Lands, and Surveyor-General, between 1911 and 1915. This key Crown official ranked scenery first. He told the Wanganui River Reserves Commission that even ‘[i]f the land were suitable for settlement, I should certainly take it if wanted for scenery’. This was permissible, he reasoned, because: ‘On a great waterway like Wanganui, it is quite justifiable to take the land even if suitable for settlement.’ Indeed, he felt that the
best and cheapest policy was to take Māori land in ‘a big lump’ – to take, in fact, ‘a larger block than you want for scenery, because the area not required for scenery can be used for settlement’.\(^{223}\)

Mackenzie’s successor as Chairman of the Scenery Preservation Board and Surveyor General was EH Wilmot. He claimed that the Scenery Preservation Board had carefully excluded ‘all Native settlements, cultivations, and all areas which are adapted for settlement’ – but he still saw it as ‘absolutely necessary’ to take a ‘fitting area’ needed to preserve scenery, and was quite prepared to take large areas of land that might include land suitable for settlement.\(^{224}\) WR Jourdain, Secretary of the Scenery Preservation Board, similarly made it quite clear to the Wanganui River Reserves Commission that the question of whether land was suitable for settlement had taken second place, because the Board’s overriding consideration was to preserve the banks, ‘whatever happens’.\(^{225}\)

Mackenzie’s opinion that it was best, because most cost effective, to take ‘a big lump’ of Māori land and then sell the excess for settlement, helps explain why, in 1916, Āpirana Ngata found it so difficult to believe that ‘the reservation of forest lands on Native lands under any Administration is genuine, and not a pretence for depriving the Maoris of their lands.’ He went on: ‘Too often the Administration follows along the lines of least resistance, and in this country in the case of land the line of least resistance follows a colour-line’.\(^{226}\)

\((d)\) The Crown unprepared to change track: Thus we see a situation where the Crown embarked upon the compulsory purchase of Māori land to preserve scenery without first informing itself about whether Whanganui Māori were in a position in the early twentieth century to give up more land for this purpose. It did not listen to the voices of Whanganui Māori pleading to keep their land. Even when, after two commissions had inquired into the effects on Whanganui Māori of losing land in Whanganui, and told the Crown that the purchase of particular land would adversely affect its Māori owners, the Crown was undeterred. It did not rate Māori interests sufficiently highly to change track except in the one or two instances already discussed, where urupā were excluded from purchases.\(^{227}\)

\((2)\) Could Māori afford to lose the land?
We have noted that:

- the Crown set about purchasing Māori land for Whanganui River scenery before finding out whether they could afford to lose land for that purpose; and
- even when it was later specifically told of the negative effects on Māori of taking certain land, it continued anyway.

In this section, we look into the evidence presented to us to ascertain as best we can whether Whanganui Māori could spare the land the Crown wanted for its scenery.

The 6,678 or so acres taken for scenery are after all comparatively few in relation to the vast areas alienated by other means. In this inquiry, the Crown made this point, saying that in a district of 1.7 million acres, takings of a few thousand acres were fairly insignificant.\(^{228}\) It said there was no evidence of prejudicial economic effects,\(^{229}\) and that taking urupā was consistent with the Treaty since Māori use was guaranteed and the sites protected.\(^{230}\)

However, it is important to see these takings in their own context.

Viewed as a proportion of the land still owned by hapū and whānau living along the Whanganui River, rather than generalised across the district and its Māori population as a whole, some hapū and whānau lost a significant proportion of their remaining land to scenery preservation.

By 1907, when Māori land was first taken for scenery preservation in Whanganui, the Crown had already purchased most of the district. The land that tangata whenua retained was usually the land that was most important to them – places where they had always lived, hunted, gathered, cultivated, and buried their dead.\(^{231}\) This was their heartland, lying at the very core of their identity.

This was the story that claimants told us. They said that takings for scenery removed an important economic base,
curtailed agricultural development possibilities, and alienated them from food sources. Settlements were depopulated, and even relocated, as a result. They lost mana and control over urupā and wāhi tapu.

(a) Economic and cultural consequences: In Whakaihuwaka, some 500 owners retained only around 13,000 acres by 1907. We have mentioned how Stout and Ngata found that many of these owners had no other land and that they were ‘unanimous and emphatic’ in wanting the Crown to stop buying in the block. When the Crown proposed taking 2,000 acres for scenery, the owners were therefore alarmed. In the end, the amount was closer to 1,000 acres. According to the 1913 petition of Eruera Hurutara, though, this included some papakāinga land at Te Aomārama. It was simply the case that owners in this block did not want to give up more land. They should not have been required to do so. There is no evidence on which we can base an analysis of precisely what economic detriment they suffered, since no research was done on that point. However, it is difficult to imagine a scenario in which selling more land to the Crown in a compulsory purchase could have been to their economic advantage in any way at all. Nor could their cultural interests have been enhanced.

As we discuss in chapter 20, owners in the Waimarino reserves were similarly affected. Between 1911 and 1916, for example, 628 acres were taken from those reserves for scenery. Several owners objected to the Wanganui River Reserves Commission that they needed some of this land to run their stock.

(b) Revised recommendations to no avail: In a few cases, the Wanganui River Reserves Commission did recommend that concerns like these should result in the taking of smaller acreages. When Rotohiko Pāuro protested, for example, that Ngāti Kurawhatia retained only 90 acres of Ōhoutahi 2, including an urupā, while ‘45,000 acres of our land have been taken away’, the commission recommended that a proposed taking be reduced from 44 acres to 15 acres. The commission also recommended some modifications to takings in the Tieke, Taumatamāhoe, Te Tuhi, and Puketarata blocks. This interaction with the commission was all in vain, however: Māori did not benefit from the Commission’s revised recommendations because the Crown disregarded them. The Crown also took some land the commission had expressly determined it should not. For example, Te Moana Te Tauri had told the commission that the proposed taking (of 280 acres) from Puketarata 411 included settlements and that, furthermore, all of it was workable land, some of it already being farmed. The commission determined that 56 acres should be exempted from the taking – but in 1921 the Crown went ahead and took the area anyway.

(c) Ngāti Hineoneone: Perhaps the hapū worst affected by scenery takings was Ngāti Hineoneone. They retained land interests in only two blocks, Tauakirā and Te Tuhi, and the Crown took land for scenic reserves from both.

By 1900, the Crown had purchased most of the remaining Ngāti Hineoneone land in the Te Tuhi block, leaving just 2,245 acres for 128 Ngāti Hineoneone owners (around 17.5 acres a head). Yet, compulsory takings for scenery from the Te Tuhi blocks in 1911 and 1912 totalled some 660 acres. In 1921, the Aotea District Maori Land Board confirmed a lease of the last 305 acres of Te Tuhi remaining in Māori ownership, to a Pākehā, for 34 years.

The few thousand acres Ngāti Hineoneone had left in the Tauakirā block included ‘the whole of the cultivations, settlement of Koriniti and graveyards of the people’. In 1899, it was suggested that the reserve was too small for the owners’ needs. The Crown nevertheless cut out over 750 acres of this land for scenery in 1911 and 1912. As we have noted (see section 16.3.8(4)), this included a substantial part – 306 acres – of the Pōtaka whānau farm on Tauakirā 2, at Ātene. Hōne Pōtaka’s expressed concern – that the proposed takings would scatter his family – highlight the potential significance of losing even comparatively small amounts of land. We cannot definitively confirm the claimants’ assertion.
that settlements such as Ātene had to be relocated because of scenery takings. Nevertheless, they evidently did make life at Ātene precarious.

Tracey Waitokia highlighted for us the ongoing impact of scenery preservation on Ngāti Hineoneone:

Scenic reserves are a major issue for our hapu. If you stand at the front of the marae and gaze upon the surrounding land blocks the majority . . . are either scenic reserves or Whanganui National Park lands. . . . The takings of such lands have made our hapu virtually landless in a sea of conservation estate. 243

(d) Ahakoa he iti, he pounamu (although it is small, it is greenstone): Quantity is not the only, or even the most appropriate, measure of loss. Because the river lands taken for scenery were typically those that had been withheld or reserved from earlier sales, their loss entailed more than can easily be conveyed by noting the number of acres involved.

Some of it was land used for habitation (such as Te Tuhi 4C or Waiora), or small-scale farming (again, Te Tuhi 4C is an example), or for māra (food gardens), or for gathering and hunting. 245 Numerous witnesses spoke of such areas’ use for hunting wild pigs, catching birds, harvesting pikopiko, karaka berries, and the like, or gathering materials for traditional medicines. 246 Such items could be used by the immediate family or wider kin group, or exchanged with others from further afield for commodities such as fish from coastal areas. True, under the 1910 Scenery Preservation Amendment Act the Governor could grant Māori the right to take birds from reserves created on their land, but (as noted earlier) it appears the provision was ‘scarcely used’: certainly we have uncovered no evidence of its use in Whanganui. 247 It may not have been known about or understood.

Enforced change in settlement, cultivation, and harvesting practices would have caused disruption, and possibly hardship. We do not know how quickly the affected people were able to shift their practices and consumption patterns, but in a subsistence situation such as obtained on the river, we think it extremely likely that tangata whenua were worse off.

We also note that loss of land bordering the river would probably have made it harder to use the back country profitably, as access from the river would have been more limited.

(e) Loss of commercial opportunity: Scenery brought with it commercial opportunity, and Alexander Hatrick is the prime example of a person who capitalised on every opening that came his way. We have mentioned already how the Crown compulsorily acquired the mineral spring Waiora and surrounding land to assist Hatrick’s plan to exploit these attractions for commercial gain. The Crown took the land from 230 owners, of whom at least one was living on the site. 248

Government policy at the time would have made it almost impossible for the Māori owners themselves to develop the springs commercially (had they wished to do so), not least because of the difficulty they would have had in obtaining a loan to set up a business. The possibility of their benefiting from Hatrick’s venture directly – as shareholders, or joint venturers – was not entertained. Perhaps they gained some employment. We do not know. We have mentioned the very small compensation: a one-off payment of £45, divided between Te Akihana Rangitaroia (£25) and Himiona Huriwaka (£20). 249 Meanwhile, Hatrick derived income; the tourists enjoyed the amenity; and the Crown got its annual rent of £5 a year. Te Pikikōtuku and 125 others pointed out, in their 1927 petition that objected to Māori land being taken for scenic reserves, how the benefits of their ancestral land had been lost to them and went instead to the steamship company and its tourist traffic. 250

There was no evidence about any economic benefit that Whanganui Māori derived from the tourist trade on the river. We do not know whether they worked at Hatrick’s hotel or on his boats, nor whether Māori were tourist guides. It was not until about the 1970s that there were any
Māori rangers or caretakers. (It must have been around then that Hōri Ranginui was employed to help maintain the scenic reserve at Hipango Park.)

(f) The loss of land of particular cultural significance: While some land was important to Whanganui Māori for economic reasons, they had of course retained other land – especially urupā and other wāhi tapu – for cultural reasons. Mangapāpapa is one such place. It was significant historically, and there were burial places there too. There were myriad others, for Māori had lived on the river mai rā anō (for as long as anyone could remember), and the waterway itself, where the scenery was, had also been the centre of settlement for countless generations.

We see the loss of urupā and wāhi tapu – and the manner of that loss – as perhaps the worst aspects of the scenery takings. Almost all Māori witnesses to the 1916 commission asked for their urupā to be returned to them. At the time, the commission made almost exactly the same arguments as the Crown made before us: that no harm was being done because there was provision for use of and access to urupā, and that urupā in scenic reserves would be better preserved. This did not mollify Whanganui Māori at the time – we quoted earlier what Kaiwhare Kiriona said to the commission – and they reject it still. Of overriding concern to Kiriona, and to Whanganui Māori today, are mana and tikanga.

We note that the Commission ‘very carefully investigated and considered’ this subject, as the majority of Māori wished ‘to retain their ownership or “mana” over the graves.” However it recommended the return of all urupā in only four of the six cases that Māori witnesses complained about, and in the end, only perhaps two of these recommendations were followed.

(g) The Crown’s approach flawed: We were sorry to see, when this matter came before us in the first decade of the twenty-first century, that the Crown’s thinking had not reached the point where it immediately conceded that yes, its compulsory acquisition of urupā and wāhi tapu as part of the takings for scenery was simply wrong. We would happily have heard by way of a plea in mitigation the argument that some legislative provision was made at the time to preserve rights of access, (although in practice they rarely were). It was plain to us, though – and should, we believe, have been plain to the Crown in this modern era – that even if provision of access had been effective, it would not have remedied the situation.

Quite simply, the sacred places of tangata whenua should never have been the subject of compulsory acquisition for scenery. There can be no serious argument that, by locating wāhi tapu in scenic reserves, the Crown was ensuring they would be preserved. Plainly, tangata whenua know best how to honour and protect their cultural significant places, and to take any other view is presumptuous and inappropriate.

(3) Alternatives to compulsory acquisition by the Crown

Even if the national interest required that the scenery on Māori land was preserved, did that necessarily mean that the Crown had to buy the land? Was the Crown’s eagerness to preserve scenery inherently incompatible with the Māori desire to keep their land?

The Crown never considered this question, because its scenery preservation legislation was fixed in the notion that the state needed to take over ownership of places of special beauty or historic interest so that they could be preserved in perpetuity for the enjoyment of all. State ownership provided the highest form of protection, because then, as Seddon put it, ‘nothing excepting an Act of Parliament should allow the scenery reserves to be interfered with.’

In reality, this was little more than rhetoric, since in the early years of the legislation the Crown did very little actually to protect scenic reserves. And, in the case of the mineral spring Waiora, it was quite willing to lease a reserve to a private individual for commercial purposes.

If the issue had been addressed, it would have been apparent that the situation was ideally suited to arrangements other than a change in ownership: public access to the scenery was not an issue, because most of it could be viewed from the river. The Crown could have become a lessee, or could have entered into covenants with the land’s owners to secure the long-term retention of the
forest in return for payment or other concessions. This would have put Whanganui Māori in a kind of stewardship role, quite compatible with Māori cultural values. These kinds of conservation covenants between the Crown and landowners are of course quite commonplace today.

(a) Māori land use compatible with protecting scenery: Another reason why the Crown did not have to buy the claimants’ land in order to protect its scenery is that Whanganui Māori posed comparatively little threat to the scenery of the Whanganui River. In order to protect scenery, the Crown needed to support Māori owners to remain in occupation themselves, since it was on Māori land leased to Pākehā farmers that wholesale felling of bush was likely to happen. Māori tended to farm differently. As historian Cathy Marr argues, there was a strong desire to manage development of land for agriculture so that the most valuable mahinga kai were retained and other areas modified as little as possible. In their plans for the agricultural development of the Morikau block, for example, the Māori owners insisted that the lake waters on Morikau 1 be left undrained and a portion of the bushland retained for mahinga kai. Similar stipulations were stipulated by the owners of the Ngarakauwhakarara block.

In other words, Whanganui Māori wanted a mix of traditional and modern land and resource use. This is why, when leasing blocks at this time, they sometimes imposed restrictions requiring bush preservation and wetland retention.

The Wanganui River Trust’s 1908 report described how local Māori maintained an attractive mosaic of forest and farmed landscape along the river below Pipiriki:

This seems to us quite compatible with Percy Smith’s view as chairman of the Scenery Preservation Commission that ‘a nicely cultivated farm’ would add pleasing variation to the Whanganui River scenery (although when he said this he was speaking of settlers’ farms). Indeed, even James Carroll, as a Government Minister, acknowledged that ‘Maoris were not, of their own volition, destroyers of scenery.’

(b) The impact on scenery of Pākehā land use: The same could not be said of Pākehā settlers, of course. By the early twentieth century, they had already clear-felled most of the bush on their farms in the river’s lower reaches, and were spreading up river, leasing Māori land towards Pipiriki.

Thus, the real issue for scenery preservation was how to control Pākehā use of land on the riverbanks.

This was understood at the time. When, for example, the Solicitor-General advised in 1910 that the Crown could no longer take Māori land for scenery, the Under-Secretary for Lands immediately tried to change his mind. He explained that urgent action was required in Whanganui, because some Māori had ‘arranged to lease or sell blocks of their land (including the scenic areas) to Europeans – a state of affairs which had only arisen, as James Carroll later admitted, because of ‘a great outcry . . . that native lands were not being opened up sufficiently fast.’ The implication of Pākehā settlers occupying or owning the land on the river was not just that they would fell the forest, but also that there was much more reluctance to take land that was in Pākehā hands for scenery preservation. They were, as Carroll observed, ‘much harder animals than the Maoris to deal with in regard to the preservation of scenery.

(c) Supporting mana Māori: What Whanganui Māori needed were ways to collectively regulate and control the use of their lands. Such mechanisms did, in fact, exist, albeit briefly. One such was under the Māori Councils Act 1900. This Act provided for councils in 19 districts, including Whanganui. According to its full title and preamble, it was designed to give ‘a Limited Measure of Local
Self-government’, and to provide Māori ‘some simple machinery’ through which to frame their own ‘rules and regulations’ as ‘best adapted to their own special wants’. Among other things, the Act gave councils the power to pass bylaws, including those ‘For the protection and management of eel-weirs and the regulation of . . . their construction’ so that they ‘not obstruct or impede . . . small steamers or boats’ and also for the ‘protection of river-banks or river bush-scenery’ on Māori land.267 Tom Bennion, in discussing these provisions, suggested that they bear the stamp of lobbying by ‘W[h]anganui interests’ (implying Pākehā interests), which is quite possible. Nevertheless, the important point for us is that in allowing Māori Councils to pass bylaws dealing with such matters, the Crown was effectively accepting that it saw Māori as capable of providing not only for ‘their own special wants’ but also for wider interests.268

Māori were initially very enthusiastic about these councils, and historian Raeburn Lange told us their achievements ‘might well have been enormous’ if nurtured by generous official finance and support. Instead, the system lacked ‘the practical government backing it needed’, and because starved of funds was ‘handicapped from the start’.269

Another potentially useful mechanism that the Crown created but never actively encouraged was that, under section 232 of the Native Land Act 1909, a Māori Land Board could declare a ‘Native Reservation’ for the common use of its owners. Amongst the uses specified was as a ‘place of historical or scenic interest’. These reserves were to be inalienable and restrictions could be imposed on their use.

We have no evidence concerning how often this provision was used, if at all. We suspect it did not prove of great assistance to Māori. We mention it, however, to show that, even at the time, there were alternatives to the outright acquisition of Māori land as scenic reserves in the early twentieth century. This point has gradually become more widely accepted. The Scenery Preservation Amendment Act 1933 first explicitly provided for reserving scenery on privately owned land, and it is now very common for landowners – both Pākehā and Māori – to conserve bush like this.

There is no reason why creative mechanisms could not have been deployed to secure both scenery preservation and the retention by Māori of their land. The simple fact, though, is that it took a long time for governments in New Zealand to consider any means of achieving public objectives on private land other than purchasing it outright. Certainly, no alternatives seem to have been in contemplation in the early twentieth century – arguably because Māori land rights, and Treaty rights, were not rated highly enough in the index of public priorities.

(d) Alternative sites: A key aspect of the test for compulsory acquisition of Māori land is whether the Crown could have fulfilled its policy objectives by using its own land, or by acquiring other land instead.

To preserve Whanganui River scenery, the Crown did put into reserves significant areas of land it owned, having recently acquired them from Māori. Private land that went into scenic reserves was predominantly Māori land, but perhaps that is explained by the fact that ‘there were very few, if any, settlers on the Whanganui River who had land suitable for scenery preservation’.270

We now address the question of whether, given the very significant focus on taking Māori land for scenery reserves, Māori land was chosen only because the best scenery was located there, or for other reasons.

(e) Was Māori land the only land suitable for scenic reserves? In 1906, the Scenery Preservation Commission recommended taking 19,140 acres of Māori land along the Whanganui River, but just 190 acres of general land owned by Pākehā settlers.271 That is, proposed takings from Pākehā settlers were less than one per cent of proposed takings from Māori. Actual takings had a similar ratio: some 6,678 acres as compared with about 65 acres.272 It is easy to understand why Whanganui Māori have always felt that their land was taken for scenery disproportionately.

It was the case, though, that it was on Māori land that large areas of forest remained in private hands. The Crown had already set aside much of the land it owned on the upper-river banks as public domain, while settlers had largely clear-felled their land on the lower-river banks.
Those leasing from the Crown were in fact compelled to clear their land as a condition of the lease.\(^{273}\) And the Crown did take some of the few small forest patches that remained on settlers’ land along the lower reaches of the river.\(^{274}\)

(f) Other reasons for preferring to take Māori land: Numerous Tribunals have noted that, for public works generally, the combination of lesser legislative protections; confusing and separate provisions for Māori land; and the failure to address the peculiarities of Māori land title encouraged a view among Crown officials that Māori land was cheaper and easier to take for public works than other land.\(^{275}\)

Certainly the evidence presented to us shows that Crown officials did see it as ‘a comparatively easy task to secure’ large areas of Whanganui Māori land for scenery preservation.\(^{276}\) Crown officials also told the Wanganui River Reserves Commission that they saw preservation of scenery along the Whanganui River as so important that they were willing to take some lands suitable for settlement – at least those that were owned by Māori.\(^{277}\)

(g) Conclusion on alternative sites: Thus, although we accept that a programme of scenery preservation on the Whanganui River necessarily involved Māori land, we consider that:

- the Crown took more Māori land than was necessary to serve the objective of preserving scenery;
- taking Māori land was considered easy and convenient, and this encouraged a focus on Māori land rather than other land; and
- the Crown acquired about 65 acres of settlers’ land for scenery, and this small quantity is explicable largely by the forest cover on settlers’ land having been removed by the time that scenery preservation was high on the policy agenda.

Nevertheless, we are satisfied that also at play in directing focus from settlers’ land were the additional factors of more reluctance to take their land, and the tendency to be more conservative about acreages acquired.

We can therefore conclude that although a focus on Māori land was an inevitable part of a policy aimed at preserving Whanganui River scenery, there was too much focus on taking too much Māori land, arising from factors that should not have – but did – influence Crown conduct.

(4) The Crown contemplated nothing less than freehold

We saw no evidence that the Crown consulted or negotiated with Whanganui Māori before taking their land. Nor is there any basis for supposing that, if it had, it might have discussed with the land’s owners the possibility of the Crown’s acquiring lesser or different kinds of interests, or other forms of tenure. Instead, the Crown resorted straight away to compulsory acquisition of the freehold title.

We have talked about how Crown takings began in 1907 with the mineral spring Waiora and surrounding land. In terms of showing good faith on the Crown’s part, it was not a good start. The compulsory purchase proceeded under dubious statutory authority, in order to further Hatrick’s private schemes, and to facilitate his avoiding having to negotiate with Māori landowners. Although the Crown retained ownership after the taking, it leased the springs to Hatrick and allowed him to develop them as a tourist attraction. This entirely contradicted what Seddon had said was a key purpose of scenery preservation, namely ‘to protect the thermal springs, which are of so great value to the country, from ... falling into the hands of private individuals.’\(^{278}\)

Then, once hasty and procedurally dubious takings in 1908 provoked protest, instead of pausing to review the situation, the Crown used its powers of compulsory acquisition to press on and take Whanganui Māori land as fast as it possibly could. In 1911 and 1912 alone, it took some 4,320 acres of Māori land along the river. More angry response confirmed Crown officials in the belief that they had no choice but to keep using powers of compulsory acquisition – which of course further angered Whanganui Māori.

Historian Tony Walzl characterised the Crown as ‘a relentless acquirer of Maori land’ along the Whanganui River for scenery preservation.\(^{279}\) This characterisation seems fair. The anger Māori felt and expressed at the time has left a legacy of resentment that lingers to this day.
(a) Negotiation before purchase standard practice: Even if possibilities like leasehold and covenants were not on the Crown's agenda in the early twentieth century, negotiation with owners of land to be acquired for public works was standard. The Crown should have tried to negotiate purchases for scenery preservation on the Whanganui River.

The Scenery Preservation Commission's annual reports for 1906 and 1907 are littered with references to negotiations under way in other parts of the country,

and Ngata commented, in 1916, that when the Crown sought European land for scenery, it always began by negotiating.

In fact, generally speaking, the Crown found it seldom had to use compulsory acquisition – except between 1910 and 1920, when it was favoured to acquire Māori land.

Minister of Lands Robert McNab assured Ngata in 1908, when Parliament approved spending £8,000 to purchase Whanganui Māori land for scenery, that the Scenery Preservation Board's standard policy was to meet with Native owners and endeavour 'to come to terms' over land to be acquired for the Crown.

There was ample opportunity for the Crown to talk with Whanganui Māori about what parts of their land might be suitable for scenic reserves, before making any decisions. In all, the Scenery Preservation Commission spent 10 days on the river selecting reserves in 1904 and 1905, and the Scenery Preservation Board went back to confirm these a few years later in 1908.

There is no evidence that either body discussed their plans with Whanganui Māori.

(b) The Scenery Preservation Commission and consultation: Crown counsel suggested to us that the Scenery Preservation Commission had a policy of consulting Māori. We do not consider that this is borne out by what happened. The Commission is quoted as saying that Māori should be consulted not at the beginning, when identifying areas for reserve, but at a later stage, when it came to 'arranging the boundaries with the owners hereafter on the ground' – that is, at survey time. Then, 'a give and take policy should prevail, and the wishes of the Maoris be consulted and considered so far as the scenic interest will allow.' But even this did not happen.

(c) Māori would have negotiated: The extraordinary thing is that all the evidence we have seen strongly suggests that, despite all the reasons they had to resist and oppose the Crown, Whanganui Māori were open to negotiating about giving up land for scenery.

Āpirana Ngata told the House in 1906 that Māori did not oppose scenery preservation in principle, but were only 'inclined to be irritable and take objection' if not properly approached. So, Ngata felt, if the Crown extended the simple courtesy of meeting Māori face to face on their land to gain their consent, and if owners were properly compensated, 'there need be no apprehension that there would be any opposition.'

But, Ngata was to lament 10 years later, 'the error committed by all Administrations' had been to fail to approach Māori land owners. He noted that reservations usually occurred after local bodies, or 'gentlemen who took a keen interest in scenery-preservation', approached officials. But those officials did not then talk to Māori owners. The Scenery Preservation Commission instead held its meetings far from the people whose lands they proposed to take. Māori owners only learnt the Crown wanted to take their land by reading about it in the Gazette. All in all Ngata condemned the Commission's practice as 'the worst possible way to effect the reservation'. He especially highlighted the double standards being applied to Māori:

The Native owner should be the very first man to be consulted. If it were European-owned land the very first thing the Government would do would be to approach the European owner. . . . But in dealing with the Natives they are the very last to be consulted . . .

Despite this poor record, Ngata had faith that if only properly approached, Māori would still willingly gift land to the Crown for all to enjoy as scenery.

Whanganui Māori from the lower reaches themselves sought legislation in 1900 to stop forest clearance below Pīpiriki; they stopped clearing land the Crown proposed to preserve in 1906 as soon as they were asked to do so; and they even gifted land for scenery in 1910. Petitions from Whanganui Māori from all along the river
between 1912 and 1914 stressed that they were willing to relinquish parts of their land for scenery, and this point was also reiterated again and again to the Wanganui River Reserves Commission in 1916.

(5) Conclusion
We have looked into whether the takings for scenery in Whanganui were in the national interest and as a last resort. Even if scenery preservation was in the national interest, which is uncertain in the case of many specific takings, there is no evidence that the Crown needed to:

› take it from Māori compulsorily and without negotiation;
› take as much land as it took;
› purchase it at all, because lesser interests than freehold, and other forms of tenure, would have sufficed to protect the scenery.

The Crown's takings for scenery in this inquiry therefore do not meet the bar for justifiable compulsory purchase of Māori land.

However, a finding that the Crown's compulsory purchases for scenery breached the Treaty does not get us where our jurisdiction requires us to go: we need to consider prejudice. It is in that context that we go further, and ask: even if the Crown's scenery takings breached the Treaty, was the process it followed procedurally fair, and did it pay fair compensation? The answers to these questions contribute to our assessment of the grievousness of the Crown's Treaty breaches in taking the scenic Māori land, and the seriousness of their consequences. We had little evidence on this point, so our discussion is necessarily brief. We begin by looking at process, and move then to consider compensation.

16.4.4 Fair process?
Considering the question of fair process, we return to what Ngata said in 1916 about the contrast between how Māori and Pākehā landowners were treated when it came to acquiring scenic land:

The Native owner should be the very first man to be consulted. If it were European-owned land the very first thing the Government would do would be to approach the European owner... But in dealing with the Natives they are the very last to be consulted...291

Ngata noted that scenic reserves were usually created after local bodies, or ‘gentlemen who took a keen interest in scenery-preservation,’ approached officials. But those officials did not then talk to Māori owners. The Scenery Preservation Commission instead held its meetings far from the people whose lands they proposed to take. Māori owners only learnt the Crown wanted to take their land by reading about it in the Gazette. In practice, this would have meant little if any notice for most Māori landowners, especially those living in remote communities. Ngata condemned the Commission’s practice as ‘the worst possible way to effect the reservation.’

As we noted earlier in this chapter, the Scenery Preservation Act 1903 did require the Crown to take the usual steps to effect the compulsory acquisition of land: prepare a survey and a plan of the land to be taken; deposit a copy of the plan in a convenient place in the area; gazette and publically notify the intent to take it; send a copy of that notice to all the owners and occupiers; issue a call for objections (objectors had 40 days to lodge with the Minister); and finally set a place and time to hear objections.292

However, it seems unlikely that the Crown took all the prescribed steps before acquiring the scenic Māori land in Whanganui. Although we had little evidence on the point, we saw where the Scenery Preservation Commission – charged with the job of identifying the land to be reserved for scenery – implied that its approach to acquiring Māori land was rather informal. It said that it would need to consult with Māori owners ‘hereafter’ (that is, after it had gone about identifying all the land wanted), when it would arrange ‘the boundaries with the owners... on the ground.’ Then, ‘a give and take policy should prevail, and the wishes of the Maoris [should] be consulted and considered so far as the scenic interest will allow.’293 This approach does not appear to bear any immediate relation to the procedural requirements of the Act.

Departure from the Scenery Preservation Act is also
evident in the Commission’s ‘Scenery Preservation Report’ of 1906. There, the Commission recommended reserving (in addition to other land) 19,140 acres of Māori land. The report said that acquiring the land for the reserves had already been authorised, and a survey was in hand. According to the Scenery Preservation Act, though, the first step should have been to prepare a survey and a plan of the land to be taken. Not in this case, obviously. Presumably the authorisation mentioned was the Government’s rather than the landowners’.

Ngata’s and others’ contemporary comments about how Māori did not know what land was proposed for acquisition because no one talked to them, nor gave them notice of any other kind, depict a process for the compulsory acquisition of this scenic Māori land that is entirely different from that specified by the legislation.

In summary, therefore, our impression – admittedly formed on the basis of less-than-comprehensive evidence on the point – is that niceties of process were not observed here. We have talked already about how it was standard practice to negotiate the purchase of general land, but not Māori land, and especially not this Māori land. The drive was to get this land into reserves as quickly as possible to prevent the bush being felled by Pākehā lessees or by its owners. The laborious procedure in the Act – designed to protect the interests of landowners – was not considered necessary or desirable when it came to Māori land. Certainly, we saw no evidence of its being applied here.

16.4.5 Fair price?
We know little about how much compensation was paid. We know, for example, that in 1908 it was intended that the ‘greater part’ of the £8,000 voted for Whanganui scenery preservation that year would ‘go to secure Native lands’, but we do not know how much of it actually reached the owners, and how much went to administration and other costs.

What we do know is that in the 1908–09 financial year, a total of around 5,045 acres of land (both private freehold and Māori) was acquired across the whole country for scenery preservation but only £3,813 was paid out in compensation. In the 1909–10 year, the comparable figures were 3,470 acres and £1,688 (of which less than £350 was for Māori land). Again, this was across the whole country and not just in the Whanganui area. In other words, the amount of compensation per acre is likely to have been small – and particularly small for Māori land since, unlike general land where compensation was arrived at by arbitration between the Crown and the landowner, compensation for Māori land was simply decided by the Native Land Court (a matter to which we return below). In 1916, one witness speaking to the Wanganui River Reserves Commission told them that if he was to lose his land, he wanted ‘its true value instead of this miserable £1 per acre’.

As we have seen, even a 21-acre site as commercially valuable as the Waiora Springs netted only £45 for the owners.

In asking whether the compensation was fair, there are two questions to address: who should have determined the value of the land; and what criteria should have been applied?

1 (1) Who?
From the time of the first scenery preservation legislation, Māori members of Parliament consistently asked for Māori land to be assessed under the same regime as general land.

To assess the value of general land, the Crown and affected landowners jointly selected an arbitrator who valued the land ‘on the ground’, typically in the presence of the affected parties.

A judge of the Native Land Court unilaterally determined the value of Māori land, and if Māori did not agree with the valuation, they had to argue against it before the judge in question.

In early 1917, Thomas Duncan, chairman of the Wanganui River Reserves Commission, interviewed James Mackenzie, former Chairman of the Scenery Preservation Board – a man who, as Duncan observed, ‘knew’ the scenery of the River well. Given that Mackenzie had also been Under-Secretary of Land, commissioner of Crown lands, and Surveyor-General, we can take it that he also
had a fair degree of knowledge about land and its valuation. Duncan put to him the proposition that, since ‘the bush from a scenic point of view is undoubtedly a very valuable national asset’, Māori should have the option of having the value of their land assessed by arbitration. Mackenzie was in complete agreement. They ought, he said, to have the benefit of the ‘general rules’ where both parties selected an arbitrator, adding: ‘I don’t think anything could be fairer than that.’

However, the recommended change was not made. According to Robin Hodge, this was because, despite support from Crown officials and from Māui Pōmare, Native Affairs Minister William Herries saw it as unnecessary. The judge of the Native Land Court, he felt, was ‘quite as competent to judge as any assessor.’ We note, though, that just a few years earlier, in 1914, Herries had himself put forward a Bill that envisaged something quite different. Because the tribunal that valued land taken from Māori ‘simply consists of the Native Land Court . . . without the assistance of assessors chosen by either side’, Herries proposed that for valuing their rights in waterways, Māori should have the benefit of an Appellate Court consisting of two judges, and two assessors, one chosen by Māori and the other by the Crown. Herries considered this would be ‘a better Assessment Court than they have ever had before’ and ‘fair to both the Crown and to the Natives.’

(2) Arbitration versus the Native Land Court
Robin Hodge thought Māori might have been served better by an arbitration court, although her conclusion was based on limited evidence. Clearly, it is a difficult question to answer in hindsight. There are too many variables, and too little information about what actually happened in the two different processes.

Looking to views at the time, though, Āpirana Ngata’s opinion was clear. He told Parliament in 1906 that he thought:

There was, to say the least of it, an unconscious bias in the minds of the Court, which caused a distinction to be set up between the value of land owned and occupied by Maoris and that of Europeans’ land. . . .

One European in a thickly populated Maori district would make more noise and attract more attention than a thousand Maoris, and possibly on account of that the amount of compensation payable for Maori land had been underestimated in the past.

We can therefore say with certainty that there were knowledgeable people of the time who thought that the system of Native Land Court judge as valuer was unfair to Māori. But, even if Māori land had been valued by an arbitrator rather than a Native Land Court judge, the methodology he would have used to arrive at the value would have been wanting in Treaty terms.

(3) Compensation is monocultural
Before moving to the question of whether the contemporary valuation criteria were fair or appropriate, we pause briefly simply to note that the idea that loss of land can be compensated by money is of course culturally determined. Inherent in it is the idea that the value of land is entirely, or primarily, to be conceived in monetary terms. That conception is not part of the Māori world-view.

The Crown’s scheme for taking Māori land for scenery preservation had no regard to the fact that, by the twentieth century, the land remaining in Māori hands was usually important or strategic for both cultural and economic reasons. As the Wairarapa ki Tararua Tribunal said:

Even where not much land was taken, the sense of loss is often not proportional to the roods and perches that were involved. Especially where whānau landholdings are minimal, monetary compensation is really no compensation at all for the loss felt. With multiple ownership, the amount received by individuals is anyway usually paltry.

Several witnesses to the 1916 Commission refused to accept the Crown’s compensation, and returned the money sent to them. Their stance was that no amount of money was adequate recompense for land over which
they did not want to relinquish their mana. Particularly jarring was the idea that money should be paid for urupā. Other Whanganui Māori, though, focused their objections pragmatically on the method for assessing compensation, and the level at which it was set.

The valuation criteria of the time—and indeed of today—took no account of two important factors: the land's cultural worth to Māori, and the great beauty of the forested river landscape that made it uniquely suitable for preservation in a scenic reserve.

In order for compensation to be fair, it must have regard to the loss to its owners that results from the compulsory acquisition. Clearly, Māori were losing an asset, and for that it was relevant to look at market value. But there was so much other value in the land for Māori—kinds of value that did not relate at all to the price someone would pay on the open market. It was a value special to them.

Phillip Cleaver told us how valuations of the day took no account of ‘mahinga kai, cultural perceptions, or the fact that the land comprised part of a limited area that had been retained by Māori.’

And even though this land was so beautiful, special, and unique that the Crown was turning itself inside out to buy and retain it for New Zealanders to enjoy as a national treasure, none of those kinds of attributes were regarded as compensable. The value of this rural land lay only in its potential for agriculture—and the rugged terrain and nutrient-deficient soils saw it classed as poor quality farmland.

In the words of the chairman of the Wanganui River Reserves Commission, these takings ‘were valued as a piece of ground,’ and ‘[c]liffs were valued as cliffs alone, no special value being put on their scenic beauty.’

How ironic that the Crown would go to such lengths to override Māori property rights to acquire what it insisted was a scenic asset of national importance, while at the same time running a valuation system that told its owners the land was worth very little because it could not be intensively farmed.

In 1903, Seddon said the land must be taken to protect the ‘vast wealth we have in our scenery.’ The wealth was metaphorical only, though, as Māori found. When Te Irima Te Pikikōtuku spoke to the Wanganui Reserves Commission, he specifically addressed this paradox, noting that the cliffs—useless for farming—were nevertheless ‘beauty spots . . . so interesting to a multitude of people’ that they were willing to ‘photograph and paint [them] for money.’ In no uncertain terms, he said, ‘we expect to be paid for them.’

Those expectations were in vain, for it was as low-grade farmland that the Māori land was valued, and the compensation was commensurate with that classification.

### 16.5 Māori Participation in Managing Reserves

We have spoken already of the duty on the Crown, even where the compulsory acquisition of Māori land is justified, to interfere as little as possible with the tino rangatiratanga of Māori. One obvious way to have recognised the proper status of Whanganui Māori on the river would have been to provide for their involvement in the various bodies that ran the scenic reserves over time, and also to employ tangata whenua in the day-to-day running of reserves.

The Crown did not feel itself under such a duty, however, and in fact Whanganui Māori were not represented on the bodies that managed their former landholdings as reserves until 1958. Since then, they have had one representative on the bodies variously responsible for reserve management.

We can be brief: having neither representation nor any other role, Whanganui Māori did not participate at all in any decision-making affecting their former landholdings before 1958. Plainly, they ought to have been represented on the Wanganui River Trust, alongside local body politicians, given that it was mostly Māori who lived along the river. It will be recalled that, at a certain point, the membership of the Trust’s Board did expand to include occupiers of rateable property—but this was to give a seat to Pākehā who were by then coming to live on the upper river. Equally obviously, positions as honorary rangers

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looking after the reserves ought to have been offered to Māori as well as to Europeans.

We know little about how reserve management affected Māori interests in the early days. Māori had no platform from which to raise their concerns, so this is unsurprising, and their occasional refusal to hand over control of historic sites may or may not have been a criticism of the Crown’s management regime. We do know that, once rangers were appointed, some of them – especially Downes – tried to protect historic sites, including urupā. But Whanganui Māori also complained of the taking of Māori artefacts, and explicitly criticised the lack of protection for reserves. Even Downes’s active interest was a mixed blessing, since, while he protected some sites and artefacts, he also disinterred and took photographs of kōiwi.

The presence of tangata whenua in the running of the reserves has therefore been almost non-existent since they were created. For many years, the Wanganui River Scenic Board wanted to acquire as much Whanganui Māori land as possible along the river, and as late as 1980 contemplated compulsory acquisition of a further 50,000 acres for scenery preservation. It was also sobering to note that, as recently as 1981, the Wanganui River Reserves Board refused to allow a submission on the Board’s management plan to be presented and spoken to by Whanganui Māori of the very highest mana – kaumātua who represented interests from the river’s source to its mouth.

16.6 Findings
Specific legislation in the early twentieth century treated scenic reserves as if they were public works, and authorised compulsory acquisition of land to preserve scenery.

16.6.1 Compulsory acquisition breached article 2
The compulsory acquisition of 6,678 acres of Māori land for scenic reserves on the Whanganui River breached article 2 of the Treaty of Waitangi. None of the acquisitions met the test of being necessary in circumstances where the national interest was at stake and there were no other options. All of the Crown’s actions on which we make findings here were part of that fundamental breach of the principal guarantee in the Treaty.

16.6.2 National interest advanced but no exigency
Scenery preservation was a policy objective that advanced the national interest, but it was not an exigency of the kind that justifies the compulsory acquisition of Māori land. Lives were not at risk, nor was there a state of national emergency such as might arise from a nationwide power shortage.

The level of exigency must be very high where, as here, the land was particularly valuable to tangata whenua for cultural and economic reasons and where there were other options available for preserving the scenery on the land.

16.6.3 Takings not in last resort
First, the Crown could and should simply have taken less Māori land, being careful to take only the land absolutely necessary to further its policy objectives. It should also have exercised a preference, wherever possible, for taking other land. Instead, and accepting that much of the remaining bush was on Māori land, it seems likely that the official view was that taking Māori land was easier and generally preferable to taking other land.

Rather than proceeding straight to compulsory acquisition of Māori land on the Whanganui River, the Crown could have:

› negotiated with the Māori owners to purchase scenic land (negotiation was standard when land was wanted from Pākehā owners), or negotiated other arrangements that would allow Māori to continue using the land while protecting its scenery;
› used section 232 of the Native Land Act 1909 to declare a ‘Native Reservation’ as a ‘place of historical or scenic interest’ for the common use of its owners, as this provision allowed the imposition of restrictions on its use;
› empowered Māori Councils to have a role in scenery
preservation, as suggested by the Central North Island Tribunal, \textsuperscript{35} and
- legislated to facilitate the compulsory acquisition of interests in the land that were less than the freehold interest (leases, licences, covenants).

\textbf{16.6.4 Taking wāhi tapu particularly reprehensible}

We regard as particularly reprehensible the Crown's conduct in compulsorily acquiring urupā and wāhi tapu, especially in cases where the owners of the land in question had told the Wanganui River Reserves Commission why they needed to retain mana over this land. The sacred places of tangata whenua should never have been compulsorily acquired for scenery. Allowing Māori to access urupā does not retrieve the Crown's position.

The Crown's reluctance to acknowledge its breach in taking the urupā, and to recognise immediately the need to return them as soon as possible, exacerbates the Crown's hara (sin, blameworthiness).

We note that the Crown indicated in other submissions that it may be prepared to return urupā if land was lost in breach of the Treaty. It says, however, that this will depend on the current status of the land.\textsuperscript{36} In the case of urupā on land taken for scenery preservation, we think it is unlikely that any will have fallen into private ownership, since the whole point of the takings was that the land should come under the control of the Crown.

\textbf{16.6.5 The Crown must consider if Māori can spare land}

The Crown acknowledged that when acquiring Māori land for public works, it must consider whether affected landowners will retain sufficient land to cater for their foreseeable needs.

The Crown embarked upon its programme of land purchase for scenery protection in 1903, without consideration of whether Whanganui Māori had land to spare.

Then, in 1907, the Stout–Ngata Royal Commission gave the Crown the best and most reliable information then obtainable on what land Māori could afford to give up. They told the Crown that while there may still have been room for small areas of Whanganui Māori land to be purchased and preserved, large scale land alienations along the Whanganui River were no longer appropriate. Rather than following this advice, the very next year the Crown authorised taking 19,000 acres of Māori land along the Whanganui River for scenery preservation. This comprised most of the riverside land that remained to Māori.

This conduct was a further breach of the Crown's duty of active protection.

Legislative complications and the outbreak of the First World War – which placed new and more pressing demands upon the Government's attention and finances – ultimately meant that the quantity of Māori land taken for scenic reserves along the Whanganui River was significantly less than originally authorised.\textsuperscript{37} In the end, some 6,678 acres were taken by the Crown. Although less than the 19,000 acres originally authorised, these 6,678 acres nevertheless constituted a loss that Whanganui Māori (who had already seen so much of their land alienated) could ill afford.

\textbf{16.6.6 Compulsory acquisition regime monocultural}

The regime for taking scenic land was like the public works regime, and was monocultural in the same ways.

In enacting it, the Crown did not take account of the special significance of land to Māori. It also gave no weight to the important fact that, by the twentieth century, the land remaining in Māori hands was usually significant or strategic for both cultural and economic reasons. By facilitating the easy purchase of Māori land for scenery, the Crown failed to protect Māori from unnecessary cultural, spiritual, and economic loss.

Inherent in the idea that owners can be compensated for loss of land by payment of money is a conception of land as an asset rather than as a taonga. Moreover, the criteria for calculating the value of this riverside land did not recognise its special value to tangata whenua, nor its unique scenic beauty. It was valued only by reference to its potential as farmland, which delivered both cultural insult and a low price.

The Crown's monoculturalism in operating such a regime breached its duty of partnership.
16.6.7 Valuation process
Māori objected to their land being valued by a Native Land Court judge, whereas general land went through an arbitration process. It is impossible now to ascertain whether the different systems actually produced results that were disadvantageous to Māori, but they certainly thought so at the time, and that view was upheld by an independent Royal Commission. Owners of Māori land who disagreed with a valuation had to contest it in the same forum that produced it, and this was inherently unsound procedurally.

We find that there was no proper basis for the Crown to operate a different valuation system for Māori land. It would have been fairer for Māori to have had available to them the system that was available to owners of general land.

The Crown’s failure to allow this breached article 3 of the Treaty.

16.6.8 Poor process
The Crown enacted procedural safeguards for owners of land to be compulsorily acquired for scenery, but these do not appear to have been applied to owners of Māori land on the Whanganui River. Such failure breached the Crown’s duty of active protection, and article 3.

16.6.9 Cultural harm
We find that Whanganui Māori all along the river between Taumarunui and Raorikia suffered cultural harm, through the Crown trampling on their mana and presuming to take ownership and control of their taonga. This was a breach of the plain meaning of article 2 of the Treaty, and of the principles of partnership and active protection.

16.6.10 Economic harm
Although it is not possible to quantify the extent of the economic harm to Whanganui Māori that resulted from the compulsory acquisition of those 6,678 acres that went into scenic reserves, we consider that there is sufficient evidence for us to infer that they suffered adverse economic effects from these factors:

- several groups already had too little land left, so that their remaining land played a critical economic role;
- areas suitable for, and previously used for, food cultivation were reduced;
- reduced acreages made remaining landholdings less viable for farming;
- because remaining on the land was more marginal economically, settlement patterns were affected;
- the prices paid for their land were low because of how the valuation criteria operated; and
- they were excluded from the economic opportunities arising from tourism (although factors other than land ownership were also involved here).

16.6.11 Māori excluded from management of reserves
Whanganui Māori were excluded from management of and decision-making concerning scenic reserves until 1958. From that time, the provision of one seat on various responsible boards was entirely inadequate. Its inadequacy is demonstrated by the Whanganui River Scenic Board’s seeking to acquire Māori land for scenery preservation right up until comparatively recent times. Had a Māori voice been sufficiently strong, that culture would have changed much sooner.

Failure to provide for adequate Whanganui representation in the management and governance of scenic reserves breached the Crown’s duty to interfere with tino rangatiratanga as little as possible when engaging in compulsory acquisition of Māori land, and also breached its duty of partnership.

The modern regime for reserve management has been in place since 1990. Since the role of Whanganui Māori in that regime is inextricably linked to their relationship with the Department of Conservation, we make those findings in our chapter on the department and its role in managing the Whanganui National Park.

16.7 Recommendations
We recommend that the Crown returns to Whanganui Māori title in all urupā and other outstanding wāhi tapu
located on land it compulsorily acquired from them for scenic reserves. We mention in particular the sites about which we received evidence, which we have listed in appendix VII.

We reserve our recommendations about increased and different involvement of tangata whenua in management and governance of the land they formerly owned for our chapter on Whanganui National Park, since inclusion in the park was the ultimate fate of most of the land taken for scenery preservation.

Notes
1. Under-Secretary for Lands to William Massey, Minister in Charge of Scenery Preservation, 1 June 1915, AJHR, 1915, C-6, p 1
2. Document A34 (Hodge), pp 80, 188; Robin Hodge, under questioning by the presiding officer, fifth hearing, 12 March 2008 (transcript 4:15, p 147)
3. Wai 262 ROI, doc K4 (Park), p 308
5. Document B38 (Waitokia), p 10
10. Submission 3.3.58(a), pp 75–76
11. Submission 3.3.58(d), p 1; submission 3.3.58(a), pp 74–75, 78
12. Submission 3.3.58(a), p 78
13. Ibid, pp 86–89
14. Ibid, p 95
15. Claim 1.5.5, pp 321–322
16. Submission 3.3.58(a), pp 100–102
17. Ibid, p 104
18. Submission 3.3.87, p 3; submission 3.3.58(a), pp 74–76, 80, 84
19. Submission 3.3.120, pp 23–24
20. Submission 3.3.126, pp 2–4
21. Submission 3.3.120, pp 23–25
22. Ibid, p 25
23. Ibid, pp 29–30
24. Ibid, pp 32–33
25. Ibid, p 32
26. Ibid, p 28
27. Ibid, pp 30–32

29. ‘Our River Scenery’, Wanganui Chronicle, 31 May 1910, p 8
30. Ibid
31. Ibid
32. ‘Notes of Native Meetings’, AJHR, 1885, G-1, p 3
33. Document A13 (Marr), p 81
34. Document A61 (Rose), p 140
35. Document A34 (Hodge), p 13; Document A13 (Marr), p 82
36. Wanganui River Trust Act 1891, s 11
37. Wanganui River Trust Act Amendment Act 1893, s 2
41. Robert Campbell, Rapids and Riverboats on the Wanganui River (Wanganui: Wanganui Newspapers Ltd, 1990), pp 94–96
43. Document E9 (Haitana), pp 4–5
44. Wanganui River Trust Act 1891, s 9
45. ‘Amending the Boundaries of the Wanganui River Trust Endowment, and cancelling the Order in Council vesting Land in the Wanganui River Trust’, 7 January 1895, New Zealand Gazette, 1895, no 2, p 37
46. The amending gazette notice of 1895 refers to the original proclamation of the domain lands: ‘Land set apart as a Public Domain under “The Wanganui River Trust Act, 1891”, 19 December 1892, New Zealand Gazette, 1892, no 101, p 1724. That proclamation, however, did not gazette any land in the Ahuahu block, and a search of the Gazette reveals no other such proclamation.
48. Archibald Willis, 22 October 1903, NZPD, 1903, vol 126, p 710
49. Archibald Willis, 21 September 1894, NZPD, 1894, vol 86, p 200
50. ‘Forests Conservation: Reports by Commissioners of Crown Lands Dealing with the Preservation of Native Flora and Fauna’, AJHR, 1903, C-13B, pp 1, 12
52. Richard Seddon, 22 October 1903, NZPD, 1903, vol 126, p 712
53. Ibid, p 704
54. Ibid, pp 709–712
55. Scenery Preservation Act 1903, title
56. Document A34 (Hodge), p 64
57. Wai 1200 ROI, doc A82(c) (McBurney supporting documents), vol 12, p 3420; see also doc A82 (McBurney), p 47
58. Document A34 (Hodge), pp 64–65; Wai 1200 ROI, doc A82(c) (McBurney supporting documents), vol 12, p 3420
59. Document A34 (Hodge), pp 64, 66
60. Ibid, pp 14–15
61. Hone Heke, 22 October 1903, NZPD, 1903, vol 126, pp 710–711
62. ‘Wanganui River Scenery Preservation’, Wanganui Herald, 3 October 1904, p 7
63. 'Scenery Preservation Commission', Wanganui Herald, 3 October 1904, p 7; 'Scenery Preservation Commission', Wanganui Herald, 26 September 1904, p 5.

64. 'Scenery Preservation Commission', Wanganui Herald, 27 January 1905, p 7.


68. Ibid; doc A34 (Hodge), p 67.


70. Document A34 (Hodge), p 66.

71. 'Scenery Preservation Report', AJHR, 1906, c-6, p 11.

72. Scenery Preservation Amendment Act 1906, s 3.


74. 'Scenery Preservation Report', AJHR, 1908, c-6, pp 5, 14.


76. 'Scenery Preservation Report', AJHR, 1908, c-6, pp 5, 14–16.


81. The final text read (at section 29): ‘Where any land set apart by a Maori Land Board as a reserve, other than as a papakainga reserve, is in the opinion of the Scenery Preservation Board suitable for scenic purposes, the Maori Land Board may, with the consent of the Native Minister, having due regard to the interests of the beneficiaries, transfer such reserve by way of sale to the Crown for such purposes.’

82. 'Scenery Preservation Report', AJHR, 1907, c-6, p 33.

83. Ibid, pp 24, 33.


86. Document A39 (Boulton), pp 176–177; doc A51 (Walzl), pp 197–199; doc E12 (Southen), p 7; doc E16(a) (Pucher), app 8; submission 3.3.20, pp 5–6.

87. Taranaki Herald, 6 March 1907, p 1.

88. Document A39 (Boulton), pp 175–176, 181; doc A51 (Walzl), pp 198–199; Campbell, Rapids and Riverboats, p 77.

89. Various speakers, 10 October 1908, NZPD, 1908, vol 145, pp 1189–1190; doc A34 (Hodge), p 69.


92. 'Scenery Preservation Report', AJHR, c-6, 1908, p 1; doc A34 (Hodge), p 5.

93. For quotations see respectively Chief Surveyor to Under-Secretary for Crown Lands, 1 April 1910, ACGT 18190 LSI 1371–1372 record 10; Wanganui River Scenic Reserve, Commission, Archives New Zealand, Wellington.


101. Document A34 (Hodge), pp 70, 85; ‘Scenery Preservation Report’, AJHR, 1910, c-6, p 2. Also see Under-Secretary of Lands W Kensington to E Phillips Turner, 25 January 1910. Phillips Turner was told to begin surveying lands ‘which it is most needful to reserve first, on account of their probable disposal either by the Aotea Maori Land Board, or by the native owners, at an early date if they are not first taken under the Public Works Act’. The urgency is shown by the fact that Prime Minister Ward himself had to be specially asked to authorise the appointment of a second party of surveyors, since it was not budgeted for: see Kensington to Prime Minister, [circa 9 February 1910]. For Hatrick’s assistance, see W Kensington to A Hatrick, 25 January 1910, ACGT 18190 LSI 1371–1372 record 10; Wanganui River Scenic Reserve, Commission, Archives New Zealand, Wellington.
Archives New Zealand, Wellington; doc A34 (Hodge), p 113

Pukehika, December 1916, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington


Scenery Preservation Amendment Act 1910, ss 3(b), 10; see also Wai 262 R01, doc K4 (Park), p 295

Document A34 (Hodge), pp 247–248

Document A34 (Hodge), pp 86–87; doc B52 (Ngāti Hineoneone bundle of documents), p 20

Document A34 (Hodge), pp 88–89

Ibid, p 89

Ibid, pp 89–90

Wai 262 R01, doc K4 (Park), pp 309–310; doc A34 (Hodge), pp 85, 88

Document A51 (Walzl), p 206

Ibid, pp 210–211

Ibid, pp 212–213

Wai 262 R01, doc K4 (Park), pp 312–313

Document A37 (Berghan), pp 12–18; doc A66 (Mitchell and Innes), p A1

Document A102 (Edwards), p 198; doc A37 (Berghan), pp 13, 18

Document A37 (Berghan), pp 12–19. The parcel Ahuahu B is shown on Maori Land Online as Crown land, but also as having four Māori owners.

‘Scenery Preservation Report’, AJHR, 1912, c-6, pp 2, 4–5; doc B41 (Wegman), p 3

‘Scenery Preservation Report’, AJHR, 1914, c-6, p 8

Wai 262 R01, doc K4 (Park), p 308

Ibid, pp 30–31

Document A34 (Hodge), pp 86–87; doc B52 (Ngāti Hineoneone bundle of documents), p 20

Document A34 (Hodge), pp 88–89

Ibid, p 89

Ibid, pp 89–90

Wai 262 R01, doc K4 (Park), pp 309–310; doc A34 (Hodge), pp 85, 88

Document A51 (Walzl), p 206

Ibid, pp 210–211

Ibid, pp 212–213

Wai 262 R01, doc K4 (Park), pp 312–313

Document A37 (Berghan), pp 12–18; doc A66 (Mitchell and Innes), p A1

Document A102 (Edwards), p 198; doc A37 (Berghan), pp 13, 18

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‘Scenery Preservation Report’, AJHR, 1912, c-6, pp 2, 4–5; doc B41 (Wegman), p 3

‘Scenery Preservation Report’, AJHR, 1914, c-6, p 8

Wai 262 R01, doc K4 (Park), p 308

Document A34 (Hodge), pp 86–87; doc B52 (Ngāti Hineoneone bundle of documents), p 20

Document A34 (Hodge), pp 88–89

Ibid, p 89

Ibid, pp 89–90

Wai 262 R01, doc K4 (Park), pp 309–310; doc A34 (Hodge), pp 85, 88

Document A51 (Walzl), p 206

Ibid, pp 210–211

Ibid, pp 212–213

Wai 262 R01, doc K4 (Park), pp 312–313

Document A37 (Berghan), pp 12–18; doc A66 (Mitchell and Innes), p A1

Document A102 (Edwards), p 198; doc A37 (Berghan), pp 13, 18

Document A37 (Berghan), pp 12–19. The parcel Ahuahu B is shown on Maori Land Online as Crown land, but also as having four Māori owners.

‘Scenery Preservation Report’, AJHR, 1912, c-6, pp 2, 4–5; doc B41 (Wegman), p 3

‘Scenery Preservation Report’, AJHR, 1914, c-6, p 8

Wai 262 R01, doc K4 (Park), p 308

Document A34 (Hodge), pp 86–87; doc B52 (Ngāti Hineoneone bundle of documents), p 20

Document A34 (Hodge), pp 88–89

Ibid, p 89

Ibid, pp 89–90

Wai 262 R01, doc K4 (Park), pp 309–310; doc A34 (Hodge), pp 85, 88

Document A51 (Walzl), p 206

Ibid, pp 210–211

Ibid, pp 212–213

Wai 262 R01, doc K4 (Park), pp 312–313

Document A37 (Berghan), pp 12–18; doc A66 (Mitchell and Innes), p A1

Document A102 (Edwards), p 198; doc A37 (Berghan), pp 13, 18

Document A37 (Berghan), pp 12–19. The parcel Ahuahu B is shown on Maori Land Online as Crown land, but also as having four Māori owners.

‘Scenery Preservation Report’, AJHR, 1912, c-6, p 9

Document A34 (Hodge), pp 90–91

Ibid, p 93; Māui Pōmare, 3 August 1916, NZPD, 1916, vol 177, p 750

Document A34 (Hodge), p 93

Ibid, p 104

Wanganui River Reserves Commission, evidence of Hōri Pukehika, December 1916, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 96

Wanganui River Reserves Commission, evidence of Rongonui Te Whitu, December 1916, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 113

Document A34 (Hodge), pp 100–110

Wanganui River Reserves Commission, evidence of Kaiwhare Keremeneta, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 102

Wanganui River Reserves Commission, evidence of Hēnare Tāwhiao, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 109–110

Wanganui River Reserves Commission, evidence of Te Iringa Te Pikikōtuku, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 109

Document A34 (Hodge), pp 102, 105, 113

Ibid, p 95


Report of the Wanganui River Reserves Commission, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), pp 119–122

Document A34 (Hodge), pp 122–134

Ibid, p 121

Ibid, pp 30–31

Wanganui River Trust, advertisement, ‘Lands for Lease by Public Auction, at Taumarunui, on Wednesday, the 16th day of April, 1913’; Hākiaha Tāwhiao to Māui Pōmare, 10 April 1913; Miriama Kahukarewao and two others to the Minister of Native Affairs, 17 April 1913, MA1/1111 1913/3832, Archives New Zealand, Wellington

Document A158 (Alexander), p 115

Document A34 (Hodge), pp 122–132

Ibid, p 121

Ibid, pp 125–127, 141

Ibid, p 131

Ibid, pp 109–110

Ibid, p 121

Te Hikaka Takirau, minority report of the Wanganui River Reserves Commission, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington

Document A34 (Hodge), pp 134–135

Document A34 (Hodge), pp 31–32

Ibid, pp 136–137

Ibid, p 137

Ibid, p 139

Ibid, pp 139–142

Wai 262 R01, doc K4 (Park), p 268

Reserves Act 1977, s12(1)(b); doc A34 (Hodge), pp 22–23

We regret that we have no data on land that the Crown might have acquired elsewhere in the inquiry district.

Document A43 (Hodge), p 38

169. Robin Hodge, under questioning by Angela Ballara and presiding officer, fifth hearing, 12 March 2008 (transcript 4.1.5, pp 127, 147)

170. Wai 262 R01, doc K4 (Park), pp 296–297


173. Document A34 (Hodge), p 148

174. Ibid, p 149


176. Document A34 (Hodge), p 19

177. Wai 262 R01, doc K4 (Park), pp 247–248

178. Document A34 (Hodge), pp 159–165

179. Ibid, pp 160–161

180. Ibid, p 165

181. Ibid

182. Ibid, pp 166–167; Campbell, *Rapids and Riverboats*, p 193

183. Document A34 (Hodge), p 166; Bill Rangiiniui, oral evidence and under questioning by Rangiiniui Walker, 29 August 2007, Wanganui Racecourse (transcript 4.1.2, pp 199, 204)

184. Campbell, *Rapids and Riverboats*, p 196

185. Document A34 (Hodge), pp 160–161

186. Ibid, pp 168–169

187. Ibid

188. Ibid, p 169


190. Document A34 (Hodge), pp 171–172

191. Ibid, p 172

192. Ibid, pp 173–176, 179

193. Ibid, p 177

194. Ibid, p 178

195. Ibid

196. Ibid, p 179

197. Ibid, p 180

198. Ibid, p 181

199. Ibid, pp 181–182

200. Ibid, p 182

201. Ibid, pp 175–176

202. Ibid, p 180

203. Ibid, p 25

204. Ibid

205. Reserves Act 1977, s 40(2). This clause was inserted by section 95 of the Conservation Law Reform Act 1990.

206. Document A34 (Hodge), pp 80, 188

207. This was directly addressed in the Waitangi Tribunal’s *Wairarapa ki Tararua Report* at page 786 (section 8.4.1(4)). See also submission 3.1.126.


209. The Tribunal reports that contributed most to the compulsory acquisition jurisprudence that we endorse are the *Te Maunga Railways Report*, the *Ngai Tahu Report*, the *Turangi Township Report*, the *Central North Island Report*, and the *Wairarapa ki Tararua Report*. The Wairarapa ki Tararua Tribunal distilled the work of those previous Tribunals on this topic, and we follow the reasoning and approach outlined in chapter 8 of its report.


211. Wai 1200 R01, doc A82 (McBurney), p 58


214. Ibid, p 710

215. See chapter 14 for discussion of the work of the Stout–Ngata Commission.


217. ‘Native Lands and Native-Land Tenure: General Report on Lands Already Dealt with and Covered by Interim Reports’, AJHR, 1907, g 1c, p 9


219. ‘Native Lands and Native-Land Tenure: General Report on Lands Already Dealt with and Covered by Interim Reports’, AJHR, 1907, g 1c, p 13

221. 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 4
222. AJHR, c-6, 1911–1916; Dominion, 30 April 1912, p 6
223. Wanganui River Reserves Commission, evidence of James Mackenzie, ABWN 8926 W5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 114
225. Ibid, p 115
226. Ōpirana Ngata, 3 August 1916, NZPD, 1916, vol 177, p 744
227. Document A34 (Hodge), pp 39, 141–142
228. Submission 3.3.120, p 24
229. Ibid, p 25
230. Ibid, p 32
232. Document A37 (Berghan), p 1074; 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, pp 3–4
233. 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 4; doc A51 (Walzl), pp 172, 182
234. Document A34 (Hodge), p 90
235. Document A55 (Clayworth), pp 96–97
236. Document A34 (Hodge), pp 103–108
237. Ibid, pp 125, 126, 127, 130, 131, 132
238. Ibid, pp 53–54, 99, 132
239. Document A37 (Berghan), p 885
240. Whanganui Native Land Court, minute book 41, 28 June 1899, fol 179 (doc A37 (Berghan), p 876). The speaker was Hōri Pukehika.
241. Document A37 (Berghan), p 876
242. Document A34 (Hodge), pp 86, 89–90
243. Document B38 (Waitokia), p 10
244. Document A18 (Cross and Bargh), p 95; doc A57 (Cleaver), pp 89–90
245. Document A124 (Shenton), p 3; doc B44 (Ranginui), pp 6–7; doc E3 (Taurerewa), pp 9–10
246. See, for example, documents B5, B8, B9, B10, B11, B54, D46, F9, G7, H9.
247. Wai 262 R01, doc K4 (Park), pp 247–248
248. Document A51 (Walzl), pp 198; doc A39 (Boulton), pp 177, 181
249. Ibid, p 198
250. Wai 167 claim, doc A49 (Bennion), p 109
251. Document B44 (Ranginui), pp 4–5
252. Document A34 (Hodge), p 102
253. Ibid, p 121
254. Ibid, pp 100–110, 125–127, 131, 141. Māori witnesses to the Commission complained that urupā were being taken from the Ahauahau, Tauakira 2N, Waharangi 2, Waharangi 3, Ōhoutahi 2, and Köiro 1 blocks.
255. Ibid, pp 39, 141–142
256. Submission 3.3.120, p 32
257. Scenery Preservation Amendment Act 1910, s 7
258. Richard Seddon, 22 October 1903, NZPD, 1903, vol 126, p 705
259. Document A36 (Marr), p 119
261. 'Scenery Preservation Commission', Wanganui Herald, 27 January 1905, p 7
262. 'Our River Scenery: A Plea to Prevent Deforestation Hon Jas. Carroll Deputationised A National Not a Local Problem', Wanganui Chronicle, 31 May 1910, p 8
263. Document A34 (Hodge), pp 5, 187; doc A51 (Walzl), pp 200–201;
264. 'Official Vandalism', Wanganui Herald, 16 April 1903, p 4
265. Document A51 (Walzl), pp 199–202
266. 'Our River Scenery: A Plea to Prevent Deforestation Hon Jas. Carroll Deputationised A National Not a Local Problem', Wanganui Chronicle, 31 May 1910, p 8
267. Maori Councils Act 1900, s16(9)
268. Wai 167 R01, doc A49 (Bennion), p 92
270. Robin Hodge, under cross-examination by Jason Pou, fifth hearing, 12 March 2008 (transcript 4.1.5, pp 108, 117)
271. Document A34 (Hodge), p 66
272. In her report, and under questioning, Hodge was unsure whether any Pākehā-owned freehold was taken. See Hodge, under questioning by presiding officer, fifth hearing, 12 March 2008 (transcript 4.1.5, p.149). However, her report actually refers to some 24 acres of freehold land taken from Ōhoutahi block in 1914 (this was land held by the Catholic Mission): doc A34 (Hodge), p.40. In addition, small parts of freehold land from the Ramahiku and Kānihinihi blocks (42 acres) were also taken for Puketarata Scenic Reserve in 1912 and 1913 respectively. The Wanganui River Reserves Commission report of 1916 noted that these lands were freehold. See Wanganui River Reserves Commission report, pp 10, 13, ABWN 8926 W5278 box 82 record 228.7 Wanganui River Reserves Commission, Archives New Zealand, Wellington; E Phillips Turner to Under-Secretary for Lands, 6 February 1910, ACGT 18190 LS1 1371 record 310, Wanganui River Scenic Reserve Commission, Archives New Zealand, Wellington.
273. 'Official Vandalism', Wanganui Herald, 16 April 1903, p 4;
274. Edward Phillips Turner to Under-Secretary for Lands, 6 February 1910, ACGT 18190 LS1 1371 record 310, pt 3, Wanganui River Scenic Reserve Commission, Archives New Zealand, Wellington. These are the small areas taken from the Ramahiku and Kānihinihi blocks referred to above.
275. Waitangi Tribunal, Wairarapa ki Tararua Report, vol 2, p 794
277. Document A34 (Hodge), pp 117–118
278. Richard Seddon, 22 October 1903, NZPD, 1903, vol 126, pp 704–705
279. Document A51 (Walzl), p 327
280. 'Scenery Preservation Report', AJHR, 1906, c-6; 'Scenery Preservation Report', AJHR, 1907, c-6
281. Āpirana Ngata, 3 August 1916, NZPD, 1916, vol 177, p 743
282. Tony Nightingale and Paul Dingwall, Our Picturesque Heritage: 100 Years of Scenery Preservation in New Zealand (Wellington: Department of Conservation, 2003), p 22
283. Robert McNab, 10 October 1908, NZPD, 1908, vol 145, pp 1189–1190
284. 'Wanganui River Scenery Preservation', Wanganui Herald, 3 October 1904, p 7; 'Scenery Preservation Commission', Wanganui Herald, 27 January 1905, p 7; 'Scenery Preservation Report', AJHR, 1908, c-6, pp 10, 14
285. Submission 3.3.120, pp 24–25
287. Āpirana Ngata, 24 October 1906, NZPD, 1906, vol 138, p 596
288. Āpirana Ngata, 3 August 1916, NZPD, 1916, vol 177, p 743
289. 'Preservation of River Scenery', Wanganui Herald, 26 September 1900, p 3
290. 'Through the District', Wanganui Herald, 3 April 1906, p 6
291. Āpirana Ngata, 3 August 1916, NZPD, 1916, vol 177, p 743
292. Document A34 (Hodge), pp 14–15
293. Ibid, pp 66–67
294. 'Scenery Preservation Report', AJHR, 1906, c-6, p 11; doc A34 (Hodge), p 66
295. Āpirana Ngata, 10 October 1908, NZPD, 1908, vol 145, pp 1189
296. 'Scenery Preservation Report', AJHR, 1909, c-6, pp 2, 5, 6
297. 'Scenery Preservation Report', AJHR, 1910, c-6, pp 1, 2, 4–5
298. Document A34 (Hodge), p 117
299. Ibid, p 107
300. Document A34 (Hodge), pp 117, 121, 138
301. Scenery Preservation Act 1908, s 6(2); Public Works Act 1908, s 91
302. Wanganui River Reserves Commission, evidence of James Mackenzie, January 1917, ABWN 8926 w5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), pp 94, 114–115
303. Document A34 (Hodge), p 142
304. William Herries, 3 November 1914, NZPD, 1914, vol 171, pp 780–781
305. Document A34 (Hodge), p 146
307. Waitangi Tribunal, Waiparapa ki Tararua Report, vol 2, p 800
308. Document A57 (Cleaver), p 114
309. Document A34 (Hodge), p 152
310. Ibid, p 114
311. Richard Seddon, 22 October 1903, NZPD, 1903, vol 126, pp 704–705
312. Wanganui River Reserves Commission, evidence of Te Iringa Te Pikikotuku, ABWN 8926 w5278 box 82 record 228.7, Archives New Zealand, Wellington; doc A34 (Hodge), p 109
313. Document A34 (Hodge), pp 165–167
314. Document B39 (Bill Ranginui), p 8; Bill Ranginui, oral evidence, 29 August 2007, Wanganui Racecourse (transcript 4.1.2, pp 199, 204)
315. Waitangi Tribunal, He Maunga Rongo, vol 2, p 842
316. Submission 3.3.120, pp 32–33
317. Document A34 (Hodge), p 73
318. Ibid, pp 98, 108, 109, 111, 117, 121
319. Ibid, p 142

Alexander Hatrick

Hipango Park
1. Robert Campbell, Rapids and Riverboats on the Wanganui River (Wanganui: Wanganui Newspapers Ltd, 1990), p 155; Wai 167 b01, doc A49 (Bennion), p 104

Highlighted quotations
1. Document B1 (Clarke), p 49
2. Richard Seddon, 22 October 1903, NZPD, 1903, vol 126, pp 704–705
3. 'Stop It At Once' (editorial), Wanganui Chronicle, 22 February 1910, p 4
Map 17.1: Location of native townships in the Whanganui inquiry district
CHAPTER 17

NATIVE TOWNSHIPS

17.1 INTRODUCTION
In the late nineteenth and early twentieth centuries, the Crown introduced a special regime for establishing small towns on Māori land. These settlements were called ‘native townships’. The name is rather misleading; although the towns sat on Māori land, they were established to further European settlement. Under the regime, Māori transferred their land in trust to the Crown, or district Māori land councils and boards, which then developed the land into towns. Between 1896 and 1907, 18 native townships were established in the north Island. We discuss two in this chapter: Pīpiriki, situated on the Whanganui river and the first native township to be established; and Taumarunui, at the northern end of the inquiry district. A third township, Ōhotu, was planned but not set up under the native township regime.

Although they involved relatively small amounts of land, native townships had a disproportionate effect on Māori because they were situated on their kāinga. They were typical of Māori experiences of land development at the end of the nineteenth century, when the Crown wanted the cooperation of Māori to develop land, but took a very heavy-handed approach. Māori authority over land inevitably fell away when the native township scheme involved their leasing their land to the Crown or Māori land boards for towns that were neither in Māori ownership nor under their control. Whanganui Māori would of course have preferred to be included in the administration of the towns. Then, with careful management, the towns might have delivered them financial benefits, but the Crown was not sufficiently focused on solving the problems that emerged, and any positive outcomes of the townships went to others.

17.2 THE PARTIES’ POSITIONS
17.2.1 What the claimants said
(1) The legislation, and economic benefits
The claimants characterised the townships legislation as a way for the Crown, at the behest of settlers, to relieve Māori of their land without their consent, and with minimal compensation or other benefit. They likened appropriation of land for native townships to compulsory acquisition for public works.

Claimants focused on the Native Townships Act 1895. They said it was imposed on Māori, who would not have wanted its radical measures for putting their land into trust with the Crown. They said the Act was ‘devoid of any mutuality’ and ‘entirely a European
and not a Maori initiative’. Moreover, it was ‘entirely concerned with the compulsory taking of Maori land for townships in the national interest’; Māori interests came a poor second, if they featured at all.3

Overall, they argued, the relationship between the trustees who managed native townships (the Crown, district Māori land councils, and district Māori land boards) and beneficiaries (the Māori customary owners) was not properly designed or regulated: the trustees had too much power, and beneficiaries’ interests were not properly protected. In particular, the regime for the creation and management of reserves set aside for Māori occupation in the towns was not well thought out, and did not meet Māori needs.4

The claimants also said that the legislative schemes governing native townships provided inadequate safeguards for Māori. Owners had little say in the layout of the town, were restricted in the area they could occupy, and received no compensation for land taken for public works. The Crown later altered the regime, enabling perpetual leases and sales of land, without properly discussing the changes with Māori, or having proper regard for their land interests. It did not even protect the sections reserved for Māori occupation from sale.5

(2) Pipiriki
Ngāti Kurawhatia, under the umbrella of the Pipiriki Incorporation claim, made specific submissions about Pipiriki native township, and the Tamahaki Council of Hapū and Uenuku Tūwharetoa adopted the general submissions on native townships.6

The claimants said that Whanganui Māori agreed to a township at Pipiriki on the condition that they retained control of the land; and it is unlikely that Whanganui Māori were aware of the existence of the 1895 Act or its specific provisions. The Crown deliberately misled the owners by describing itself as an agent for the owners rather than a trustee, and downplaying the amount of control it would have over the land.7 The claimants drew attention to a document that Te Keepa drafted during his negotiations with the Crown about Pipiriki native township in 1895, which set out certain conditions for a township. Claimants said that the Crown was obliged to honour these conditions and, if the Crown did not agree to them, then the establishment of the township should be seen as a compulsory acquisition.8

The claimants also argued that there is no evidence that the Crown consulted Māori about reserves for their occupation, or considered what would comprise sufficient reserves. It took land without compensation for public works, and made unfulfilled promises that there would be significant income from rents and employment in the town. Potential income for Māori from the township was undermined by the imposition of unreasonable survey costs, possibly without prior or adequate explanation. The Crown failed to look after the owners’ interests when it imposed perpetual leases, and also acted unreasonably when it refused to return land to owners until long after it was clear that the town was not a success.9

(3) Taumarunui
A number of groups made specific submissions about Taumarunui: Ngāti Rangatāhia; Ngāti Hāua; Ngā Uri o Tūtemahurangi and Waikura; Ngā Uri o Te Tarapounamu; and Ngā Uri o Tānoa and Te Whiutahi.10

Claimants characterised the Crown’s chief failure as not acting in partnership with Māori in Taumarunui Native Township. In establishing and managing the town, the Crown marginalised Māori. Because there was inadequate consultation, there was no informed consent. The Crown unreasonably rejected owners’ requests to partition the land before the township was declared, and when an owner resisted the town survey, the Crown unfairly used the fact that the land was still undivided to encourage the majority of owners to overcome his resistance.11

Claimants also alleged that Māori had too little say in the size and location of their reserves in the town. A significant amount of land was taken for public works without compensation, including urupā and cultivations; these sites were not offered back when no longer needed.12

The Crown diminished Māori authority further when it changed the district Māori land council to a district Māori land board, and first reduced and then eliminated Māori representation. It gave Māori no voice in local
government, excluding them from decisions about local by-laws, rating, and public works. The local body soon became a lobby group for lessees advocating for the land to be freeholded.13

Responsibility for low rents, sub-leasing, high costs, and taxes lay with the Crown.14 Inadequate income increased debt, which enabled the Crown to pressure Māori to sell the land.15 The Crown failed to supervise the Māori land board adequately, enabling and encouraging the perpetual leasing and sale of most of Taumarunui, including allotments reserved for Māori. This left them with insufficient land.16

17.2.2 What the Crown said
The Crown defended its intentions in setting up the townships, claiming that the failure to realise financial benefits for Māori was unforeseen and beyond Crown control.

(1) The legislation, and economic benefits
The Crown argued that Māori might not have consented to the legislation, but this did not breach the Treaty, because expectations of consultation were probably lower in 1895 than in more recent times. It emphasised that although the Crown was not required by legislation to seek Māori consent for a town, townships were not imposed in Whanganui, as Māori consented to the establishment of Pipiriki and Taumarunui.17 There were adequate provisions for Māori to influence the layout of the towns and to request reserves; and as one of the purposes of the towns was to provide Māori with an income from leasing, the more land that was available for leasing, the more potential income there would be. The Crown said that it was reasonable for Māori owners to pay the costs of development because they were to gain the financial benefit of the development of towns through rents. It was also reasonable that there was no provision for compensation for the initial public works in the towns, because these added value to the town land, and would in turn be reflected in higher rents. Later takings were subject to normal public works provisions.18

The Crown maintained that it genuinely intended for Māori to benefit financially from the towns. It acknowledged that this benefit did not always eventuate, but argued that this was due to economic factors beyond the Crown's control. The Crown took steps, it said, to try to improve returns for Māori.19 It contended that the introduction of perpetual leases was not unreasonable at the time. The subsequent history of sales was complicated, and a lack of evidence on how much land was sold made it difficult to draw conclusions. It cannot be assumed that Māori were unwilling sellers, nor that selling was unreasonable. In fact, the Crown argued, owners who sold in Taumarunui could make a significant capital gain.20

The Crown defended the introduction of perpetual leases, saying that they were considered necessary and reasonable at the time in order to attract and keep tenants.21 On the sale of township land, the Crown maintained that there were adequate safeguards in the legislation to prevent landlessness; that it cannot be assumed owners were unwilling sellers; and that selling the land could have had significant financial benefit for owners.22

(2) Pipiriki
The Crown did not accept that it imposed a township at Pipiriki, claiming that it consulted widely with Māori and obtained their consent. The Crown did not agree to the conditions outlined in Te Keepa's document, so its terms cannot be said to govern the establishment of Pipiriki.23 The Crown denied that it misled Whanganui Māori about control of the town: it always said that it would manage the townships, and Māori ‘appear to have understood and accepted that they were ceding day-to-day control of the township land’.24

The Crown asserted that there was no evidence that Māori suffered prejudice from the layout of Pipiriki, or that allotments reserved for Māori were insufficient. It was also unclear how much land was taken for public works without compensation and, in any case, Māori were expected to benefit from the development of the township. The Crown said that charging survey costs against the land was reasonable, and that owners ‘apparently accepted the costs of setting up the Township, expecting that they would be able to recoup these expenses from the rental income’. The Crown denied that it promised that
survey costs would be ‘minimal’, and said it adjusted the repayment scheme once it became apparent that Māori in Pīpīriki were experiencing difficulties. Perpetual leases were not unreasonable in the circumstances of the day, and the Crown was not responsible for particular administrative decisions of the Aotea District Māori Land Board. Finally, it was also reasonable to reject owners’ requests for the return of township land, because it appeared they would renege on lease contracts.

(3) Taumarunui
The Crown contended that its consultation with owners was adequate, and that they consented to the establishment of the town and to the town’s layout. Māori were more concerned about which Act the town would be established under rather than the principle of the town itself. There is limited evidence that owners were prejudiced by the lack of partitioning before the declaration of the town, and although one owner objected to the survey at the outset, later the owners unanimously agreed to the town being surveyed. No objections to the survey were received. Although it appears that occupied buildings and some wāhi tapu were not reserved, the circumstances are unknown, and mistakes might have been rectified later. There is no evidence that there were insufficient reserves in Taumarunui for Māori; there are indications that Māori had other lands in the vicinity, including a village immediately outside the township.

The Crown argued that local government is a separate issue from the administration of the land within the town; that it was reasonable to provide for local government; and that at all times Māori were eligible to stand and vote in local government elections.

As to financial benefits for Māori, the Crown said that the take-up of sections was lower than expected in Taumarunui, and this was the cause of low incomes. It could not control the number of lessees, and it made reasonable efforts to ensure that sections did not remain unleased. Moreover, it was reasonable to expect Māori to pay rates for town services, and no evidence showed that they were unduly disadvantaged. Again, the problem with paying rates was that the town did not prosper as expected, but the Crown could not control this. The sale of Taumarunui sections was a rational financial decision, which gave the owners a significant capital gain, and it cannot be assumed owners were unwilling sellers. Finally, the Crown submitted that safeguards against landlessness were adequate.

17.3 Our Approach in this Chapter
It follows from our findings in chapter 14 about Māori land development and trustee regimes in this era (see section 14.7) that the Crown’s Treaty duties obliged it to:

- Discuss with Māori their views on town development and, if not to plan in accordance with those views, at least to accommodate them to a significant extent in any plans.
- Obtain the consent of Māori before establishing any town on their land.
- Include a substantive role for Māori beneficial owners in any trustee regime. A collaborative model in which Māori had seats on a trustee board would have been satisfactory, but at the very least Māori should have had a significant advisory role.
- Put in place a regime that gave Māori owners a reasonable chance of benefiting economically.
- Protect any places in the towns that Māori occupied and wished to keep.

We evaluate the regime in Whanganui in light of these precepts. We divide the chapter into three main sections. We start with the legislation, then turn to how the regime was implemented in Pīpīriki, and in Taumarunui. We do not address the planned native township at Ōhotu, because it never came to fruition. We do mention it in relation to vested land in the following chapter.

We consider why the Crown introduced the first regime; the discussions it had with Māori about towns; the purpose of the legislation; and some of its key provisions. We
investigate whether the Crown ensured the first regime adequately safeguarded Māori interests; the level of protection for Māori occupation; the extent of Māori involvement in the management of their land; and the costs associated with setting up native townships.

We then discuss why the Government introduced a second regime in 1902 enabling Māori land councils to develop towns, and how this improved the prospects for Māori involvement in management. We investigate the government’s decision first to transfer all townships to the control of district Māori land boards in 1908, and then to enable perpetual leases and sales of township land two years later.

The application of the legislation to the townships of Pipiriki and Taumarunui raise similar issues: Did Māori consent to the towns? What was the impact on Māori authority and control over the land? Was the Crown responsible for the limited extent to which owners benefited financially? And did the safeguards for Māori occupation in the towns work in practice?

At the end of the chapter, we set out our findings on Treaty of Waitangi breaches, and we make some specific recommendations.

17.4 The Legislation
Here we examine the two native townships regimes: the first established under the Native Townships Act 1895; the second under the Native and Maori Land Laws Amendment Act 1902. We ask where the idea came from to establish native townships, and what the Crown sought to achieve. We look at what the Crown did to bring them about, and investigate whether – as it claimed at the time – it acted to protect Māori interests, or to protect them enough. We see how the regime ended.

17.4.1 The background to the native townships regime
In the late nineteenth century, there was increasing pressure on Māori to sell land, as the European population grew and the Government pushed its infrastructure further into the interior of the country. The growth of the tourist industry and the development of the North Island main trunk railway provided additional impetus for settlement in areas where Māori still owned a significant percentage of the land. Settlers in these areas often found it difficult to secure land through purchase or formal leases because the Native Land Court had not yet investigated and issued title, and much of the land was still in customary ownership. Informal leases might be arranged, but this created another set of problems as banks would not lend money for development with such uncertain security. Even if the land did have a title, settlers found it difficult to deal with multiple owners.

Governments were aware of the problems of dealing with Māori land, and had a history of stepping in to negotiate with Māori over land specifically for towns. One example was the Thermal Springs District Act 1881, which enabled the Crown to establish towns in the Rotorua district. The Act envisaged that Māori would either sell land to the Crown, or retain ownership and lease, with the Crown acting as their agent. The Crown could set apart reserves for public use with the agreement of Māori, and there was provision for extensive Māori involvement in the management of the land in the town. In the end, Rotorua was the only town established under the Act. Although initially successful, a downturn in the economy caused lessees to abandon their sections, and the Crown then bought the land.32

In the mid-1880s, the Crown was negotiating with Māori for towns at Tokaanu near Taupō (on the basis that half the sections would be sold), at Te Puia on the East Coast, and at Pipiriki in Whanganui.33 However, no towns were established in these places, possibly because Māori were increasingly reluctant to sell more land.

17.4.2 Interest in townships grows during the 1890s
In the 1890s, the Liberal Government renewed negotiations over land for towns. Touring Māori settlements in the North Island in March 1894, Premier Seddon and James Carroll discussed the need for land development, including a new township at Pipiriki. They promoted the use of the Public Trustee to manage development, citing the Trustee’s recent financial success in increasing rental income from the West Coast Settlement Reserves as a
Carroll made further trips up the Whanganui River in the 1890s, discussing land issues with Māori, including a town at Pīpīriki. At the same time, the Government was trying to establish towns at other places such as Tokaanu, Moawhango, and Waipiro. Carroll later recollected that the negotiations over Pīpīriki influenced the Native Townships Act 1895 most directly. In 1899, Carroll said in Parliament that Māori agreement to hand over land at Pīpīriki to the Government, 'led to the passing of the Native Townships Act.' Carroll implied that Whanganui Māori agreed not only to transfer land for a town but also to the subsequent legislation. However, the evidence does not make clear to what extent Carroll discussed the Bill and its provisions with Māori before introducing it to Parliament. As we discuss later in the chapter, we think it possible that Carroll lacked a concrete agreement for a township at Pīpīriki.

Hōne Heke, the member for Northern Māori, suggested the Bill was drafted to meet Māori owners’ desire to assist town development and retain their land. In July 1895, Heke reported that, having visited nearly all Māori settlements in the North Island, he had found Māori were generally willing for their land to be used for towns and farms, but disliked Crown pre-emption as it meant they could not get full value for the land. They were therefore unwilling to sell.

In 1895, then, the dilemma was that, while settlers and some Māori wanted towns, and the Government believed that they were important for its land settlement policies, negotiations to create them on a mixed sales and leasing model seem to have stalled. A new solution was required.

17.4.3 Genesis of the first native township regime
Carroll and John McKenzie, the Minister of Lands, drafted the Native Townships Bill, and McKenzie introduced it to Parliament in late June 1895. The Bill gave the Government the power to impose townships and to declare up to 500 acres of Māori land as a site for a township. The Crown became the sole trustee, taking over legal ownership and control of the land. Carroll asserted that these provisions were in Māori interests. He said it was necessary to have the power to impose townships, because Māori tended to adopt 'a negative position . . . no matter the project.' For instance, Māori had vigorously protested the vesting of land in the Public Trustee in Taranaki so that he could lease it out. But Parliament, 'seeing they [Māori] were not responsible for their actions, for their deeds at the time, seeing them in that pitiable state, passed such legislation as the House thought was for their good.' By these means, Carroll declared, lease revenue increased from £2,000 to £20,000 per annum, and Māori retained land that would otherwise no doubt have been sold.

When the House conducted the Bill’s second reading, the absence of the three North Island Māori members reduced the likelihood of proper debate about whether the regime was actually in the best interests of Māori. McKenzie said that Māori would be able to discuss the Bill in the Native Affairs Committee and give evidence ‘regarding any of the provisions of the Bill that they might think to be unsuitable’. We do not know whether this happened. Te Heuheu Tūkino, paramount chief of Ngāti Tūwharetoa, later said that he tried to get certain amendments put into the Bill, but ‘they were not agreed to’. He might have been referring to an amendment to exclude any urupā or pā from the Bill. This amendment was defeated by five votes.

(1) Carroll an advocate for native townships
Hōne Heke, who addressed the Bill in its third reading, and the two Māori members in the Legislative Council, did not completely oppose the Bill, but they did express disquiet about some of its clauses. Heke thought the proposed legislation might deliver some benefits for Māori, but only if the Crown was prevented from buying the township land. Carroll reassured Heke that the Bill did not allow sales. Carroll outlined the legislation, and rhetorically inquired, ‘Now, what harm could there be to anybody in that? What injury could possibly accrue to the Native owners under these conditions?’ The Government’s position appeared to be that Māori might
not agree with the townships regime, but it had more experience and knew better than them.\textsuperscript{41}

Other reasons why Carroll might have supported the native townships concept may have been:

- His deep involvement in the Carroll-Pere Trust, which owned large amounts of land on the East Coast. Serious financial problems were affecting the Trust at that time, and the threat that Māori would lose all the land in that Trust could have made Carroll more conservative about Māori taking on the risks of private finance.\textsuperscript{42}
- He may have seen Government ownership and management of the land as the only way to make such a regime acceptable to Pākehā and to get it through Parliament. Historians have described how the public was increasingly opposed to what was called ‘Māori landlordism’ in the 1890s. The Central North Island Tribunal suggested that, in this climate, it was important for the Government to act as a buffer and protect Māori in any joint-venture leasing situation such as townships.\textsuperscript{43}
- He could also have believed that vesting the land in the Crown was the only alternative to the Government placing even greater pressure on Māori to sell their land for towns.\textsuperscript{44}

(2) \textit{Seddon thought Māori could not manage their land}

Seddon’s position was clear: he shared the view common in wider settler society that Māori could not manage their land to best financial effect. History had shown, Seddon told Whanganui Māori in 1895, that Māori could not profitably manage their own lands because Pākehā would take advantage of them and refuse to pay rents, a reference to the failure of leasing in Rotorua.\textsuperscript{45} Such attitudes and experiences may go some way towards explaining why the Government clung to a management model similar to the West Coast Settlement Reserves when devising the native townships regime. As we noted previously, during 1894 and 1895 the Government had discussed the West Coast reserves with Whanganui Māori, and had emphasised that putting their land into trust was the best way to ensure that it was not sold, and that it was developed for their financial benefit. (For details of Seddon and Carroll’s tour through the North Island, see section 10.9.3(3).)

(3) \textit{Some politicians say scheme ‘draconian’}

A number of politicians challenged the proposed regime as draconian. The member for Wellington, John Duthie, agreed the Bill might be necessary, but nevertheless thought it ‘of a very arbitrary character, open to a considerable amount of objection.’\textsuperscript{46} In the Legislative Council, Henry Scotland said the Bill was ‘a very high-handed measure. It looked very like an attempt to force settlements on the Natives whether they wanted them or not. One had heard of setting a steam-engine to work to crack a nut, and really that was what the measure reminded him of.’\textsuperscript{47} Hōri Kerei Taiaroa, meanwhile, could not imagine how taking land from Māori and vesting it in the Crown could ‘be done in any case with fairness.’\textsuperscript{48} Taiaroa suggested restricting the application of the Bill to particular places, thereby limiting any anxiety Māori might feel about the Government’s plans. Henry Scotland wondered whether 500 acres was excessive for a town.\textsuperscript{49} However, no changes were made.

17.4.4 \textit{The Native Townships Act 1895}

The Native Townships Act came into force on 30 August 1895. It explicitly sought to overcome many of the difficulties with the settlement and management of Māori land that the Government had identified in the 1880s and 1890s. It was, the long title of the Act stated, ‘An Act to promote the Settlement and Opening-up of the Interior of the North Island’. The preamble called it ‘essential’ to establish townships, but recognised that ‘in many cases the Native title cannot at present be extinguished in the ordinary way of purchase by the Crown’. ‘Other difficulties’ also existed, which had ‘impeded’ the progress of settlement.

To overcome these ‘difficulties’, the Act enabled the Crown to declare, without Māori consent, up to 500 acres of Māori land as the site for a township. The Crown was to survey the streets, reserves, and town sections, and provide for areas reserved for Māori occupation. It became the trustee for the owners, taking over legal ownership of
their land, and managing it through the commissioner of Crown lands.

The commissioner was to lease town sections to the public, collect the rents, and pay out of them costs of survey and administration, and any compensation due for improvements already made. The commissioner would then pay out the rest of the rent to be 'divided amongst the Native owners in proportion to their relative shares and interests therein.' The term of the lease was 21 years, and lessees had the right to renew for one further term.50

Under the Act, up to 20 per cent of the township was to be reserved for Māori as native allotments, which could not be leased or sold.51 The surveyor had to consult with Māori about the reserves and include in them every urupā and occupied building, but otherwise he was not required to follow owners' wishes. Māori had two months after the survey was published to object to the Native Land Court about the layout of the town, but only as to the location and sufficiency of their reserves: they could not oppose any other aspect of the town. The final decision on reserves lay with the court.52

One section enabled owners to sell their interests to the Crown on condition that the land had not been set aside as a native allotment, and that it was already subject to a Crown pre-emption order issued under the Land Act 1892 when the township was proclaimed. However, this clause seems not to have been used.53

17.4.5 The 1895 regime and Māori occupation
The Government made some effort to provide for Māori to continue their traditional occupation of land in townships: there were provisions to set aside up to 20 per cent of the area as native allotments that were, at least initially, completely inalienable. Claimants criticised the limit of 20 per cent, and suggested that it would have been more appropriate to set a minimum area for the reserves.54 We do not know how the Government arrived at the figure of 20 per cent, nor whether or how it was explained to Māori. The Government thought it was adequate, though. This much is clear from the Parliamentary debates.55

Perhaps more importantly, the legislation gave over to the surveyor and the Native Land Court the layout of the town. The surveyor was entitled to ignore Māori requests for reserves if he thought they interfered too much with the layout of streets and sections. The Native Land Court decided whether Māori objections were well founded.56 As the Native Townships Bill made its way through Parliament, Henry Scotland argued that provision for Māori to object to the layout of the town was too weak – a view that proved to be correct.57 In 1903, Carroll told Parliament there had been 'glaring mistakes' in town layouts under the 1895 Act, prompting him to introduce an amendment. The Native Townships Amendment Act 1903 enabled the town plan to be modified at the direction of the Native Minister, although not if the area in question was already leased.58 The 1903 amendment might have been unnecessary if the Crown had given Māori more say in the layout of townships. A more collaborative approach would probably have met the important needs of both Māori and settlers, and the functional requirements of a town. But officials of that time probably did not consider a collaborative model when they drafted the legislation. Without provision in the law, outcomes for Māori depended on whether or not authorities on the ground were well disposed to them and their preferences.

Finally, the land set aside for Māori use was vested in the Crown, and later transferred to the Māori land boards. While this protected it from sale (at least until law changes in 1910), it is hard to imagine that Māori would have found it anything less than galling to be denied formal ownership and control of their marae and urupā.

17.4.6 Public works and costs
The sections in the 1895 Act relating to public works differed from ordinary public works legislation. There was no provision for Māori to object formally to the street layout or takings for public reserves under the Act, and neither was there any compensation, even though the land taken was declared vested in the Crown absolutely.59 The provisions in public works Acts for taking land for roads were similar, but generally when authorities took land for public reserves or public buildings they had to follow
procedures for notice and objection, and to pay compensation. But the 1895 Act dispensed with even this limited recognition of Māori landowners’ rights, and allowed the Crown to ignore any Māori opposition to their land being used for roads or public reserves, and to take Māori land without compensation.

The Crown said official thinking at the time was probably that the expected financial benefits for Māori from the townships replaced compensation; that is, the works enhanced the value of the land, and this would be reflected in the price of the leases. It is probable that streets did enhance the value of the land and the rents that Māori would obtain, but other citizens were not required to forgo compensation because they would benefit from roads. Nor do we think that rents would necessarily have been higher because of the public reserves sited on Māori land appropriate for the purpose. We doubt that such an effect was even considered when the legislation was drawn up. Moreover, we have seen no evidence that the Crown discussed these public works provisions with Māori.

The legislation obliged Māori to make another contribution to the setting up of the town. Survey and administration costs were deducted from rents once the land was leased. The Crown also justified this on the basis that the Māori owners were expected to gain the financial benefits of the development, and should therefore pay the costs – just as any owner would expect to pay the costs of developing their own property. However, in its submissions concerning Treaty breaches, the Crown stated that it was also reasonable to expect the Crown to take into account the benefit that the public would derive when it determined what Māori should contribute to survey costs.

In our view, it is not valid to liken native townships to private land development. The Government laid great emphasis on the importance of the townships for the settlement and prosperity of the whole country, not simply the Māori owners. Yet it did not contemplate contributing to the development costs. Neither was the principle that Māori should pay the cost of the towns debated in Parliament, and we have little evidence that the Crown discussed it with Māori owners.

Overall, the Crown seems unilaterally to have arrived at policy positions about how the towns would be set up, and safeguarding Māori interests does not seem to have been to the fore. We will look at the practical consequences in the context of the implementation of the scheme at Pipiriki and Taumarunui.

17.4.7 A management or advisory role for Māori?
At the beginning of this chapter, we said that the Crown should have included Māori beneficial owners in any trustee regime that was established to manage the townships. Here we inquire into township management under the 1895 Act, and the role Māori were expected to play.

(1) Examples of Māori involved in land management
In the early days of the colony, there were instances where Māori agreed to have reserves managed on their behalf, but townships were creatures of the late nineteenth century. Komiti and Native Land Boards with Māori representation had been proposed as possible models for land management since the 1880s. (For more details on native committees, see section 10.7.4.) The Thermal Springs District Act 1881 offered the possibility of Māori developing towns in partnership with the Crown. The Native Reserves Act 1882 enabled two Māori representatives to be added to the Public Trust Office board of management, to assist with decisions on Māori reserve land. In 1891, Carroll himself had suggested establishing land boards with both Māori and Pākehā members (see section 10.9.2(2)).

(2) No substantive management role for Māori
The 1895 Act had no substantive management role for Māori: legal ownership of township land reposed in the Crown as trustee for the owners, with the commissioner of Crown lands as manager.

It is difficult to understand why Māori were so comprehensively excluded from any trustee or even advisory position. Perhaps it was simply a question of haste and efficiency; perhaps the political situation also influenced the Government. We know that Māori opposition...
to Government control of land management was growing. The Māori political movement Te Kotahitanga met from 1892 and put forward several Bills to empower Māori communities to deal with their land, but the Government would not countenance this. (For more detail about this political context, see chapter 10.) In Parliament, Carroll complained that Māori were inclined to be negative about anything ‘being done for them within the walls of that Chamber’, a possible reference to the contemporary political contest between the Government and Te Kotahitanga.66

One of the members of Te Kotahitanga was Te Keepa te Rangihiwinui, who took a leading role in negotiations for a town at Pīpīrīki. Whether or not there was a direct connection between Te Keepa’s role in Te Kotahitanga, discussions concerning Pīpīrīki, and the 1895 Act, the townships regime may be seen as a rebuff to Te Kotahitanga’s aspirations for Māori autonomy.

17.4.8 A second native townships regime
In 1901, the Government introduced a second townships regime, putting township development under the management of the new district Māori land councils rather than the Crown. As we have seen, these district Māori land councils were introduced in response to calls from Māori for the means to manage their land effectively, and provided for Māori to vest their land in trust in councils that usually had majority Māori membership.

The immediate cause of the second regime was Māori rejection of the Government’s plan to use the 1895 Act at Te Kūiti and Ōtorohanga. Both settlements are in Te Rohe Pōtāe (the King Country) alongside the North Island main trunk railway line, and settlers had begun moving there as the railway was built. The Māori owners were interested in establishing towns at these two sites, but refused to do so under the 1895 regime.67

For a short time, from 1901 to 1903, the Māori land councils were empowered to set aside land as a native township at the request of a majority of the owners.68 From 1902, under the Native and Maori Land Laws Amendment Act of that year, the Governor could also proclaim any Māori land as a site for a township, even where Māori owners had neither requested it, nor consented. The 1902 Act established the main provisions of the second regime.69

1. How different was the 1902 regime from that of 1895?
The new regime differed from earlier one mainly in that district Māori land councils, rather than the Crown, were trustees for the owners, and in some respects could be more flexible in setting up the town. Māori land councils organised the survey, and could set their own procedure for hearing objections, and for resolving disputes about the layout of the town and native allotments.70 Now, Māori land councils decided on the land to be reserved for Māori occupation, and the amount was subject to no limit.71

In other respects, once the town was set up, administration would be along similar lines. Rents would be distributed to individuals according to their relative shares.72 Regulations issued in 1903 set the terms for leasing and occupying the township. Lease terms for the general sections were similar to the 1895 regime. Leases would be sold to the highest bidder by public tender or auction. The term was still 21 years, and still with a right of renewal; roads and public reserves would still be vested in the Crown.73

2. The Crown, land councils, and land boards
Initially, the second regime operated in parallel with the first. The Crown retained legal ownership and management of townships set up under the 1895 Act (and some towns continued to be set up under this Act), while the Māori land councils administered those townships established under the 1902 Act. However, in 1906, district Māori land boards replaced the district Māori land councils, and took over the administration of native townships under their control. Each Māori land board consisted of three members: the president and two members (at least one of whom had to be Māori), all appointed by the Government.74

In 1908, the Crown also transferred the administration of all the townships set up under the 1895 Act to the Māori land boards. For a short time, this increased representation for Māori in those townships as there was a Māori
member on each Māori land board until 1913. The land on which these 1895 townships were situated remained vested in the Crown until 1910. (For Māori representation on the Aotea land board, see section 14.5.4.)

17.4.9 Pressure to sell township land grows
Lessees, the public, and politicians lobbied Government to allow township land to be sold. Pressure was particularly strong in the King Country towns, including Taumarunui. Lessees claimed that they would invest in better housing and more substantial buildings if they could buy their sections. They also alleged the leasehold tenure was holding up public works such as sanitation, drainage, and footpaths, because the town councils could not borrow enough. Lessees won considerable support, particularly from William Jennings, the member for Egmont and then Taumarunui.  

(1) The Liberal Government supports perpetual leases
The Liberal Government resisted for some years. It claimed that perpetual leases would answer the case. In 1907, the Native Land Commission chaired by Sir Robert Stout and Āpirana Ngata recommended against granting lessees the right to freehold in Taumarunui. They said it would be ‘a deliberate interference with the bargain made between the lessees and the Māori Land board (as agent for the owners),’ and would not in fact improve town finances. The commission did, however, recommend that ‘where permanent buildings are likely to be erected’, the leases should be ‘Glasgow leases’, which would give lessees perpetual rights of renewal. These would provide more secure title, enabling lessees to borrow and invest in buildings and businesses to develop the towns.

(2) Landowners in some towns push to be able to sell
Owners in the settlements of Te Puia, Utiku, and Parata persistently sought permission to sell. Although Carroll and Ngata came to the view that these owners should be able to sell if they wanted, and that selling could provide money to develop other lands, to begin with they did not agree that this should apply to all townships.

In parliamentary debates in 1907, Carroll, by then the Native Minister, pointed out that it was mainly lessees that were requesting that townships be opened up to sale. He said he would need to see similar petitions and requests from the Māori owners in favour of sales before he would be convinced on the subject.

However, public opinion increasingly favoured freehold over leasehold. When the Government changed its policies about Māori land under the new Native Land Act in 1909, it was largely in response to these pressures. The 1909 Act removed many restrictions on alienation, although not on certain trust land, including native townships. Carroll told Parliament that these would be dealt with under separate legislation that would be drafted at a later date.

17.4.10 The Native Townships Act 1910
As promised, Carroll introduced the Native Townships Bill to Parliament in 1910.

(1) What would the new legislation do?
The Bill permitted perpetual leasing and sale. Māori land boards could grant perpetual leases to any lessee; and Māori could sell their interests, but only to the Crown. Carroll might have made the Crown the only purchaser to encourage leasing rather than sales. He stated the Crown would certainly buy Te Puia and perhaps also Utiku townships, but seemed reluctant to go any further. As some politicians pointed out, the Bill left unclear whether lessees would have the right to buy their leased sections from the Crown, and whether the Crown would buy land in the other towns.

After much debate, Carroll changed the Bill to enable private purchasing. He would not go as far as some wanted, and give lessees an absolute right to purchase the freehold of their leased sections. Māori would have to consent to sell. It is possible that electoral politics influenced the Government climbdown on private purchasing. William Jennings, the member of the House of Representatives for Taumarunui, supported the Liberal Government in most matters but, as we have noted above, he was a vocal...

823
advocate of the freehold and enabling leaseholders to purchase the Māori land they were leasing. Professor Alan Ward concluded that the Government amended the 1910 Bill in order to hold the seat for the Liberals against any Opposition candidates in the upcoming election of 1911.\(^\text{85}\)

(2) **Bill introduced without discussion with Māori**

Two Māori members of Parliament had serious concerns about the lack of discussion with Māori prior to the Bill. Hēnare Kaihau, the member for Western Māori, argued that the Bill 'should be, first of all, referred by the Government to the Maoris in their own districts, and by them and the Ministers in charge of each such measure thoroughly discussed and talked out.'\(^\text{86}\) As it was, according to Kaihau, many Māori knew nothing about it.

Peter Buck (Te Rangi Hiroa), the member of the House of Representatives for Northern Māori, agreed. He said that when Māori handed their land over to be administered by someone else, there was

> a definite agreement between the Native people and that body, and any attempt to alter the condition of things without the Maoris agreeing to it is distinctly a breach of faith with these people. I venture to say that the land for the townships in the King-country would never have been made available had it not been that the Natives relied on the Board to carry out the conditions under which it was handed over.

Buck strongly opposed giving lessees an absolute right to purchase the freehold, and hoped that 'we shall hear nothing about the freehold in a bill of this nature unless it comes first from the Maori people.'\(^\text{87}\)

Carroll, and Ngata (who also supported the Bill), responded that Māori were aware of the debates about sale, and owners in some towns were asking to be able to sell.\(^\text{88}\) But no one fully addressed Kaihau and Buck's concerns.

(3) **Perpetual leases and sales of township land allowed**

The Native Townships Act 1910 came into operation in early January 1911. The first and second township regimes were finally amalgamated as all existing towns came under the 1910 Act. No new townships were to be created, and legal ownership of all township land was transferred to district Māori land boards, to be held in trust for the owners. The same Act also confirmed the Māori land boards' administration of townships.\(^\text{89}\)

The Māori land boards could issue leases under the Public Bodies’ Leases Act 1908. In theory, this liberalised the townships’ leasing regime, as a greater range of lease terms was now possible, including perpetually renewable leases.\(^\text{90}\)

Sales of township land were permitted and, for the first time, Māori land that was originally vested under the 1900 Act on the condition that it would be leased but not sold could be alienated permanently. The Māori land boards, if they obtained the consent of the owners in writing, could sell the land. Alternatively, a meeting of owners under the provisions of the Native Land Act 1909 could approve a sale. As we have seen, the Government saw meetings of assembled owners as a return to collective decision-making, but the legal requirements meant that land could be sold without all the owners knowing or consenting, and votes could be carried by persons representing a minority of shares. We examine how this system worked in practice in our analysis of Taumarunui native township.

The 1910 Act also enabled Māori land boards to lease and sell the previously inalienable native allotments set aside for Māori occupation; only allotments that contained a meeting house or church were now protected from sale.\(^\text{91}\)

(4) **Were Māori interests protected?**

As the Native Townships Bill made its way through Parliament, Carroll and Ngata claimed that there were safeguards adequate to protect Māori interests. Ngata told the House that Māori from the Te Kūiti area had come to Wellington to express their approval of these protections. Carroll recited what the Bill required: owners had to consent to a sale, either in writing or through meetings of owners; the Māori land board had to make inquiries about the transaction and approve it; and the Governor
had to give his consent. This triple layer of safeguards was ‘giving a pledge, at any rate, to the public that every transaction will be closely scrutinised and examined’. Ngata added that the Bill was undoubtedly devised to meet tenants’ demands, but Māori interests were ‘perfectly protected’. He defended the record of the Māori land boards acting for Māori. In his experience ‘if they err at all, they err on the side of conserving the Natives’ interest’.

According to Carroll, ‘the system has served its purpose’ and it was now ‘essential’ to purchase the townships, although he did not say why. He said that he believed that the more land that Māori held on to, the better it would be for both current and future generations, yet

there are circumstances which arise at times in connection with their possessions, and with the drift of civilization and the development of the country which make it of benefit and advantage to them to be able to sell some of their lands, so the proceeds may be utilized for the benefit of other areas which they own.

Māori who wanted to develop their lands found it near impossible to get finance for farm development from the Government, he acknowledged, and anyway Māori should sell their land interests in towns because they were more suited to life in rural areas.

Carroll also justified the new provisions enabling native allotments to be leased. In some cases the reserves’ original purpose had fallen away because Māori no longer lived on or used them. He therefore wished to empower the Māori land boards to lease the reserves with the consent of the owners, and did not think Māori would object to this. Carroll did not mention that the new legislation would also enable native allotments to be sold.

Some of Carroll’s reasoning was undoubtedly valid. Principally, Māori did need money for development and it was reasonable that they would choose to make some sales to fund this. Carroll also refused to bow to demands for tenants to have an absolute right to buy the freehold.

On the other hand, Ngata acknowledged that, generally speaking, Māori did not have much ‘resisting power’ when it came to sales of their land. The regime itself had supplied that resistance, but now the Government was removing it. Carroll and Ngata must have known how risky this was for Māori owners.

It is notable that in 1913, both Carroll and Ngata, now out of office, attacked the recently-elected Reform Government’s Native Land Amendment Bill, the provisions of which we outline in the next section. They declared that the enactment was not about bringing undeveloped land into production: it was purely in the selfish interests of tenants, and therefore unjustifiable. A very similar case could have been made against the Liberal Government’s Native Townships Act 1910. It too was about meeting tenants’ demands, and neither Ngata nor Carroll advanced any strong argument for a Māori interest in the changes.

17.4.11 The Native Land Amendment Act 1913
The Native Land Amendment Act permitted the Government to purchase Māori interests in lands vested under the Maori Lands Administration Act 1900 direct from individual owners and without a meeting of assembled owners. This undermined further any Māori collective decision-making about land management, and also made it easier for the Crown to purchase Māori land.

The 1913 Act also put an end to what little Māori representation remained on Māori land boards, removing Māori membership without discussion or agreement with Māori. In the Whanganui townships, as we shall see, the Acts of 1910 and 1913 marked the beginning of the end, and much of the land in the towns was subsequently sold.

17.4.12 The return of land to Māori after 1952
The township regime changed little over the next three decades. In 1952, the Māori land boards were abolished and their duties transferred to the Māori Trustee under section 4 of the Maori Land Amendment Act 1952. The Maori Reserved Land Act 1955 specified the Trustee’s powers in relation to native township sections. Government policy was now to return vested land to Māori, including the Māori land that remained in the old native townships.
In Whanganui, the Māori Trustee handed back control of the Pipiriki township land to an incorporation of owners in 1960. The little that remained of Taumarunui land was returned to whānau trusts from the 1970s onwards. By the time of our inquiry, it appears that there was no native township land left under the Māori Trustee in Whanganui.

Finally, in 1997, the Government recognised that perpetual leases on Māori reserved land were imposed without beneficial owners’ consent and had resulted in financial disadvantage to Māori. It passed the Maori Reserved Land Amendment Act 1997, which provided compensation to owners and a plan for gradually ending such leases. However, the 1997 Act only applied to reserved land leases subject to the Maori Reserved Lands Act 1955, and some questions still remain about leases on land that were no longer in this category by 1997. We elaborate further later in the chapter.

17.4.13 Conclusions on the legislative framework

(1) The native townships regime of 1895

When the Government introduced native townships in 1895, it claimed that the scheme was advanced with Māori interests in mind. The scheme did respond to Māori concerns to the extent that it involved leases and avoided sales, and did not involve the Public Trustee. The Government appears to have genuinely intended that the regime would deliver financial benefits to Māori, and that the land would remain in a long-term trust.

However, the first regime placed the Government’s own land settlement policies and settlers’ interests above those of Māori. The 1895 Act created an incapacitating legal environment for Māori, who became beneficial owners with no authority and only as much informal influence as the commissioner of Crown lands might allow.

It seems reasonable that any arrangement for a leasehold town on Māori land would need to involve the Crown, which had the resources to undertake such intensive development; Māori were unlikely to be able to do this alone. But there was no legal or practical reason why the Crown could not include Māori in the administration of the towns. The Crown was aware of Māori preferences for active involvement in their land, and it could have devised a more inclusive arrangement. Instead, it persisted with the extreme paternalism of the ‘native reserve’ model, with itself as trustee.

Moreover, Māori owners were expected to fund all township development, even though the Government saw the townships as advancing settlement and the prosperity of the entire country. Provision for Māori interests was very limited: Māori could object to the layout of the town only in relation to their own areas of occupation, and even then the Native Land Court had final say. The Crown made all other decisions. There were no notice and objection procedures for those instances when land was taken for public reserves, public buildings, or roads; and compensation for public works was not required.

(2) The second regime of 1902

The second regime, set up in 1902, was an improvement for Māori. It had the potential to create a partnership between Māori and the new district Māori land councils, on which the majority of members were Māori. But the new legislation was too short-lived to deliver its potential benefits. Very soon, the councils became boards, with reduced Māori membership.

(3) The changes of 1910

In 1910, the Government departed from the conditions of the native townships trust, and introduced perpetual leases and sales. This was largely the result of political manoeuvring, and the changes were not agreed with Māori; as Ngata said, the new policy was to meet the demands of tenants. That said, Māori owners in some towns did want to sell. The new provisions opened Māori up to long and disadvantageous leases, and also sales to the Crown, which they would find difficult to resist. The Government knew those risks, and it is difficult to see how anyone would have believed that the ‘safeguards’ would have offset them. When we come to consider the sale of township land in Taumarunui, we examine whether Carroll’s pledge that every transaction would be carefully scrutinised was honoured.
(4) Finally

From the Crown’s point of view, setting up the townships on the basis of rules that gave it control made it more likely that they would be uniform and efficient. This had the advantage of certainty and consistency – or at least, of seeming so. However, if the Crown had instead established towns by negotiating with the different iwi, enabled their input, and given owners at least a voice on a permanent advisory committee, the towns would have started on a very different footing. Issues like how much land should be reserved for Māori occupation, whether or not owners would be compensated for initial public works, and what ratio of development costs to likely profits was acceptable, should all have been on the table. They were not.

Excluding Māori from all important decisions about the town except their own area of occupation made the Crown, as trustee, even more than usually responsible for ensuring that it looked out for Māori interests, and spared no effort to ensure that the towns achieved the stated intention that they would benefit Māori financially. In our next sections, we see how this unfolded.

17.5 Pīpīriki: Establishment and Management

17.5.1 Introduction

Situated on the banks of the Whanganui River, in the heart of the Ngāti Kurawhatia rohe, Pīpīriki is located about 79 kilometres from the city of Whanganui. Today it is home to only about 50 residents, but at the end of the nineteenth century it was one of the largest settlements in the district.

Pīpīriki was officially proclaimed as a native township in August 1896, the first place to come under the 1895 legislation. The commissioner of Crown lands managed Pīpīriki initially, then the Aotea District Māori Land Board, and later the Māori Trustee. In 1960, the town (and also other land) was returned to an incorporation of owners called Pīpīriki Incorporation.

In March 2008, we travelled to Paraweka Marae in Pīpīriki. The claimants spoke to us about their tūpuna Īhaka Rerekura and Te Keepa Te Rangihiwini, who helped establish Pīpīriki as a native township. They took us to important sites along the Whanganui River, and showed us the remains of Pīpīriki House, the grand hotel owned by local businessman and politician Alexander Hattrick from 1901. We heard about urupā and wāhi tapu that are located in Pīpīriki and were the subject of discussions between Māori and the Crown when the native township was negotiated in 1895.

17.5.2 Establishing a township at Pīpīriki

A red-letter day at Pīpīriki was 20 November 1895, for on that date Māori and the Crown convened there to formally establish New Zealand’s first native township. A Union Jack flag was flown; Īhaka Rerekura, Te Keepa Te Rangihiwini, and Premier Richard Seddon gave speeches; and, to close the proceedings, Te Keepa, Tōpia Tūroa, and Seddon hammered in survey pegs on either side of the Pīpīriki–Karioi Road.

What did this meeting signify? Did it mean that tangata whenua understood and agreed to a native township? If so, was their agreement premised on any conditions? How did the Government respond? And what happened in the years that followed? In order to answer these questions, we need to traverse the events that culminated in the historic meeting at Pīpīriki.

(2) Te Keepa supports Crown involvement

In the late nineteenth century, Māori leaders associated with Pīpīriki were in favour of developing the settlement as a town. Te Keepa was one of the most influential leaders at that time. It was said that he had prevented land confiscation at Pīpīriki after the 1860s wars, and as a result he got tangata whenua to place the area under his control.

At a meeting between Whanganui Māori and Native Minister John Ballance at Rānana in 1885, Te Keepa spoke in favour of Māori committees working with the Government to manage their land as he did ‘not think that it would be good to leave the management of the lands with the Committees alone’. On railway development in the region, which was the central topic of discussion at that meeting, Te Keepa said:
I think that wherever there is a [railway] station erected a township should be laid off, and this should be managed by the Government and the Committee. No private speculator should be allowed to obtain land near the railway. The Government and the Committee should have the management of the lands near the railway. The Governor is the highest person in the place, and he should be at the head.

In 1887, Te Keepa showed further support for township development, agreeing to sell the Crown land at Horowhenua (outside of the Whanganui inquiry district) on several conditions. The Government was to establish a town named Taitoko (after Te Keepa), with Te Keepa as one of the trustees for certain public reserves; it was to build a school for both Māori and Pākehā children; and

Pirekiore wharenui at Paraweka Marae, Pipiriki. At Tribunal hearings here in 2008, the claimants talked about their tūpuna Kurawhatia and Hinerua and about the more recent figures Ihaka Rerekura, Te Keepa Tahukumutia, and Mātenga Keepa, who were prominent in the late nineteenth century and who helped to establish Pipiriki township.
every tenth section was to be returned to Māori. Ballance agreed, but did not carry out the plans, establishing Levin on the land instead.  

(3) A township at Pipiriki?

At some point in the 1880s, Te Keepa also apparently reached an agreement with Ballance concerning a town at Pipiriki, although there is little evidence as to its terms or conditions. Nothing happened then – probably due in no small part to Te Keepa’s boycott of the Native Land Court outlined in previous chapters, and his determination to promote a role for Māori committees in land management. Indeed, by the 1890s, Te Keepa was adamant that any township at Pipiriki would be established on Māori land. Submitting Pipiriki land to the Native Land Court process and then selling it to the Crown for a town was not an option.

By the early 1890s, Pipiriki was the northern endpoint of the steamship line run by local businessman and politician, Alexander Hatrick, a tireless promoter of the Whanganui River as a ‘scenic highway’, and of his own interests. Hatrick, with the support of other settlers and politicians, worked hard to persuade the Government of the necessity of turning Pipiriki into a town. Māori also saw possibilities for development: Ihaka Rerekura and two others invested in the first accommodation house at Pipiriki, leasing it to the Huddle brothers.

In July 1893, local politician Archibald Willis, James Carroll, and a large party of other politicians and businessmen travelled up the Whanganui River on a journey that included a short meeting with Te Keepa at Pipiriki. Te Keepa acknowledged negotiating previously with Ballance over establishing Pipiriki as a township, and said that Māori now agreed to carry out the arrangement. However, despite this and further, seemingly positive, negotiations in March 1894, the only concrete result was an agreement that Māori would transfer some land to the Crown for a school site.

Seddon and Carroll were in Wanganui again in late March 1895, where Seddon met with the Wanganui Chamber of Commerce and indicated that he was still hoping to buy land for a town at Pipiriki. Carroll, meanwhile, travelled upriver. He did not come back with an agreement, which one newspaper report blamed on Te Keepa’s refusal to allow land through the Native Land Court, but there was some discussion of handing land over to trustees along the lines of the Taranaki West Coast Settlement Reserves. The Wanganui Chronicle reported:

Māori continued to discuss the proposed township throughout early 1895. According to one newspaper, Māori held a large hui to ‘fully digest the question of the township’ and then reported their decisions to the Government. Another newspaper said that some Māori appeared to have reached an agreement with Carroll and Native Land Court Judge William Butler in March whereby they would put their land through the court in order to develop a township, but that they later declined to do so as they did ‘not wish to offend Kemp [Te Keepa].’

Contemporary records do not reveal whether Whanganui Māori and the Government discussed Pipiriki township when the Native Townships Bill was introduced into Parliament in late June 1895. As we have noted, Carroll may have drafted the Bill out of frustration at the lack of a detailed agreement for a township at Pipiriki (see also section 17.4.3). Te Keepa later referred to meeting Seddon in Wellington about the township, but we do not know when this meeting occurred. The records are silent until November 1895, when Te Keepa invited Seddon and Carroll back to Wanganui, ‘to fix a site for a township at Pipiriki,’ to deal with issues concerning navigation on the Whanganui River, and to discuss settlement of other land.
(4) Agreement?

It was at this hui, held over three days from 18 to 20 December 1895 at Wanganui and Pipiriki, that Te Keepa and Whanganui Māori finally agreed to establish Pipiriki native township. However, in the course of discussions, Te Keepa presented a document to the Government ‘setting forth the conditions under which the natives were willing to grant a portion of land for a township’. This document has not survived, so no one knows its exact terms.

The claimants inferred from information about the contents of the document derived from contemporary reports of the hui that Te Keepa did not know about the Native Townships Act 1895. The conditions in his document, they submitted, were ‘completely at odds with the Act’. They contended that Pipiriki should have been developed in accordance with his document – which they characterised as an agreement or contract – rather than in accordance with the 1895 Act.

The Crown interpreted the three-day hui differently and maintained that Te Keepa’s document was not a contract because the Crown neither signed nor agreed to it.

To ascertain the nature and significance of Te Keepa’s document, we now set out what we know about the hui.

(5) The three-day hui at Wanganui and Pipiriki

On 18 November, Te Keepa and numerous others met Seddon and Carroll at the Wanganui courthouse. They discussed changes to the steamers on the Whanganui River, the proposals to take land for scenic reserves, and the township at Pipiriki. Te Keepa produced a document that he said contained plans ‘for carrying out the idea of the Government, that sufficient land should be handed over for this purpose [of a township]’. He handed it to Seddon, and Carroll translated it. It apparently provided that a committee of seven Māori would be set up to ‘act on behalf of the whole people, the same committee to have full power to act between the Natives and the Government, the whole of the natives at the same time pledging themselves not to in any way violate the agreements entered into’. Seddon responded that he was pleased that there was now a prospect of settling the township question.

The next day, 19 November, a large party including Te Keepa, Tōpia Tūroa, Takarangi Mete Kingi, Seddon, Carroll, and other politicians went upriver to Pipiriki. A ‘long conference’ was held that night, and though we do not know who attended nor what happened, there was clearly some progress. The next morning, Te Keepa and his people had, it was reported, ‘drawn up and signed a paper agreeing to vest in the Crown in terms of the Act an area of 500 acres as a township site’. Everyone convened in front of the Huddle brothers’ accommodation house (see map 17.2). Rerekura opened proceedings, stating that Seddon had ‘come to carry out the arrangements entered into between the late Premier [Ballance] and the natives some years ago’. He and his people had ‘empowered Major Kemp to carry out everything in detail in reference to the township question, and the settling of the outlying blocks of land’.

Te Keepa spoke next. Holding the document that agreed to the township, he said it contained the names of all those present, and all those of the tribe at Wanganui. Those absent at Parihaka had not signed, but would endorse his actions. He ‘pointed out the block proposed to be set aside for the township site, specifying the boundaries’, but explained that the boundaries and ‘conditions’ contained in the document were only a preliminary step; the details could be settled later between himself, representing the tribe, and the Government. He continued that all his remaining lands should be ‘reserved to the natives’. Pointing to a ‘certain spot on the hill opposite where the korero took place’, he explained that it ‘was the burial place of their oldest ancestors and they wanted that particular spot to be kept perfectly sacred and reserved to them for all time’. Smaller urupā could be dealt with later on. He referred to Seddon’s visit to Te Urewera in 1894, when the Government granted Te Urewera Māori a considerable degree of control over their land and affairs. Those people, he said, ‘had derived great benefits from that visit’, and Whanganui Māori ‘were looking forward to receive similar benefits from the present visit’. He explained that he had protected Pipiriki land when the Government had threatened to confiscate it following the wars of the
In closing, Te Keepa emphasised that he acted for the benefit of the whole of the Māori people in the district and, to this end, hoped that produce from the land could be sent by river to Wanganui. According to one report, he then said that ‘this land he now gave to the Government for township purposes. If the Government would accept it and make such arrangements as would be beneficial to the Maoris, it would lead to the settlement and cultivation of other parts of the country’. Te Keepa handed Seddon a plan of the land for the town and the signed agreement.

(6) How did the Government respond?

In reply, Seddon opened by expressing his pleasure that the people wished to ‘give effect’ to the 1895 Act which was a ‘just law’ that would benefit Māori. Māori had previously encouraged Europeans to stay and had assisted them, he said, and therefore it was ‘the bounden duty of the Europeans to assist now in bringing up and developing the native race to that state of prosperity and numerical strength in which the Europeans had first found them’. The townships were a means of achieving this goal, and he had ‘no hesitation in saying that when effect was given to the law in respect to Native Townships the native owners would find themselves more prosperous than they were at present’.

Seddon told the hui that rents from the township would go to the owners, as ‘the Government were only managers for the native owners. Experience had shown that Māori could not ‘profitably manage their own lands’, as Pākehā would avoid paying rents. Now, though, they ‘would be compelled to pay, and the money would then be handed over to the native owners’.

Elaborating on his vision, Seddon said that establishing the town would enable better accommodation to be built, which in turn would stimulate tourism. New roads would bring more traffic, as would improving the Whanganui River for navigation. Timber-felling would provide work for Māori. Agriculture would follow, and ‘soon they would find vast settlements established and a large population’. Tourism was not always a reliable income, but if more Europeans settled the land as planned, ‘good business

Map 17.2: Sketch map of Pipiriki in the 1890s. The map was drawn by George Frederick Allen, an architect, surveyor, and long-time resident of Wanganui. The redoubts shown date from the wars of the 1860s.
would always be transacted in the township right through the year.' More rents would be received, and more trade would mean greater prosperity for the Māori owners.

On education, Seddon told Māori that his essential goal was to ‘see the children of the Europeans and the natives sitting side by side, growing up into manhood and womanhood in friendship and helping each other for their mutual prosperity’. He had therefore approved finances for the development of Pipiriki School, and encouraged every child to attend; without education, they ‘would hold a subordinate position in the world, and would be hewers of wood and drawers of waters. They would be unable to cope with the world as they found it today.’

Referring directly to Te Keepa’s speech and document, Seddon said that

he had been told that the natives there would not fall in with the wishes of Parliament in respect to the township lands. But a complete answer to their traducers was the agreement already signed by a large majority of the people . . . saying to the Government, ‘We admit that the time has come when a change should take place and we now hand over to you as agent in good faith these lands so that they may be used for the benefit of Europeans as a township, and so that we may receive benefits in the way of rents.’

Seddon committed the Government to consulting the Māori committee described by Te Keepa, stating that ‘matters of detail’ would be settled later between ‘the Native Committee, Kemp, and the Government’. However,

He wanted them to clearly understand the position. All agreements would be in accordance with the laws that were passed and all agreements would be fair to the natives and just to the Europeans. In handing over those lands to the Government for township purposes the ownership still vested with the native race. The Government were simply agents for the owners, and all moneys received by the Government would be handed over to the natives, less of course the cost of management, the expenses in connection with which would be made as small as it was possible to make them.

Furthermore, he would speak with the other chiefs, ‘and felt sure he would receive the assistance of Topia and the whole of the leading chiefs in the Wanganui district.’

The records say that Te Keepa pointed out the boundaries of the town, but there is no report of Seddon having commented. Instead, he focused on the township reserves. He assured the hui that that urupā would be ‘kept sacred and inalienable’ as provided for under the 1895 Act. Owners would need to indicate any other places they wanted reserved when the surveyor came, but Seddon did not promise the surveyor would always accede to owners’ wishes. He hoped the surveyor and the owners would

work together and that each would meet the wishes of the other. The Government would give instructions to the surveyors to be friendly with the native and to meet as far as practicable their wishes and lay off the township in a way that would be advantageous to all concerned.

We can therefore see that Seddon emphasised the financial benefits that Māori would derive from the town and made other general assurances, but he appears to have been careful not to promise more than was provided for in the 1895 Act.

(7) Did Whanganui Māori understand the 1895 Act?
What we know about the November hui does not support the claimants’ submission that Te Keepa or Whanganui Māori were ignorant of, or did not understand, the 1895 Act. Neither does the evidence suggest that the Government concealed that it would control the land at Pipiriki.

Seddon did describe the Government as ‘managers’ and ‘agents’ for Māori at some points of his speech, but at other times he stressed that Māori were giving up the land to the Government. Te Keepa would have understood that the Crown was to hold the land in trust; he knew what was involved in putting land into trust through his own attempts to set up Kemp’s Trust. He was aware of the Public Trustee’s dealings in Taranaki, and others would have had experience of trustee laws in the Native Land
Acts. (See chapter 10 for a further discussion of Kemp’s Trust and chapter 18 for Te Keepa and Public Trustee leases in Taranaki.) In his own speech, he emphasised his knowledge of the law, and repeatedly referred to handing land over to the Government. The action of driving in the survey pegs reinforced the fact that the land would be transferred. It appears that Carroll was acting as interpreter, and in that capacity would have translated Seddon’s speeches for Māori. We do not know the exact words that he used, but he would have provided enough to enable those present to follow what was being said.

In short, the November hui, the speeches, the symbolism of the occasion, and the existing knowledge that Māori had of trust arrangements all suggest that Whanganui Māori leaders were aware of the 1895 Act and its implications for their control of the land.

(8) **Te Keepa’s terms**

It seems that Māori consented to the town, but on conditions.

Te Keepa wanted the township site to be within certain boundaries; he wanted a particular urupā to be reserved; and he signalled that other reserves would be identified and agreed later. He also emphasised his past (and, by implication, his future) determination to retain the land: it would not be sold, and economic benefits would flow from retaining and developing it. He wanted the Government to recognise a Māori committee of seven members that would act on behalf of owners. He did not spell out what the committee would do: ‘details’ would be settled later.

He mentioned Seddon’s visit to Tē Urewera, and his hope that Whanganui people would receive ‘similar benefits’. In September 1895, the Government reached a wide-ranging agreement with Tē Urewera Māori that made the district inalienable by sale, provided for hapū self-govern- ment, gave decisions about land titles and management to a committee system, and promoted Māori welfare and development. Te Keepa may have been signalling his hope that the Pipiriki Māori committee would work with the Crown along the same lines.

(9) **Were Te Keepa’s terms accepted?**

We think it is fair to say that Seddon accepted some, but not all, of Te Keepa’s conditions. To say that there was a fully-fledged agreement is probably to overstate the case, but it does appear that there was a meeting of minds on a few issues.

Seddon did agree to consult the Māori committee but his terms of reference were consistently the provisions of the 1895 Act, which put formal management of townships entirely in Crown hands. This meant that the role of any committee would necessarily be limited. The Crown commissioner whose role it was to manage the town would have needed to be unusually sympathetic to make the committee work in any way that was likely to satisfy Māori aspirations.

Seddon signalled general agreement to these propositions:

- a town would be set up under the 1895 Act;
- the Government would consult a Māori committee, which would act on behalf of Māori owners;
- urupā would be reserved (as per the 1895 Act); and
- the Government would ensure rents were collected, and that costs would be as small as possible.

The agreement was not formal, because there is no evidence that anything was signed. The nature of the occasion was more discursive and political than formal and legal. What was arrived at was more analogous, really, to a statement of intent, with much optimistic discussion about future settlement and benefits. Although Seddon expressed an intention, and possibly even acknowledged a duty, to promote the economic and educational progress of tangata whenua, there is no evidence that he did anything as concrete as agree to the boundaries of the town.

(10) **Conclusions on establishing a township at Pipiriki**

We consider that Whanganui Māori were genuinely willing to have a township at Pipiriki, and foresaw economic opportunities from the settlement of the area. But there is no reason to believe that they favoured giving the legal ownership, management, and control of the town to the Crown. However, they were not in a position to negotiate...
freely for the kind of town they would like. The 1895 Act was already enacted when the November hui took place, and there is no indication at all that Government representatives were willing to come to different arrangements about Pipiriki. Tangata whenua had no choice but to work within the terms of the Act, with hopefully some extra concessions. However, the areas where Seddon signalled willingness to meet Te Keepa’s terms for the township were mainly elements catered for under the new legislation. Seddon’s agreement to consult with a Māori committee was the one concession that lay outside the 1895 Act.

In our view, both parties understood that Māori were giving up control over the land in a manner not entirely of their choosing, in exchange for certain benefits. We consider that the Government had a duty to do its utmost to ensure that those benefits were realised.

17.5.3 Proclamation and survey
In August 1896, the Government declared Pipiriki as a native township. A plan of the town was available for inspection for two months from 28 October 1896 at the Wanganui Native Land Court (map 17.3). The plan showed a total of 107 sections, 10 reserved for Māori use. We do not know whether these met Māori needs at the time, but they comprised only 5 per cent of the township area, considerably less than the 20 per cent provided for in the 1895 Act. Thirty-two acres were transferred to the Crown for public works such as a rubbish dump, public buildings, a cemetery, and recreation, municipal, and scenic preservation reserves. This figure included the original two-acre Pipiriki Native School site, but did not include any roads. The Huddle brothers’ accommodation house, later rebuilt and called Pipiriki House, was situated on section 6, block V.

Above the new township, the hill called Pukehīnau (sections 1, 2, and 10, block IV) was set aside as a 17-acre public reserve, even though it contained an urupā. Historian Leanne Boulton surmised that this was the same urupā that Te Keepa pointed out during the November 1895 hui. It seems surprising that this happened, but we have no details about the survey process, and do not know whether Māori agreement to the public reserve was sought or given. Neither do we know whether a Māori committee was involved. Māori influence in the layout of the town would have been at the discretion of the commissioner for Crown lands, whom the 1895 Act made responsible for town administration.

A year later, in November 1897, the Native Land Court began an investigation of relative interests in the land comprised in the township, but soon adjourned so that Māori could draft an owners’ list and settle their relative interests outside court. When the hearing resumed in January 1898, Te Keepa handed the court a list of names, and after further discussions, the court made an order listing 211 owners and their relative shares.

17.5.4 The financial management of Pipiriki
(1) Introduction
In this section, we consider aspects of the financial management of Pipiriki. The Crown, as we have already touched on, created expectations that there would be significant benefits if Māori gave land for a township. While the Crown could not guarantee financial rewards, we are of the opinion that it was obliged to carry out its specific promise to ensure that rent was paid and collected. More generally, the Crown had an obligation to ensure that the land was well-managed – that the leasing system was equitable, protected Māori interests, and did not penalise them financially. We do not have a full picture of the income and costs associated with the township, but we look into whether the Crown made reasonable efforts to fulfil its obligations to Māori when managing the leases, and the survey costs, at Pipiriki.

(2) The economic picture
At first, it appeared that Pipiriki might be economically successful. About the first auction of leases of town sections in July 1897, the Wanganui Herald reported that there was significant interest, with prices exceeding expectations. Two stores, a hall, Post Office, and school were built, and Pipiriki House was extended to accommodate 200 people. In 1902 alone, over 12,000 tourists travelled up the Whanganui River on Hatrick’s steamships, many of whom would have spent some time at Pipiriki.
tourism boom promised increased economic opportunities for Māori, with employment at Pipiriki House, at the farm supplying the hotel, and on the riverboat service.

This early promise was brief. Demand for the township sections declined from 1902 onwards. The completion of the North Island main trunk railway in 1908, and the improvement of roads in the interior of the north Island, drew tourists and the transport of goods away from Whanganui River. Ongoing erosion of the cliffs above and below the windy road meant that access to Pipiriki by road remained difficult, and prevented the township from becoming a regional centre for surrounding farms. In 1926, a field inspector with the Lands Department reported gloomily that 'Pipiriki is dead'. The Minister of Lands agreed, stating that 'It is a pity that any of the land was ever settled. The settlers have only starved, and have
got themselves and others into difficulties. It might be better to spend the money in removing the people altogether and letting the land go back to its native state.”

135

(3) **The management of leases: a declining income**

From 1897 to 1908, the 11 years for which we have figures, only about half of the sections in the township were leased. Initial rents were set by public auction or tender, with rents on renewals set by valuation or arbitration. The total rent payable during this time amounted to £1,623, of which £1,516, or 93 per cent, was actually collected. Per year, this was an average of £137.

At least initially, the Crown took its promises regarding the collection of rent seriously. At the first sale of leases in 1897, the commissioner of Crown lands told those who attended that “as the Crown was only acting for the native owners the rents would have to be paid promptly, and would not be allowed to get into arrears.” Boulton explained that there was a problem with rent arrears in the first two years of the town, but “this was shortlived and
the Commissioner managed to collected the large majority of rents due. By the 1930s, the number of leased sections had increased, but it is not clear that this would have resulted in increased income for owners. In 1958, 39 of the 80 leased sections were let to Māori. At least some of these were also owners, although there were a number of Māori who moved to Pipiriki from communities such as Tieke or Parinui. Those owners who also leased a section would have offset any income they received from rentals against rent they paid. The income would not necessarily cover the rent. By 1958, the annual rent received from the entire township had diminished to £80 a year.

(4) The impact of costs
We discussed the 1895 Act’s provisions relating to development costs earlier (see section 17.4.6), and concluded that the Crown should not have expected Māori to meet all expenditure associated with setting up a township. We now examine the impact on Māori of the Crown’s failure to contribute to costs.
Surveying and establishing Pipiriki cost £372, which the commissioner of Crown lands decided would be repaid in 10 instalments of about £42 over five years at 5 per cent interest. In 1898, rents collected for the year were £110 and survey charges were £84, leaving only £26 for distribution to owners. Although rents were meant to be distributed to owners twice yearly, it seems that in 1898 and 1899 there was nothing to pay out at the half-year distribution.141

When it was clear Māori were receiving almost no rent, the Government responded by passing the Native Townships Act Amendment Act 1899, which extended the time period for repayment of costs to a maximum of 10 years.142 Introducing the amendment to Parliament, Carroll referred to the situation in Pipiriki, saying that when the owners had agreed to the establishment of the township ‘we assured them at the time that they would at different intervals get a percentage of the rent while the expenses were being defrayed. When we came to pass the Act we overlooked that point, and failed to make sufficient provision to permit of that being done’. He further stated that the Government did not want to make the Act unpopular with the Natives. We do not want to set them against it, or to weaken their interest in any way, because it would lead to their withholding their lands from being brought under the operation of the Act so as to be utilised for their benefit.

However, the Crown’s generosity was limited: it did not write off the costs, nor did it reconsider the model for developing townships. To the Government’s way of thinking, the issue was not whether the Māori owners should pay development costs, but when.

In Pipiriki, the commissioner extended repayment to the maximum of 10 years, which halved the repayments to around £23 for each six-monthly instalment. Under this new scheme, it took a full 10 years to pay off the costs and during that time about one third of the total income went on survey costs.143 Owners might also have paid administrative costs as they did in the 1902 townships, but we have no information on this for Pipiriki.

5 Conclusions about the economic benefits
The evidence suggested that although the Crown made reasonable efforts to achieve and collect good rents for Māori owners at Pipiriki, it did not consider this business venture – for that is what it really was – in the context of the wider economic situation. Although the Crown conscientiously collected rents, this income was undercut by steep development costs and a shrinking economy. The Crown is implicated in the situation in which owners found themselves to the extent that it promoted a township at Pipiriki, and assured owners that benefits would flow to them. But on what basis did it make those assurances? How carefully did the Crown examine the prospects of establishing a successful town there? In conceiving and promoting this business development opportunity for Māori, did anyone address themselves to working out inputs and outputs, or calculating a reasonable ratio of costs to profit? There was no sign of this kind of careful preparation on the part of the Crown. It simply forged ahead with what seemed like an attractive idea. As it turned out, even when the town was at its most successful, the costs were too high to generate any reasonable level of income, let alone profit. The Crown covered itself by making sure that Māori paid for all the inputs, which were so high from the word go that they derived from the township much less than they put into it. Under all the circumstances, the high contribution to development costs that the Crown demanded from owners was unreasonable.

The Crown’s contended that costs are relative: had the income in Pipiriki been higher, then the survey costs would not have been so onerous. The 1899 Amendment Act, the Crown argued, was a reasonable response to problems with payment of survey costs.

We agree that the 1899 Amendment Act went some way towards ameliorating the situation at Pipiriki. Extending the repayment period did reduce the pressure on owners, but did not take away from the fact that they still had to meet all the costs of survey and development.

The irony of it is that if Pipiriki had succeeded as a township, the experience of townships elsewhere suggests that owners would have come under great pressure
Native Townships

17.5.5 Owners’ influence on the management of Pipiriki

Economic issues were not the only ones facing Pipiriki. In this section, we consider aspects of the administration of the township: payment of rents; the management of native allotments; the taking of land for public works; and the impact of perpetual leases. Unlike Taumarunui, in Pipiriki no sections were sold while it was a native township, and all except those taken for public works were eventually returned to the Pipiriki Incorporation. See chapters 16 and 25 for Waiora spring and Pipiriki school respectively.

(1) Owners have no formal management role until 1958

Since 1897, at least four different entities have managed Pipiriki, mostly without Māori representation.

The first was the commissioner of Crown lands, who managed the township from its establishment until 1908. Māhirini Rangitauira’s comments to the Native Land Court in 1923, which we discuss below, suggest there was a Māori committee at some stage, but we know nothing more about it (see section 17.5.5(5)).

The Aotea District Māori Land Board followed the commissioner in 1908, when the Government transferred the administration of all townships established under the 1895 Act to district Māori land boards. Takarangi Mete Kīngi was the sole Māori representative on the Aotea District Māori Land Board. In 1913, membership on Māori land boards was reduced to the district Native Land Court judge and the registrar of the court. The Aotea District Māori Land Board might have consulted Pipiriki owners, but Māori had no seat on the board after 1913.

The Aotea District Māori Land Board managed the town until 1952, at which time Māori land boards were abolished and the Māori Trustee took charge. From this point, authorities appear to have made greater efforts to involve Māori in decision making about the township. In June 1958, both a tribal committee and the Pipiriki Māori Lands Committee were established. The purpose of the latter committee, which included the Māori Trustee as a member, was to consider how better to use the land and improve the township. In 1960, the township land was transferred to the Pipiriki Incorporation, an incorporation of owners specifically set up for the purpose. It manages the township, and several other blocks, today.

(2) Owners and the distribution of rents

Given their marginal role in running the town, it is no surprise that Pipiriki owners had almost no say in how rents collected from the township were distributed or used. The native townships regime specified that rents were to be paid to individual owners according to their relative interest in the land. The Native Land Court determined the shares. There were 211 owners in 1898; 60 years later, this number had tripled, of course reducing the rent payable to each individual – until by 1958 no one was entitled to ‘more than a few shillings’.

From 1922, there was provision for a meeting of assembled owners to resolve how to use the rents. However, to confirm the resolution of such a meeting required the approval of the Native Minister, the district Māori land board, and later the Māori Trustee, and the Native Land Court. We see no evidence of Pipiriki owners using meetings of assembled owners like this until, in 1958, they resolved that all of the rents should be paid to the Pipiriki Tribal Committee. The Committee had been collecting to build a marae, and its resolution allowed it to use the rents for any marae purpose.

(3) Perpetual leases and delays in returning land

Owners did not decide the terms of the leases of their land. In 1916, 25 Pipiriki sections were advertised for lease for 21 years, with a perpetual right of renewal. By the 1930s, almost half of the leases were perpetually renewable: in a list of leases from 1932, 43 of them had rights of renewal that were perpetually renewable, and 47 did not. By this time Hatrick’s firm, A Hatrick and Company, leased 22 sections, all on perpetual leases.

The perpetual leases appear to have played a part in delaying the return of land in the township to owners.
In 1938, the owners petitioned the Government not to renew the Pipiriki leases. They wanted the land returned on the expiry of the last lease ending on year 1938 for our own use, principally for building purposes. The Native Department refused, because it was impracticable to re-vest sections which are leased . . . [because] an anomalous position would arise if a lessee called upon the board for renewal if the board had in the meantime ceased to be the legal owner.

Why would the department not return the land? Its response did not articulate it very clearly, but it appears that the problem lay with the perpetual leases. Where lessees had a right to renew indefinitely, the Government (or the land board) would have had to buy out of that right if it wanted to hand the land back to owners. This did not apply to the many township sections that were not subject to perpetual leases though. Those leases could have been terminated on the expiry of the last lease ending on year 1938 as the owners requested. In fact, the Native Purposes Act 1937 specifically authorised the Māori land board to return land so long as the native Minister was satisfied that it was 'no longer required for the purpose of a Native Township.'

In 1950, the owners asked again for the township to be revested in their own trustees, but according to Boulton, once more the perpetual leases stood in the way. In the event, it was not until 1960 that the land was returned to the Pipiriki Incorporation. Perhaps by then there were no longer lessees seeking to exercise their right of perpetual renewal.

(4) Public reserves
The owners' loss of authority in Pipiriki was manifested in the management of the 32 acres taken for reserves and public works sites. We do not know to what extent the Crown consulted Māori about the initial layout of the town, but when it included the urupā on Pukehīnau in a public reserve instead of setting it aside as a native allotment, the Crown did not conform to the requirements of the 1895 Act. (We investigated the contentious taking of another wāhi tapu close to Pipiriki, Waiora Springs, for tourism development, at section 16.3.8(1).)

We pointed out earlier the special provisions of the 1895 Act that exempted public works takings in the development phase of a native township from the usual notice and compensation requirements. Māori were probably not compensated for the land taken for public works in the set-up phase of Pipiriki township. The Crown is more likely to have paid for later takings, although not necessarily: it paid no compensation for a road taking in 1936, but paid £25 for land taken for a nurse's cottage in 1938.

As the township declined, some of the land originally taken for public works was never used, or fell into disuse, or was deployed for other purposes. Some land originally transferred to the Crown for public reserves was later leased out and, as the land had become Crown land, rents went to the Crown. From 1901 until at least 1930, the Crown leased section 10, block III to Hatrick. Sections 1 to 3, block IX, originally taken for Post Office buildings, were also leased to Hatrick on a yearly basis, although it is unclear when this arrangement first started. In both cases, the Aotea District Māori Land Board protested that public reserves not used for their original purpose should be returned to owners; or that, at the very least, any rents received should be paid to the owners. However, the Crown took no action.

In another case, the three sections taken for a recreation reserve on Pukehīnau became scenic reserve and are now in Whanganui National Park. The Department of Conservation built a viewing platform over the urupā on Pukehīnau and a track to it. Whanganui iwi protested and the track was closed, but we do not know if the platform was removed. At the time of our hearings, sites such as the original Pipiriki Native School and a second school site had been vested in the Pipiriki Incorporation, but the Crown or Ruapehu District Council still owned

Pipiriki, 1955. The Aotea Māori Land Board managed the town until 1953, when the management was transferred to the Māori Trustee. In 1960, the township land was transferred to an incorporation of owners, the Pipiriki Township Incorporation, which has managed the township, along with several other blocks, up to the present day.
a significant number of unused sites, including closed roads.\textsuperscript{161}

\textbf{(5) Native allotments and problems with partitioning}

In table 17.1, we have listed the Pipiriki native allotments initially reserved for Māori occupation, and they are marked on map 17.3.

Owners did have a role in managing native allotments. In the early twentieth century, there was a Māori committee, possibly the one set up under the Maori Councils Act 1900, which arranged the occupation of allotments. According to evidence that Māhirini Rangitauira presented to the Native Land Court in 1923, the reserves were divided and fenced under the direction of a committee: “The whole township was given into the hands of the committee, and it was divided in accordance with the decision of the committee.”\textsuperscript{162}

However, the system did generate problems. Under the 1895 Act, allotments reserved for Māori use were vested in the Crown in trust for the owners. To begin with, owners’ interests were spread across the reserves, and in theory they could occupy any of them. Owners occupied the Pipiriki reserves by agreement, which led to a dispute on one occasion in 1905.\textsuperscript{163}

Some Pipiriki owners later sought to partition out their allotments, to gain the certainty of title necessary to borrow to build a house. Partition also, once the legislation enabled this, gave owners the opportunity to have their sections removed from the Aotea District Māori Land Board and returned to them as freehold land. In 1919, section 3, block vii, and section 10, block ix, were partitioned; section 3 was returned to the owners immediately, while section 10 remained vested in trust until many years later. In 1949, section 10a was set aside as a Māori reservation for the Ngāti Kura marae, Paraweka. Other subdivisions of section 10 were returned to owners in May 1960.\textsuperscript{164}

In the 1940s, a Māori Affairs Department district officer proposed a partition scheme to help owners improve the town’s housing. Resident owners were reportedly in favour of the scheme, but the majority of owners did not live in Pipiriki by this time, and a meeting of owners held to approve the scheme failed to achieve a quorum. Consequently, only section 23, block iv was partitioned; other partition applications lapsed. Owners could not borrow money to improve their houses, because banks would not lend on undivided interests. In chapter 21, we explore similar housing problems in Māori settlements up and down the Whanganui River.\textsuperscript{165}

\textbf{(6) Incorporation and post-1960 issues}

The 6,742 acres that the Pipiriki Incorporation owns comprise the two original blocks, Pipiriki Township 1 (259 acres), and Whakahiuwaka C12 (900 acres); two blocks added in 1962, Waharangi 7a2 (145 acres) and 7a3 (759 acres); and one added in 1966, Waharangi 4 (4,679 acres). As we said, some of the sections in the village were returned to owners via the Pipiriki Incorporation in 1960, and became Māori freehold land.

Since taking over, the incorporation has faced a host of issues. Many of them relate to farm land that was previously vested in the Aotea District Māori Land Board and Māori Trustee. This land came back to the incorporation infested with weeds, and it had to compensate lessees for their improvements, with only minimal financial assistance from the Government. Some of its early efforts to generate income were not successful, leading to a financial

<table>
<thead>
<tr>
<th>Allotment</th>
<th>Area (acres roods perches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 4, block i</td>
<td>5 2 22</td>
</tr>
<tr>
<td>Section 7, block ii</td>
<td>1 0 1</td>
</tr>
<tr>
<td>Section 1, block iii</td>
<td>0 3 8</td>
</tr>
<tr>
<td>Section 23, block iv</td>
<td>3 2 8</td>
</tr>
<tr>
<td>Section 4, block v</td>
<td>0 1 35</td>
</tr>
<tr>
<td>Sections 8 and 9, block v</td>
<td>0 2 0</td>
</tr>
<tr>
<td>Section 3, block vii</td>
<td>1 3 16</td>
</tr>
<tr>
<td>Section 3, block viii</td>
<td>0 1 0</td>
</tr>
<tr>
<td>Section 8, block viii</td>
<td>0 1 25</td>
</tr>
<tr>
<td>Section 10, block ix</td>
<td>3 3 0</td>
</tr>
</tbody>
</table>

Table 17.1: Allotments reserved for Māori in Pipiriki native township
Native Townships

Partly in response, Waharangi 4 was added to its land assets. It was evident in our hearings that the incorporation was not popular with everybody in the Māori community of Pīpīriki. Some questioned whether it has done enough with the land it manages, and question its low pay-outs; others do not like the incorporation structure. Rosita Dixon told us that ‘I just don’t think Pakeha structures like that work for Maori. They pit us against each other, divide our communities and render our tikanga irrelevant.’ Claimants raised issues like these in relation to the neighbouring Ātihau–Whanganui Incorporation, which we deal with in chapter 18.

The legacy of the native township makes Pipiriki Incorporation different from other Māori incorporations, however. Claimants Adrian Pucher (chairman of the incorporation), Don Robinson, and Te Whetūre Gray emphasised that, while the incorporation has commercial responsibilities, its focus is on the village and, increasingly, on services to the community. As Mr Pucher said, the incorporation ‘doesn’t have a commercial venture at its centre; it is an incorporation serving a town and its people.’ For instance, the incorporation owns kaumātua flats, and has borrowed money in order to build them, and finds itself representing the people on issues such as the high rates and lack of services at Pipiriki.
(7) Conclusions about the management of Pipiriki

The administrative history of Pipiriki township is one of formal exclusion of owners from authority. There was only ever one Māori formally involved in its administration, and he sat on a land board that was located elsewhere, and then only for five years. It is possible that a committee established early on gave Māori the ability to influence things informally, but we do not know because there is no evidence about it.

The Crown also controlled the distribution of rents. As time went on, the number of owners in the town increased, and returns for each individual diminished. Owners could theoretically pool their rents and use them collectively, but first they had to get the approval of the Native Land Court, the district Māori land board, or the Crown.

The Crown appears to have acted against its own legislation in failing to set aside the urupā on Pukehinau as a native allotment, although there is no evidence as to how that came about. Title to land that was reserved as allotments was uncertain, making it difficult to improve housing at Pipiriki, because allotment interests were not good security for bank loans.

The public works regime in the townships was
anomalous and unfair. No compensation was payable for early takings, and this was exacerbated by the failure to offer (or give) back public works sites or reserves, even though much of it is no longer needed for the purpose for which it was taken.

Finally, the return of township land was delayed for over 20 years, apparently as a result of perpetual leases – even though only some of the land was perpetually leased, and legislation provided for the Crown to return land.

17.6 Taumarunui: Another Native Township

17.6.1 Introduction

Taumarunui today is a small town of about 5,000 residents, situated on the narrow alluvial flat where the Ōngarue and Whanganui Rivers meet, and surrounded by high terraces and hills. This was a strategically important location for Māori, comprising borderlands for a number of iwi, and on the route for canoes travelling between the interior and the coast. Ngāti Hāua, Ngāti Hekeāwai, Ngāti Hāuaroa, Ngāti Hinewai, and Ngāti Rangatahi were some of the major groups with customary interests here.170

At the end of the nineteenth century, the Crown's land purchases and perceived potential for a town drew settlers. Taumarunui was the place where the North Island main trunk railway would cross the upper reaches of the Whanganui River, and where steamboats would soon be able to run all the way from Wanganui. The Māori owners, however, were not inclined to sell the land. Instead, a native township was proclaimed in 1903.

Claimants and the Crown disagree about three main issues as regards the native township at Taumarunui: whether Māori consented to it; to what extent the Crown was responsible for ensuring that the town leases were well-managed; and whether the Crown sufficiently protected Māori authority over the land that went into the township.

Although claimants brought to our attention a large number of compulsory acquisitions that took place in both the town and the surrounding land, we report on only a few of them, because of the paucity of information.171

17.6.2 Setting up Taumarunui

It was inevitable that a township at Taumarunui would have an impact on Māori buildings, urupā, and cultivations. Claimants have questioned the extent to which Māori were involved in making decisions about how the town would be laid out, and the extent to which their areas of occupation were protected.

Claimant and Crown submissions gave rise to two important questions about the town’s establishment:

> Did Māori understand and consent to the development of Taumarunui as a native township?
> Did the regime protect Māori interests sufficiently, especially when it came to laying out the town?

In this section, we consider what happened in the setting up of the township: the discussions there were between the Māori owners and the Crown, how the township was surveyed, and what the outcomes were for Māori. We look at the decisions about street layout, town sections, native allotments reserved for Māori occupation, and areas where public works like roads and public reserves were located and later transferred to the Crown. We ask whether Māori retained enough land, and the right land, for dwellings, cultivation, and cultural purposes.

(1) Early plans for a town at Taumarunui

Until the late nineteenth century, Taumarunui was isolated from colonisation on account of its location. It sits near the southern edge of Te Rohe Pōtāe (the King Country) – arguably the final frontier for European settlement in the North Island – on land that the Native Land Court called the Ōhura South block when it investigated title in the 1890s. In the 1870s, though, the only European allowed to live at Taumarunui in the 1870s was Alexander Bell, who ran a post office and accommodation house with his wife Katarina Te Waihânea, daughter of prominent chief Te Āwhitu.172

In the 1880s, this all changed. The Government began surveying the route through Te Rohe Pōtāe and the
central North Island of the North Island main trunk railway, precipitating a surge of settlement activity all along the line, and especially around future railway stations.\textsuperscript{173}  
There was immediately talk of a town at Taumarunui. Travelling through the area in 1885, photographer Alfred Burton reported that Ngātai Te Mamaku, a local rangatira and cousin of Tōpine Te Mamaku, had already envisioned laying out a town and selling sections.\textsuperscript{174} Sir Julius Vogel was referring to Taumarunui when he said in Parliament in 1886 that ‘after this [North Island main trunk railway] line is pushed on . . . the progress of settlement will be enormous. I believe that one of the most important towns in the colony will be formed where the Wanganui River crosses the main line.’\textsuperscript{175}

In the late 1890s, it was estimated that 300 Māori with mixed Whanganui and Maniapoto ancestry lived in Taumarunui and the surrounding district.\textsuperscript{176} Ngāhuihuinga (Cherry Grove), the main Māori settlement there, comprised over 30 whare, the meeting houses known as Ngāpūwaiwaha and Hikurangi, and a horse-racing track.\textsuperscript{177} Other marae nearby were Te Puru-ki-Tūhua, Mōrero, Te Peka, Wharauroa, and Mātāpuna (on a site known as Ōtikōke). About a mile to the east was a large kāinga called Matahānea.\textsuperscript{178}

Taumarunui Māori settlement, 1885. The two meeting houses (Ngāpūwaiwaha and Hikurangi) are visible in the background.
Taumarunui Māori, as elsewhere, were interested in town development but preferred to lease their land rather than sell it. In November 1895, immediately after the agreement for Pīpīriki to become a native township, Native Minister James Carroll travelled further upriver, where Māori greeted him with requests for 'laying off other townships . . . including one at Taumarunui.'\(^{179}\) As railway construction proceeded, settlers set up businesses at Taumarunui, entering into informal leases with Māori for land and premises.\(^{180}\) One of the first settlers was Alfred Langmuir, later a town councillor, who already had a store further up the railway line. He visited Taumarunui in 1899 and made arrangements with Ngāti Te Mamaku and Te Manuaute Piripi Tūhaia, a prominent Ngāti Hāua rangatira, to lease land and a cottage near the future railway station as temporary premises until his own shop was built.\(^{181}\) The same year, Te Manuaute and two other Ngāti Hāua rangatira – his sister, Miriama Kahukarewao, and her husband Hakiaha Tāwhiao – asked Premier Seddon to stop the Crown from purchasing their remaining Ōhura lands, and for alienation restrictions to be removed so that they could start leasing.\(^{182}\) By 1901, there were 13 settlers leasing land and premises from Māori at Taumarunui.\(^{183}\)

Plans for the township accelerated in the first years of the twentieth century. By 1901, the Crown had bought 85,000 acres in Ōhura South, or 73 per cent of the block, and there appears to have been a definite plan for a town. The Native Land Court heard applications to partition land around Taumarunui in 1901, including one from Katarina Te Āwhitu, which requested that her interest ‘in the proposed Taumarunui Township is not to be affected’ (emphasis added) by the various partitions (see sidebar).\(^{184}\)

(2) \textit{Wilkinson sent to discover Māori opinion on a town}
Discussions about establishing a township at Taumarunui continued in 1902. A deputation of enthusiastic Pākehā settlers put their case to Acting Premier Joseph Ward, and were promised ‘favourable consideration.’\(^{185}\) Shortly

\(^{179}\) Wilkinson sent to discover Māori opinion on a town

\(^{180}\) Map 17.5: Taumarunui, 1891. ‘A Bell’ is Alexander Bell, ‘Henaki’ is probably Hīnaki Rōpiha, and ‘Tuku’ is Tuku Te Ihu Te Ngarupiki, who was famous for his orchards.
afterwards, in September, a letter from 63 residents to Ward requested that the Government acquire ‘sufficient land at Taumarunui for the purpose of a Govt township’. Three petitioners had Māori names: Hōri Hakiaha, Hare Pikipī, and Tuhi Takurua. Hōri Hakiaha was later a Māori councillor for the northern part of the Whanganui Māori Council district, but we do not know anything about Hare Pikipī and Tuhi Takurua, nor their reasons for signing the letter.\textsuperscript{186}

The Government responded in November 1902 by instructing George Wilkinson, then the president of the Maniapoto–Tūwharetoa District Māori Land Council, to discover what Māori thought about ‘setting aside of the Township site for administration under the provisions of the Native Townships Act’.\textsuperscript{187}

Wilkinson met with Māori in Taumarunui on 27 and 28 January 1903, and afterwards reported to the Government. About 40 attended. Wilkinson did not record their names, but he reported that he ‘read and explained the Native Townships Act 1895 and its amendments’, and the meeting ‘fully’ discussed the township proposal. The length of the meeting, its location in a prominent new building (Hakiaha’s Hall), and the number present (almost the same number as were polled in 1901 on the new Māori land council boundaries), suggest that most of those with authority in the town were probably there.\textsuperscript{188} (For the numbers polled in 1901, see section 14.4.8.) They assured Wilkinson that they supported the township proposal, but were unanimous that they did not want to proceed until the Native Land Court partitioned the relevant block, Ōhura South G.\textsuperscript{189}

The ownership of some parts of Ōhura South G4 was disputed. Disagreements ‘as to ownership and boundaries’ would intensify, Māori told Wilkinson, if the block was not partitioned before a town was declared. Previous applications to partition had not proceeded for one reason.

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**Taumarunui and Land Titles in the Native Land Court**

The town of Taumarunui was established on the Ōhura South G4 block. In 1890, the large Ōhura South block was given an official title in the Native Land Court. In 1892, the court partitioned the block between groups of owners. Ōhura South G (1,958 acres) was one of the smaller subdivisions. Mākere Te Uruweherua claimed subdivision G for the descendants of Terekau of Ngāti Hāua, saying ‘Taumarunui is the chief place . . . of the Terekau people. Heke[āwai] it was who began the residence here.’\textsuperscript{1}

Hekeāwai was the grandson of Terekau, and he married Te Uruweherua, the daughter of Tūtemahurangi, who in turn was the son of Kimihia of Ngāti Hāua and Te Puru of Ngāti Rangatahi. The court awarded Ōhura South G to 131 descendants of Terekau on the strength of Mākere’s evidence, which Hakiaha Tāwhiao supported. Hakiaha himself and his brother Te Whiutahi Warahi, both prominent men in Taumarunui, were not in the list of owners, being descendants of Terekau’s brother Punake.\textsuperscript{2}

In 1901, the Native Land Court partitioned Ōhura South G, creating four sections: Ōhura South G1 (219 acres), which was awarded to the Crown; G2 (two roods), an urupā known as Te Anga Anga Tonga, which was awarded to three Māori; G3 (acreage unknown), a fenced area next to the Ōngarue River, which was awarded to Katarina Te Waihānea and her eight children; and G4 (1,624 acres), which was awarded to 128 owners.\textsuperscript{3}

Ōhura South G1, the Crown’s 219 acres, was a composite of land that it had purchased; land that it took in payment for survey charges; a site that Māori had gifted for a school in the future township; and a site next to the Ōngarue River that Katarina Te Waihānea had gifted for a boat landing. Most of the Crown’s land was situated on a high terrace above the future town, and was cut up and sold in 1906 as the Rangaroa suburb of Taumarunui.\textsuperscript{4}
or another. They built Hakiaha’s Hall (named for Hakiaha Tāwhiao) to serve as a courthouse and judge’s accommodation, so that the court would hear partition applications locally. Wilkinson predicted that the township land would be partitioned into several sections, which would ‘probably run in narrow strips from the Whanganui river to the railway line’.

Wilkinson also reported that some owners, who also had interests at Pipiriki, ‘did not seem much enamoured with the Native Townships Act’. However, partition seemed the most pressing issue, so he recommended that this should proceed without delay. Discussion on the question of which Act would be most suitable for taking the land for a township was deferred.
(3) After Wilkinson’s report
We do not know what the Government thought of Wilkinson’s report, but it did not act immediately. James Carroll was reported to be in Taumarunui on 3 March 1903. It is possible that he met with Māori, as two days later Paraone Rōpia and 28 other owners (including Miriama Kahukurewao, Te Manuaate, Ngātai Te Mamaku, Turaki Maikuku, and members of the Poihipi and Te Uhi whānau) wrote to him. They requested that Taumarunui be proclaimed as a native township under the Maori Lands Administration Act 1900 and its amendments. That is, owners wanted the township to be vested in the local district Māori land council rather than the Crown. They also gave boundaries for the township: the railway line on one side, the Ōngarue River in the west, the Whanganui River in the south, and in the east up to a peg of the Taumarunui block at Matahanea. The proposed eastern boundary seems to have included more land than the town eventually occupied. Hinaki Rōpia, Mākere Te Uruweherua, and Whakapaki Hekeāwai, who later raised questions about the establishment of the township and its eastern boundary, did not sign the letter.

In July 1903, shopkeeper Alfred Langmuir suggested to Carroll that a survey take place before September, when Taumarunui was to become the terminus for the Main Trunk railway line, and tourists would arrive en masse to travel down the Whanganui River. This prompted Carroll to give instructions in August 1903 for a survey as soon as possible – only the external boundary, he suggested, so as to avoid delay.

(4) The Crown proceeds with a survey before partition
Despite Māori communicating so clearly to Wilkinson that they wanted the court to partition Ōhura South 64 before anything else happened to advance the township proposal, Crown officials chose to go against their wishes. This was because of the previous experience of the Government and district Māori land council of laying out native townships over existing subdivisions of the Māori land. This was the situation in Te Kūiti and Ōtorohanga, where they found that owners’ partitions did not match up with the town section boundaries. This resulted in practical difficulties, further costs, and delays in advertising sections for lease. Crown officials were consequently against the partition of land at Taumarunui until after the town was proclaimed. Wilkinson too could see the wisdom of this:

if the township survey is made first, the Native litigants and the Court may use the boundaries of streets and allotments as Native Blocks boundaries, which will simplify matters very much.

Partitions were entirely under the purview of the Native Land Court. In August 1903, Patrick Sheridan, the superintendent of the Māori Land Administration Department, wrote to Judge Mair asking him to let any applications for partition ‘stand over’. Mair replied cooperatively that he did not anticipate getting to Taumarunui for some time.

Māori owners presumably knew nothing of this behind-the-scenes connivance.

(5) The legislative regime under which the township came
Although some Taumarunui owners had expressed to Wilkinson disquiet about the town being set up under the native townships Act, the Crown did not disclose which legislation it would use until November, only a few weeks before proclaiming the town.

At first, Carroll indicated that he wanted the township to come under the 1902 Act, which put the district Māori land council rather than the Crown in charge. The fact that it was Wilkinson – president of the Maniapoto–Tūwharetoa District Māori Land Council – who was sent to communicate with Māori about the township may have given the impression that the town would be established under the 1902 Act. However, against that, Wilkinson reported that he read out the provisions of the 1895 Act at his Taumarunui meeting. Māori landowners in Taumarunui wanted the Māori land council to manage the town.

The Crown seems to have wavered. Evidence suggests that Carroll instructed the surveyor-general simply to ‘prepare a survey’ without elaborating further. But the surveyor-general instructed Assistant Surveyor James
Simm, who was to do the work, that the Native Minister had decided Taumarunui would be surveyed according to the 1895 Act. This would make the Crown the authority that decided on the layout of the township and management of the land.

(6) Simm’s 1903 survey
Simm made a preliminary survey of Taumarunui in September 1903. His instructions were to lay out the town according to the Native Townships Act 1895, with reference to the boundaries that Parāone Rōpiha and 28 other owners had set out in their letter to the Native Minister in March. He was also to consult with George Wilkinson.

Simm found that the land was swampy because of its susceptibility to flooding from the Whanganui River, which made much of it unsuitable for building. The two best areas for subdivision were the west end, near the railway station, where businesses could be located, and the east end, which would serve for residential housing. In the middle was a large sandbank, with the land immediately adjacent useless due to frequent floods. Simm reported that Māori had always avoided building below Mōrero Terrace because of this flooding, but he thought the area might be good for paddocks and gardens, and he arranged with Māori to cut it up into sections. At the same time, he arranged to ‘straighten up the boundaries of their reserve’, evidently referring to Mōrero marae.

Simm identified Mōrero marae, Wharauroa marae, and a section containing the grave of rangatira Taitua Te Uhi as native allotments. Together, these amounted to 42 acres out of the total township area of 210 acres. Simm followed the 1895 Act as per his instructions, setting aside as native allotments the specified 20 per cent of township land.

Simm recommended excluding a further 135 acres to the east of the town at this time, because of objections from one of the owners, Hinaki Rōpiha, who claimed this was his land. After discussion with Māori, Simm also excluded from the township boundaries the 39 acres that comprised the Māori settlement at Ngāhuihuinga (later called Taumarunui papakāinga), located at the confluence of the Whanganui and Ōngarue Rivers.

Simm’s plan laid streets over some cultivations but avoided urupā. Māori had already named some of the streets, choosing names of prominent local people like Katarina, Ngātai, Te Huia, Mākere, Taitua, and Tuku.

As we mentioned, Hinaki Rōpiha expressed opposition to the survey and township. Simm reported that this man did not want some of the land in the east of the town surveyed, and seemed generally against the town. Other owners were in favour of the town, and did not support Rōpiha, but he continued to protest. In late November, Wilkinson reported to the Maniapoto–Tūwharetoa Māori Land Council that he had received a telegram to the effect that Rōpiha had used force to stop the survey. The council agreed that Wilkinson should go to Taumarunui to sort out the issue. There are no reports of what happened, but perhaps the news that the town would come under the Māori land council rather than Crown turned Rōpiha around. The following year, he seems to have been genuinely in favour of the town, telling the council that he was very satisfied with its work.

(7) The proclamation of the town
It was not until November 1903 that the Crown finally decided to set up the town under the 1902 regime. The surveyor-general assumed that the Māori land council would take control of the survey at that point. However, even then the Crown seems to have been ambivalent about who should be in charge. Sheridan, Superintendent of the Māori Lands Administration Department, informed Wilkinson that the Native Minister would decide what lands are to be included in the township and will be guided entirely by the advice of yourself and the Assistant Surveyor General. . . . We will not in this instance be as much in the hands of the Council as in the case of Otorohanga and Te Kuiti.

The Crown might have been minimising the involvement of the Maniapoto–Tūwharetoa District Māori Land Council in order to save time, hurrying to proclaim the town before the projected opening of the railway. Only a few weeks later, on 27 November 1903, the Governor
proclaimed Taumarunui as a native township under the Native and Maori Land Laws Amendment Act 1902. The town was declared to be 342 acres, although this was later amended to 384 acres.\(^{207}\)

In short, the Crown did discuss the layout of the town with Māori, and appears as a result to have modified the town boundaries and identified reserves for Māori. Hinaki Rōpihā’s objections were also resolved to his satisfaction. On the other hand, the Crown delayed bringing the town under the administration of the Māori land council, despite Māori telling the Crown that this was what they preferred. There was thus the peculiar situation that although this town was legally under the Māori land council, the Crown was in charge in its early stages, especially as regards the timing of the survey – before any partition of Māori interests – and the survey itself. By the time the Maniapoto–Tūwharetoa District Land Council took over the reins, the Crown had already done the work of liaising with Māori about the boundaries of the town, and its layout.

\(^{(8)}\) The final town layout: the land council’s plan, 1903–04

After the proclamation of the town in November 1903, the Maniapoto–Tūwharetoa District Māori Land Council took over. The 1902 regime gave Māori land councils broad powers to determine the town layout, and to reserve any allotment either for the purposes of the public, or for the Māori beneficial owners. Māori land councils were obliged to put up a plan of the town for two months and hear objections, but could decide their own procedure for such hearings. Their decisions were final.

Having inherited Simm’s preliminary town plan, the Maniapoto–Tūwharetoa District Māori Land Council carried out further survey work, and put its revised plan on public display in January 1904.\(^{208}\) Notices in the Gazette and local newspaper called for objections and any applications for further reserves.\(^{209}\)

The January 1904 plan changed Simm’s preliminary plan most notably around Mōrero marae. Simm’s plan showed a 20-acre rectangular plot for the marae, the revised plan reduced the marae area to about 10 acres.
comprised in section 1, block XIVA. The balance of the land formerly designated as marae was put into town sections, and a new street, Taitua Street, was added. At later hearings for township reserves, the Māori land council said that it would reserve the reduced marae site, but added that it planned to alter the line of Tūraki Street near Mōrero marae, which involved taking from it a further two or three acres. It also stated that it would create a 26-acre public recreation reserve on block x and parts of the surrounding blocks. Some evidence, such as plans for later survey work, suggests that the new road line and recreation reserve were not on the map displayed to the public in January 1904. Māori may not have known about the changes before they attended hearings for reserves in April.

On 26 and 27 April 1904, the Māori land council heard all applications about the town layout and reserves. Māori were well represented at the hearings, producing information to support their own applications, and objecting to other owners’ applications. The Māori land council considered everything, then, after some deliberation, gave its decisions.

(9) The land council replies to objections and applications
There was one formal objection to the town layout: some owners wanted Miriama Street to be the main street, and the road line to be altered to the landing site on the Ōngarue River. However, Hakiaha Tāwhiao opposed the alteration, and the Māori land council was not inclined to make any significant changes. It told owners that:

The mode or manner of laying off a township is somewhat like the way a tohunga Maori would carve a stick. Every tohunga would carve his stick according to his own design. Whichever way it was done, some other tohunga could find fault with it if he wished to. This township has been laid out by a skilled surveyor and has been declared by the Assistant Surveyor General as having been well laid off.

The land council did not feel that major alterations were justified, especially as that would entail further surveying and costs.

The Māori land council generally granted applications for native allotments in areas that were occupied or cultivated. It told one owner that it could ‘only grant reserves or occupation licenses to those who apply for such because of their houses, fences and cultivations being on some of the sections within the township’. The council therefore granted owners’ applications to reserve all of block xix, ‘seeing as there are cultivations and fences on nearly all Block xix.

One of the few applications not granted was that of Whakapaki Hekeāwai and 27 others, who applied to reserve over half of the town: blocks vii to xixv, xxx, and xxxi, and the ballast reserve. Mākere Te Uruweherua, Hekeāwai’s half-sister, spoke for the group, explaining that they wanted to exclude all the land within the township claimed by them until the dispute as to ownership had been settled by the Native Land Court, when they would decide whether to put it into the township or not.

At the time, there was considerable disagreement between Mākere and Tiraha Poihipi (husband of Mākere’s niece) about ownership in the east end of the Ōhura South G4 block, in particular the Mātāpuna meeting house and surrounding land. Hinaki Rōpiha supported Tiraha, and it is possible that his reluctance to have the land surveyed for the native township the previous year was part of the same dispute.

The Māori land council told Mākere’s party that ‘the Council had nothing to do with the fixing the boundaries of the township and cannot alter them’. Indeed, the boundaries had already been proclaimed, and the Māori land council had no power to exclude the land. Nor would the Māori land council reserve the land identified in their application. Instead, it reserved four sections that the owners were actually occupying in the west end of the town. Although not recorded in the council’s minutes as having been reserved, another section that Mākere had indicated contained an urupā was also excluded from general lease.

In total, the Māori land council added 27 town sections to the three original sections for Māori occupation,
He Whiritaunoka: The Whanganui Land Report

Bringing the total area in native allotment to 43 acres. The areas set aside are listed in Table 17.2 (see also map 17.6 for the location of the marae sections).

(10) Streets and public reserves

Simm’s survey had laid out streets but no public reserves. As we have already explained, when finalising the town layout, the Māori land council added Taitua Street, and altered the line of Tūrangi Street. It also decided to set aside 26 acres in blocks X, XI, and XII as a recreation reserve (later known as Taumarunui Domain), and sections 7, 9, and 11, block VI for ‘government buildings’ that were later used for the Post Office. Apart from the native school site, gifted to the Crown by Māori before the town was established, these were the only public reserves shown in the Taumarunui town plan, as confirmed in 1904.220

As we have seen, the native townships legislation provided for roads and reserves to be transferred from Māori ownership to the Crown without compensation. Here, we consider whether the owners were aware of these provisions and consented to this aspect of the regime.

It is possible that owners thought that transferring land to the Crown for roads without compensation was an acceptable price to pay for the opportunity to lease sections to settlers. We know that, in 1908, Konge Ngātai and others created a subdivision, known as Taumarunui extension 2, on part Ōhura South G4D, across the railway from the original township and just outside the town boundaries. There were 24 town sections for lease in the development, and Ngātai transferred land for an access road to the sections to the Crown for no payment.221 However, we know nothing about what owners thought about the Crown getting the land for roads in the original township for free.

As far as public reserves were concerned, it is not clear that owners knew about them, or their significance in terms of transfer of ownership to the Crown. Public reserves were not on the original 1903 plan, and although they were shown in the 1904 plan, we do not know whether owners would have understood the effect on them of the change. Did anybody explain or specifically bring it to the owners’ attention, giving them a proper opportunity to object? We do not know. At the hearings for native allotments, several residents, including Tonga Tānoa, applied to retain seven sections for cultivations in the area that was to become Taumarunui Domain. This

<table>
<thead>
<tr>
<th>Area</th>
<th>Set aside for</th>
<th>Area (acres, roods, perches)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Section 5, block V</td>
<td>‘Te Ngaropaki’ (Te Ngarupiki) Te Kahukete Takuira and others</td>
<td>0 1 10*</td>
</tr>
<tr>
<td>Sections 3, 5, 7, 9, block VI</td>
<td>Mākere Te Uruweherua and others</td>
<td>1 0 0</td>
</tr>
<tr>
<td>Section 4, block VII</td>
<td>Te Huia Te Pikikōtuku</td>
<td>0 1 0</td>
</tr>
<tr>
<td>Section 14, block VII</td>
<td>Marumaru Hikaia</td>
<td>0 1 14</td>
</tr>
<tr>
<td>Section 1, block XIVA (site of Mōrero marae)</td>
<td>Maata Tūao and others</td>
<td>7 2 0†</td>
</tr>
<tr>
<td>Section 5, block XVI (site of Taitua Te Uhi’s grave)</td>
<td>Miriama Kahukarewao</td>
<td>1 0 13</td>
</tr>
<tr>
<td>Sections 1–15, block XIX</td>
<td>Taumata Poihipi and others</td>
<td>34 0 13‡</td>
</tr>
<tr>
<td>Sections 5, 7, block XXVIII</td>
<td>Hinaki Rōpiha and others</td>
<td>1 2 24</td>
</tr>
</tbody>
</table>

* Takuira and one other still held section 5, block V, when the town was partitioned in 1921–22, when Takuira’s interests were located in this section and in block XIVA, section 1.
† Approximately
‡ Comprising 16 acres for section 15, which contained Wharauroa marae, and other sections, mostly one acre each.

Table 17.2: Areas set aside in Taumarunui
might suggest that Māori were unaware of the Māori land council’s plans for a domain. The council told the applicants they could continue to cultivate these sections on the understanding ‘that when the Europeans want to take over the land and improve it for recreation purposes they (the Maoris) must then give up their cultivations, and cultivate elsewhere’. The year before, the same Māori land council initially refused to make public reserves in Te Kūiti and Ōtorohanga, arguing that Māori owners should be compensated. In Te Kūiti, Carroll at one point suggested that public reserves could be made later out of adjacent Crown land. The Crown’s position in Ōtorohanga, however, was that the value of the neighbouring sections would be enhanced by the public reserves and therefore compensation was not warranted.

Although the Māori land council does not appear to have broached the issue of the Crown paying compensation for public reserve land in Taumarunui, it delayed transferring the land to Crown ownership. It was not until 1908 and 1909, when the Taumarunui Native Town Council sought control of the land, that the transfer took place. We do not know if owners were cultivating the sections on the domain up until then. By the time that the public reserves were transferred, the Maniapoto–Tūwharetoa District Māori Land Board was in charge. It seems unlikely that it discussed the transfer with owners, because in 1916 and 1922 they enquired about compensation for the domain and other reserves. The registrar of the Waikato District Māori Land Board (successor to the Maniapoto–Tūwharetoa District Māori Land Board) noted that the domain land was set aside in 1904, before sections were advertised for lease, and consequently no compensation was paid because it was ‘no doubt considered an advantage for the owners as well as the lessees and probably the rentals were enhanced accordingly’.

The actions of the Māori land council on behalf of Māori in Te Kūiti and Ōtorohanga are evidence that it did not consider it reasonable for the Crown to take land for public reserves without compensating the owners. Perhaps it had given up on persuading the Government of this position by the time it came to deal with Taumarunui. The apparent lack of discussion with Māori owners there about public reserves, and owners subsequently inquiring about compensation for them, tends to suggest that this aspect of the regime was neither adequately explained nor agreed to.

(11) Conclusions about setting up the town
At the beginning of this section, we set out to investigate whether Māori understood and consented to a native township at Taumarunui, and whether the regime provided them with adequate protection.

At first, there were promising signs that the Crown was committed to including Māori in decisions about the township. The Crown actively sought Māori views in the set-up phase, and an influential section of the owners consented to the idea. However, this consent came with several conditions: owners requested a partition of the land before the town was surveyed, certain town boundaries, and for the town to come under the control of the district Māori land council. The Crown did not meet all of these conditions. Importantly, it did not allow partition of the land to proceed before survey, and although this might have avoided some of the practical difficulties and costs experienced in other native towns, the Crown neither sought nor gained Māori owners’ approval for its decision. The result was that, as Māori had predicted, Taumarunui became embroiled in disputes over land ownership, and the Crown did not gain the full consent of some owners to the town being laid out on their land.

The Crown also deferred bringing Taumarunui under the management of the Māori land council until the preliminary survey had been conducted in accordance with the 1895 regime. We cannot escape the conclusion that the Crown’s main aim was to avoid delay and meet a self-imposed timetable. As a result of this deferral, the Māori land council had little opportunity to influence the layout of the township before it was proclaimed, or to engage in comprehensive discussions with owners about some of its proposed changes.

The result was not all negative. When the township was first surveyed, the surveyor consulted with Māori and consequently avoided affecting urupā, excluded the Taumarunui (Ngāhuiainga) papakāinga area from the
He Whiritaunoka: The Whanganui Land Report

856
town, and set aside 20 per cent of the total township area as three native allotments. The Māori land council later increased the number of native allotments after discussions with owners, reserving many sites that were occupied, or were cultivated or lived on. Taumarunui Māori also retained ownership of most of the land around the town, subdivided among whānau.

On the other hand, the later addition of public reserves to Taumarunui and planned alterations to Tūraki Street near Mōrero marae in 1904 were probably not discussed with the owners, and they almost certainly did not agree to the transfer of this land to the Crown without compensation. Also, the 1902 regime limited the ability of the Māori land council to address the problems of the 28 owners who requested that land be excluded from the town, as the Crown had already proclaimed the town boundaries and the land council had no power to change them. This failure to obtain consent from a considerable section of owners in the east end of the block was one of the main flaws in the initial setting up of Taumarunui and was entirely the Crown’s doing. It had an ongoing impact on owners, to which we return in our later sections on the management of the town. We also discuss the subsequent history of the native allotments and Taumarunui papakāinga in later sections.

17.6.3 A Māori role in local government in Taumarunui?
In this section, we consider the changing nature of local government institutions in the early history of Taumarunui. A major part of the evidence presented to us concerned the overlapping jurisdictions of local authorities and the conflict for power and control between them. To begin with, local rangatira formed a kāinga committee under the auspices of the Whanganui Māori Council, which had had itself been set up at the beginning of the twentieth century to provide Māori with a limited form of self-government, particularly in relation to health and sanitation. The Crown then introduced legislation for the election of a special form of town council for native townships, which in its first term had one seat reserved for a Māori councillor. This was replaced in 1910 by an elected borough council when the population exceeded 1,000.

The borough council had no specific Māori representation, and no Māori councillors were elected for some decades. Here we investigate whether, as claimants said, this diminishing Māori representation prejudiced Māori interests in the township, and whether the Crown should have provided better protection for Māori.

(1) Taumarunui township’s first local government body
The Taumarunui kāinga committee was really the first local government body in Taumarunui native township. Its members were Te Manuaute Piripi Tūhaia, Te Whiutahi Warahi, Te Pikikōtuku Te Huia, Hakiaha Tāwhiao, and the Reverend John Egerton Ward. Ward was a Presbyterian minister and later a town councillor. He was a close friend of Hakiaha and Te Manuaute, and probably acted as interpreter. The kāinga committee was a sub-committee of the Whanganui Māori Council, which was established to improve hygiene and sanitation in Māori settlements in the district. The Whanganui Māori Council could officially define areas of Māori occupation as kāinga, determine the boundaries of such kāinga, and recommend these boundaries to the Governor for gazetting. The point of such legal definitions was that the committees had certain legally defined powers within ‘kāinga’ such as the ability to collect the dog tax, and enforce alcohol restrictions and collect fines for flouting such restrictions.

In October 1904, the Whanganui Māori Council defined the boundaries of the Taumarunui kāinga. However, rather than limiting them to areas that had been set aside for Māori occupation, the Whanganui Māori Council recommended that the entire native township and the adjacent Māori freehold land be included in the kāinga. A clash of cultures was predictable. On the one hand, Taumarunui had been proclaimed as a native township with the aim of leasing to Pākehā. On the other, the Taumarunui kāinga committee had declared the entire town a Māori kāinga; it seems likely that one of the main aims of the committee was to prevent alcohol from coming into the town.

The power of the kāinga committee to enforce such liquor bans, and its ability to collect dog tax, almost immediately caused controversy. In 1905 and 1906, the editor of
the Observer newspaper denounced the creation of such distinctive Māori local government committees, especially in towns where the majority of the population was Pākehā. The kāinga committee continued to operate in Taumarunui probably until the early 1910s, but conflict with the Taumarunui Borough Council, first elected in 1910, was eventually resolved in favour of Pākehā residents.

(2) The Native Town Council: a Māori seat at the table
Taumarunui township sections were first leased in 1904, and the new Taumarunui residents soon began agitating for a town board that could borrow money and levy rates for much-needed improvements to roads and drains. The Māori land council president, Wilkinson, supported the lessees in their quest for a local authority on the basis that the kāinga committee could not provide an answer: Māori councils, he argued, were designed to deal solely with Māori villages, and their members would not be able to run a settler town. Even more importantly, the Government had not provided for Māori committees or councils to levy rates or borrow money for improvements. Therefore, according to Wilkinson, the advancement of Taumarunui ‘will be blocked unless the European residents are allowed to set up a local body.’

The Government’s response was to pass new legislation, the Native Townships Local Government Act, in October 1905. It was barely debated in Parliament. Carroll simply stated that the Bill was necessary to enable a system of local government to be set up in native townships, which were not covered by the Counties Act 1876 (which provided for local councils to be elected). He did not mention the most unusual aspect of the legislation: the reservation of a seat for a nominated Māori councillor in the first council. The council was to have four elected
members and one nominated Māori member, whom the Government would appoint. However, this arrangement was only ever a temporary measure. At the next election, all members would go out of office, and after that all would be elected.\(^{232}\)

Another aspect of the legislation was that, as in a general election, all resident adults could vote.\(^{233}\) Counsel for the claimants have suggested that only ratepayers could vote in native townships.\(^{234}\) This was certainly the case in rural county and town district elections, and previous Tribunals have found that where these rules operated, they did disadvantage Māori. However, voting was different for borough and city councils, where all resident adults could vote, and the Government chose to follow these rules for the native township local government legislation.\(^{235}\)

Taumarunui elected its native town council in May 1906. The Māori councillor was Hakiaha Tāwhiao, who served in this role until the second election in 1908, when his appointment was terminated as per the legislation. He protested, but there was no provision for reappointment of a Māori councillor. As it turned out, one year later another councillor resigned and the remaining councillors nominated Tāwhiao in his place.\(^{236}\) This interesting turn of events suggests that the non-Māori councillors saw benefit in having Māori represented on the council.

The native town council complained constantly of a
shortage of money, finding it difficult to borrow any significant amount for improvements. In an interview with the *Auckland Weekly News* in March 1909, the chairman, the Reverend John Ward, spoke of his frustration at the Government’s refusal to lend the town council money. According to Ward, the council could not borrow because the leasehold status of the land did not adequately secure borrowing, and the Government would not freehold the land. He concluded that either the land tenure had to change to freehold, or there had to be ‘on the part of the Government some radical measure more adaptable to special local conditions and requirements’. Unfortunately, no ‘radical measure’ was forthcoming, and pressure grew to freehold the land.

**3) The borough council: Māori influence declines further**

In the end, the Taumarunui Native Town Council was short-lived. In 1910, the number of Pākehā living in Taumarunui had grown to over 1,000. They greatly outnumbered Māori, whose population seems to have been under 130 at this time. Having reached the required population size for a borough, the native town council was replaced by a new borough council. Taumarunui borough encompassed the whole of Ōhura South G4 and G3, and therefore included rural and town land, freehold and leasehold; the Rangaroa suburb on former Crown land above the township; the native township; and the adjacent Taumarunui papakāinga.

The change to a borough was significant for Māori, as they lost what little representation they had in local government. When elections were held for the borough council, Tāwhiao nominated a councillor as his replacement but that person was not elected. Tāwhiao asked the Government to appoint a Māori councillor, ‘with the object of safe-guarding Maori interests on the council of this township’, but the law did not allow such appointments. We are not aware of any subsequent Māori councillors until Pei Te Hurunui Jones, who served on the council from 1953 to 1958.

The borough council quickly came into conflict with the Whanganui Māori Council. The borough wanted the Whanganui Māori Council to stop collecting the dog tax and enforcing alcohol restrictions on Pākehā. The Government was sympathetic to the borough; Thomas Fisher, Under-Secretary of the Native Affairs Department, urged the Whanganui Māori Council to find some compromise with the borough. In response, the Whanganui Māori Council resolved to amend the definition of Taumarunui town as a kāinga so as to exclude land leased by Europeans, thereby lifting some restrictions on Pākehā bringing in alcohol to the town. But it maintained the right to collect dog tax, and resolved that restrictions on supplying alcohol to Māori in the town must continue.

Not everyone agreed with the Whanganui Māori Council’s compromise. Parāone Rōpiha, Taumata Poihipi, Rangitahi Parāone, Hakiaha Tāwhiao, and 45 others ‘representing the whole iwi’ petitioned the Native Minister against any changes. In their view, the borough council was a ‘kaunihera Pakeha’ (Pākehā council) that would not represent them fairly. They were also concerned that the borough council might petition Parliament about the issues of dog tax and alcohol restrictions, and stated clearly that they did not want changes:

> i roto i te Taone o Taumarunui ara o matou Papa-kainga, me te Mana e kiaa nei i roto i te Ture he Taone Maori me te Mana o te kaunihera ki te kohikohi i nga Taake kuri i roto i taua Taone me era atu Mana hoki o te kaunihera Maori i roto i nga Papa-kainga o Taua Taone.

in the town of Taumarunui, that is, in our papakāinga, including the powers declared in the Native Townships legislation; and the mana of the Māori Council to collect dog taxes in the town, together with all the Māori Council’s other powers in the papakāinga of the town.

As Māori feared, the borough council did later ask the Taumarunui member of Parliament, William Jennings, if he could introduce a Bill to remove the Māori council’s powers to collect dog tax. Although he usually supported the borough council, on this occasion Jennings seems to have taken no further action.

As we will see, Māori concerns about the protection of their interests were justified and were later fully realised.
The borough council, shorn of Māori representation, became a vocal and effective lobby for changing the tenure of the land in the town to freehold.

(4) Conclusions on local government in Taumarunui
Taumarunui Māori valued the authority that they initially held in the native township, with Māori representation on the kāinga committee and the first native town council. In those early years, it must have seemed to Māori that their involvement in these two institutions and the district Māori land council would have ensured that they retained influence in the governance of their town.

However, as the Pākehā population grew and the town became a borough, local government soon lost its Māori dimension. Once there was an elected borough council, Pākehā became overwhelmingly dominant and Māori voices largely disappeared from the town’s institutions for many decades.
The Crown’s role in this transition was not simply passive. The Crown reserved a seat for a nominated Māori councillor on the first native town council, indicating its awareness of the need for a Māori to reflect and safeguard Māori interests in the town. However, the reserved Māori seat was only a temporary measure, and in 1910 the Crown pressured the Whanganui Māori Council to reduce its enforcement of alcohol restrictions in the town. Then it removed Māori representatives from district Māori land boards. Owners were thus effectively excluded from decision-making about the Taumarunui native township, even though the township sat on their land.

17.6.4 Lease management: the system and Māori
At first, the population of Taumarunui boomed, leases and rents increased, and it appeared that the town might be a successful venture for Māori. A Pākehā population of 13 in 1901 increased to 1,128 in 1911, and 2,287 in 1926. By 1907, 252 out of some 277 township sections were let, and two years later sections were said to be very scarce. The rents for 1907 were £662, and £1,487 in 1915. However, 1915 proved to be a turning point. Thereafter, although the town’s population continued to increase, annual rents declined to about £1,250 by 1918, and £1,050 in 1922.

The claimants and Crown agreed that, as a leasing proposition, Taumarunui was ultimately a failure. The Crown contended that this was because too few tenants took up leases, which was beyond the Crown’s control. Yet the relationship between numbers of tenants and income for owners was not as straightforward as the Crown suggested. We now investigate the management of rents; lease terms and income; costs; land tax; and rates.

(1) The problems with calculating and distributing rents
In the first few years of the township, Māori owners did not see the full financial benefits of the new leasing regime. Indeed, most owners did not receive any rents until 1910 – seven years after Taumarunui was declared a native township.

The problem was that the Māori land boards were required to distribute rents to each owner in proportion to the value of their interests in the land. To meet these requirements, the Maniapoto–Tuwharetoa Māori Land Board took into account the sections that owners occupied, and deducted rent for their occupation from rental income they would otherwise derive. Owners who occupied sections in the town thus received less rent. However, the board found it difficult to arrive at the correct amounts due to each owner. Some were not due any payment at all, while according to one view, those who occupied reserves that were more extensive than the value of their shares in the land should have been paying something into the rent account.

To make matters worse, the land on which Taumarunui sat was still not partitioned by 1910. This contributed to the uncertainty and disagreement about entitlement to rent, and indeed whether they should be paid out at all while the land remained undivided. Those claiming the more commercially valuable sections advocated waiting until the land was partitioned, because they did not want the rents from what they claimed as their sections pooled and divided among all owners.

The Government was aware of the delay in distributing rent, but did not act to remedy the situation beyond telling the Māori land board that it could not see a problem with distributing the rent in the usual way. In 1910, a new Māori land board president decided to put an end to the delays, and paid out the accumulated rents of over £2,500 over the next two years. Rent payments seem to have continued thereafter, although it was not until 1922 that the Māori land board consented to a partition of the land.

(2) Short-term leases
Up to 1910, short term leases were issued for gardens and paddocks, and differed from the usual kind of lease in Taumarunui, which provided 21 years with one right of renewal. Claimants have suggested that the use of these short term leases unfairly decreased the rents obtained for the land.

We find very little to criticise here. These short-term leases were a positive response to the early leasing situation in Taumarunui. Although, as we noted above, the majority of township sections were leased by 1909, only 58 out of 277 leases were sold at the first auction in
The president of the Māori land council predicted that it would be some years before all the sections were needed for residential purposes, and therefore suggested that many sections could bring in useful income if let as paddocks and gardens. The Māori land council president later reported that a ‘considerable area’ was let after the Government brought in regulations that enabled shorter lease terms. Without this, the land would probably have generated no income. It was in fact leases with long terms that were the real problem.

(3) Long leases and valuation issues
A real obstacle to owners’ obtaining fair rental for their land was the infrequency of rent reviews. Although land values at first rose rapidly, rent reviews occurred only at the expiry of the 21-year lease terms, so rents did not keep pace with land value. Government regulations set the reserve price for rents at 5 per cent of the land value, but by the time the 21-year leases expired, rent were well below the 5 per cent figure. For instance, a Government valuation set owners’ interest at £77,806 in 1916, which should have yielded rents of £3,890. However, rents for the previous year were only £1,400 – less than 1.8 per cent of the land value.

By 1919, the Crown was aware of this problem. Indeed, the Crown was wary of lessees’ proposals that it should buy the town, fearing that it might be left collecting rent-als that would not cover the interest on the large loan it would need for the purchase.

The situation was expected to improve at the end of 21 years when leases were renewed and rents reviewed, but this did not happen because of the valuation and arbitration system used to set rents for second and subsequent lease terms. Under the system, valuers for both the Māori land board and the lessee gave their respective valuations, and if they could not agree, an arbitrator or ‘umpire’ set the rents.

However, in Taumarunui, as elsewhere, the rents set were surprisingly low. In 1922, the Native Affairs Committee discussed the issue. Mr King, Deputy Native Trustee, stated that the system of arbitration had unexpectedly resulted in very disappointing rents for the second term of many leases on Māori land, and rents significantly below 5 per cent of Government valuations. The system, King said, was ‘open to serious thought’, because it might never yield fair rents for owners. Three years later, the president of the Waikato District Māori Land Board reported similarly: arbitrators had fixed rents in Taumarunui well below 5 per cent of the Government valuation. However, although this was a widespread problem, no policy fix was forthcoming.

(4) Subletting
While we do not have comparative figures for rents and values in other towns, the evidence of subletting and transferring of leases indicates that owners were being deprived of significant income.

In Taumarunui, regulations allowed lessees to sublet with the consent of the Māori land board. To keep survey costs down in the early years of the town, many of the residential sections in Taumarunui were large, measuring one acre. It was expected that lessees would bear the cost of further subdivision and sublet parts of their sections, if and when demand for land increased. However, by 1920 it was evident that many lessees avoided paying survey costs by informally subdividing their sections – and making a profit by subletting these subdivisions. In 1904, for instance, sections 6 and 8 in block 111 were leased on the usual terms at £21 and £5 a year respectively. The lessee sublet both nine years later, the first for 10 years at £111 a year, and the second for 5 years at £65 a year. Lessees could also benefit from rising capital values by selling their leases, and charging ‘goodwill’ to the incoming lessee. One lease reportedly changed hands for £500 in 1908, with a lease for only part of the same section sold some years later for the even higher price of £1,000. Some owners, who were also lessees, benefited from this trade. Most, however, were not in this position.

Crown officials and the Māori land board knew that this was going on but, before the 1920s at least, seem to have done little to remedy the situation. By contrast, in the 1950s the Māori Trustee controlled the few remaining
leases, and ensured that lessees who wanted to sublet or subdivide did so formally and had the land revalued. This meant that owners would benefit from any upwards revaluation.267

This approach was not evident earlier, though. In 1925, the president of the Māori land board considered that although current lease terms were not in the best interests of owners, there was no need for action. Many owners were already selling their sections, and the president anticipated that the lease question would be resolved in Taumarunui as most of the land would be sold before the original lease terms (21 years plus a right of renewal for 21 years) expired.268

(5) How did costs affect rental incomes?
As in Pīpīriki township, Taumarunui owners were expected to pay the full survey and development costs associated with set-up. The Crown did act to keep survey costs down, but costs were still high right from the start. In 1911, they were reported to be as follows: surveying, £324; commission to the Māori land board, £298; river protection works, £230; road formation, £500; and sundries £46.269 This equated to 35 per cent of the average annual income from rents.

The amount spent on improving roads was unusually high. Although the model for townships had owners paying for the survey of the town, the rates that lessees paid were supposed to cover the formation of roads. However, in the first 10 years of the township, the Māori land board sought the Crown's approval to use rents to pay for that work. There is no evidence of its discussing this with owners, and they were not pleased when they discovered it.270

Costs rose still further in the 1910s, as erosion from the Whanganui River proved more difficult and expensive to fix than expected.271 During the First World War, a new scheme for the erosion control works cost more than £2,700. This led to disagreements between Māori owners, the borough council, and lessees as to what proportions each should pay. Owners rejected the idea that their rents should pay for the works, and sought reassurance that the works would also serve their interests. In 1916, they offered to match any European subscription for river protection pound for pound if the works also protected the papakāinga and urupā downstream of the town's recreation reserve.272

The Government's eventual response was to promise to set up a commission to determine costs between the owners, borough council and lessees at some later date. In the meantime, it took the view that the Māori land board's trustee obligations to protect the land it managed meant that it had to lend all of the money for the works up front, out of the rents.273

The commission was set up in 1918. Māori owners were not invited to appear; the Waikato Māori land board representing their interests. The commission decided that four parties should share the cost: the Waikato Māori land board's share, £660, was slightly under a third. The other parties had to come up with £840. This relatively favourable outcome for owners was, however, undermined by the length of time the commission gave the other parties to repay the owners. The borough was to pay in instalments over five years, but the lessees had 15 years to pay their instalments.274 Thus, the Crown's process resulted in the owners shouldering the whole burden of the works for many years.

(6) An additional burden: land taxes
Taxes were another cost burden, which increased during the First World War. After 1917, a graduated land tax regime introduced partly to pay for the war applied to leased Māori land. The more valuable the land, the more tax was payable. Māori land continued to be assessed at half the rate of general land, but when land values increased significantly in the period up to the early 1920s, so did tax payable on leased land vested in Māori land boards. In Taumarunui, land tax rose from £97 in 1914 to £729 in 1921.

In October 1922, the Native Affairs Committee investigated 46 petitions from Māori, including one from Taumarunui, asking for relief from the land tax. It is evident from the committee's report that the Government first realised in 1920 how dramatically tax on Māori land
had increased. The tax was oppressive for Māori because, unlike European land, Māori land blocks generally supported multiple owners. Tax allowances in blocks with more than one owner were not particularly generous, being capped at £500. Moreover, much of the rent paid to owners was going towards tax, greatly affecting Māori incomes. Normally, a landlord would raise rents to compensate for higher outgoings, but this was not an option here, because the owners were saddled with long lease terms at low rents.

Rather than wait for the Government, the Māori land board decided in late 1921 to solve the problem in Taumarunui by partitioning the interests of the owners. This would enable the creation of trusts for each partition, rather than the one large one in which all rents were pooled. The smaller trusts, with less income, would pay tax at a lower rate. The partition in March 1922 reduced the land tax that owners paid in 1923 to £186.

(7) Paying rates
Paying rates was also an issue for Māori landowners in Taumarunui. At first, the native township regime ensured that only leased sections were rated, and lessees rather than beneficial owners were liable. But from 1908, rates were levied on unleased sections, including the native allotments reserved for Māori occupation.

Rates in Taumarunui might have been especially high in the 1910s, because of all the town development that was still going on. The first mayor of the Taumarunui borough reputedly ‘converted Taumarunui into a modern town’, raising a loan of some £26,000 for streets, gas, water, and lighting. Rates paid for such loans.

In 1918, the Māori land board paid rates of £633, or 49 per cent of the total rental income. There is some evidence that the Māori land board also paid the rates for the 39-acre Taumarunui papakāinga situated outside the original township boundaries, possibly at the request of the Māori owners. For some years, while the land was undivided and rents were pooled in a single trust account, Māori could rely on rents meeting their rates liabilities. However, following the partition in 1922, the Māori land board informed the borough that it could no longer pay the rates, and named several owners who owed significant amounts. One consequence of partition was that paying rates became more complicated, because each of the separate trusts had separate rates obligations and different owners. Rates came out of the income that each trust received, which might or might not meet the rates bill.

There were few solutions to this problem beyond selling the land. In the 1930s, Native Minister Āpirana Ngata negotiated rates compromises with borough councils across the country, which often obliged Māori to sell land to meet the payments. In Taumarunui, Ngata negotiated compromise payments of £1,000 for £1920 owed in one part of the borough, and £1,000 for £3,864 owed in another. We do not know whether Māori sold land in order to discharge this debt. The underlying problem remained, though, and rates soon accumulated again. By 1943, Taumarunui Māori owed £4,000, which was reportedly growing by £300 each year.

(8) Local government public works
We divert briefly to mention a topic not strictly to do with the management of the leases.

In 1908 and 1909, the Taumarunui native town council needed land for its offices and other municipal purposes. It wanted to acquire part of block XVIII, a large area in the centre of the town. The Maniapoto–Tūwharetoa District Māori Land Board was keen to negotiate, as it had not yet been able to lease this land, which was prone to flooding and covered in sand and scrub. When the Māori land board sought the advice of the Native Department about the appropriate lease arrangements, it was told that it could enter into a yearly tenancy with the town council.

In 1909, the Governor authorised a lease of one acre in block XVIII for a public pound, and it is possible that similar arrangements were made to satisfy the town council’s other public works requirements. In 1912, the new borough council went ahead and exercised its power under public works legislation to acquire 33 acres compulsorily from block XVIII for a borough endowment (including a market place and pound site) and sections 3 and 5 of block...
vi for borough council offices.285 The owners were paid £500 for block xviii and £350 for sections 3 and 5.286

In short, although the Māori land board succeeded in leasing land to Taumarunui’s local authority for the public pound, there was nothing to stop the borough from buying land compulsorily under public works legislation. We saw no evidence of the borough discussing its proposed acquisitions with the owners of block xviii or the two sections in block vi. Nor did it talk to them about compensation, because they inquired in both 1916 and 1924 about whether compensation had been paid for a number of works, including the borough council offices.287

(9) Conclusions on lease management and Māori
The financial benefits that were expected to flow to Māori owners from leasing their land under the native townships regime never really eventuated in Taumarunui. From the first auction of leases, the owners, the district Māori land council, and then the district Māori land board, faced problems. As one lease management issue was resolved, another emerged, suggesting that the Government neither properly considered nor adequately addressed the practical implications of the overlapping layers of law to do with the native township itself, and also taxation, rating, and public works.

We recounted earlier the Government’s decision not to partition the township land. This decision delayed the distribution of rent until 1910 – six years after the first leases were auctioned – as the Māori land board could not determine accurately how much rent was owed to each owner. It also caused disagreement amongst owners, some of whom claimed the valuable areas of the township and opposed rents being paid out before partitioning because this would lead to a distribution of rents that they deemed unfair. Although the Crown created this situation, it did not provide solutions. It was left to the Māori land board to make the decision to pay out rents, even though doing so may have led to an inequitable distribution of money.

Then, once owners finally received income from their land, it was almost immediately swallowed up by the costs of road building, river protection works, land tax, and rates.

The Government’s expectation that Taumarunui owners would pay for all river protection works until the costs could be properly apportioned meant that owners were temporarily without even the little income the town leases furnished. Then others who were obliged to contribute to the river protection project were given up to 17 years to reimburse the Māori owners of the township land. The problem was exacerbated when the Government brought in a graduated land tax that saw owners’ taxes rise exponentially in Taumarunui. The impact was greater because the Government’s early refusal to allow partition of the township land had not been remedied, and the large, undivided block attracted a much higher tax rate.

The Māori land board ameliorated the tax situation by partitioning township lands in 1922, but this then created new difficulties for paying local rates. The Māori land board no longer had the combined rentals of the entire township from which to pay rates, and responsibility for their payment fell to the owners themselves. They were receiving less rent than might have been expected due to a combination of infrequent rent reviews and a valuation and arbitration system that prescribed relatively low rentals. Lessees, on the other hand, profited until the 1950s from informally subdividing and subletting their leased sections. The Government knew this was happening from at least the 1920s, but did nothing about it.

17.6.5 The sale of township land
The Bell whānau sold the first land in Taumarunui in 1915. The next sales were in 1919, when eight sections were sold at Government valuation for £9,769. By 1937, the Crown had bought 169 acres for an unknown amount. When the Crown sold this land to the lessees, it charged them £108,589, although we do not know the proportions in which this sum comprised the amount it paid the owners, interest, and other charges.288

The claimants and the Crown agree that poor returns from the leases were an important factor in encouraging sales, and that it was a financially rational decision to sell. However, they disagree about whether Māori were ‘willing sellers’; whether the Crown conducted the sales process
fairly, or pressured Māori into selling the land and paid unfairly low prices; and whether Māori were left with sufficient land. In this section we focus on the sale of the leased sections, saving the issue of sufficient land for another section on Māori occupation of the town.

(1) Why did Māori sell the land?
Māori views on keeping the town land gradually changed. The town was established on the premise that leases would provide a good long-term income. Ngātai Te Mamaku and 38 other prominent owners living in Taumarunui were of ‘one mind’ when they wrote to the Native Minister in January 1907 to oppose any moves to allow sales. They asked that:

the arrangements connected with this Township be continued as these were laid down in the beginning. That is that they be solely disposed of by leasing only for 21 years. In accordance
with the owners authorities and all the conditions as laid down between the Maniapoto–Tūwharetoa Council and the permanent Maoris who are in the title for this Township.290

Shortly afterwards, however, the Bell whānau offered their township land to the Crown. Because the leases were not very profitable, they planned to keep certain sections in the town for their own use, and to sell the rest to develop farmland they owned. The Crown communicated to Bell that it would wait until the Stout–Ngata commission made its recommendations on Māori land use before coming to any decisions.291

In 1913, a group of 31 owners, including representatives from many prominent Māori families in the town, sought to partition and sell their interests. Their reasons were similar to the Bells’: they wanted to become owners of defined parts of the town, and then sell their other interests to develop their farmland in the area.292

At that time, the financial outlook for the leases was not hopelessly gloomy. The rents were not particularly high, and the town council had begun to apply rates to all township sections, but the intransitive problems of the late 1910s had not yet emerged – the land tax and river protection works that wiped out the surplus rents; and the arbitration system for rent reviews that was unfair to owners. However, having seen that capital gain on the land was very good, and income was not, a proportion of owners planned to hold on to papakāinga in the town, but let go of the leased lands in order to realise the capital. Owners like these may be fairly characterised as willing sellers.

Those who wanted to sell hesitated, however. They predicted – probably correctly – that their sale aspirations would not win majority approval at a meeting of assembled owners, which the legislation required. With over 130 owners in Taumarunui, gaining the support of a majority was no minor hurdle. In 1915 and 1916, meetings of owners turned down offers from the Crown to buy the whole town.293 There is some evidence that owners wanted reassurance that, if they sold the township, they would get to keep the sections they occupied. They also commissioned their own valuation, so might have wanted a higher price than the Government was offering.294

The economic situation changed during the First World War, as we have explained. Would more owners have wanted to retain the land if the income had remained stable, and costs had not increased so much? It is a moot point. By the 1920s, the declining lease income, combined with high rates and taxes, meant that selling made sense financially.

We can add two further motivations for sale. First, Māori had no say in the management of their land, and strangers occupied most of it. It would not be surprising if they felt consequentially disempowered, and disconnected from the land. Secondly, some owners may have been forced to sell due to personal debt and the need for cash for living expenses. This was certainly common enough in other areas. In a later section, we show that rates debts figured strongly in the sale of some land.

(2) Lack of Crown remedies for Māori financial problems

Taumarunui was a remnant of owners’ original lands, which were placed in trust with the aim of retaining them. It is reasonable to expect the Crown to have made every effort to help Māori to achieve this. In 1910, Carroll said that he believed that, in principle, Māori should retain as much land as possible for their descendants. However, he qualified this by saying he also thought they should sell township land in order to develop their other lands (see section 17.4.10(4)).

The Crown seems to have seen no particular reason to help Māori to hold on to township land. In fact, as we have seen, from 1910 all the legislative amendments were trending in the direction of facilitating sale rather than retention. Nor did the Crown acknowledge any obligation to rectify problems arising from the lease system it created, so it is not surprising that neither did it consider that it had a role in relieving the problems Māori were experiencing as a result of taxes, and then rates. It could have intervened in any of these situations. It could have required – and funded – Māori land boards to supervise subletting more closely. When the lease valuation problems emerged in the 1920s, the Crown could have revised its policy on perpetually renewable leases, and instead encouraged leases with more frequent rent reviews. It
could have reconsidered the policy of applying full rates to all Māori land in towns, and provided a speedier answer to the problem of the high land tax. It could also have strengthened the access for Māori to loans for rural development, especially as the stated reason for the sale of town land was for owners to obtain such finance. The Crown, though, was comfortable for Māori to exit the impossible situation it had largely created for them by selling the land.

(3) The fairness of the sales process
In this section, we investigate whether the Crown carried out its 1910 promise that every transaction would be carefully scrutinised to ensure owners’ interests were protected; whether, if the Crown was the buyer, it paid Māori a fair price; and whether the system enabled owners to consider sales collectively.

At first, the requirement for meetings of assembled owners ensured that offers to purchase the town were considered collectively. As well as the Crown’s offers to purchase the entire town in 1915 and 1916, a group of lessees applied to the Māori land board in 1918 to buy eight sections mostly situated on the main street. At the meeting of owners to consider the application in 1919, the president of the Māori land board reportedly urged Māori to offer the whole town to the Crown. He advised them that if they invested the total purchase money, the income would amount to £3,000 a year – far more than the leases were returning. But owners did not heed this advice. They discussed the matter amongst themselves, then agreed to sell only the eight sections to lessees.

Into the 1920s, though, decisions about sales were less collective. After the partition in March 1922, there were fewer owners in each subdivision, which made it easier both to negotiate sales and avoid meetings of owners. From 1913, the Crown could buy interests from individuals. For example, in subdivisions A, W, and H, it purchased individuals’ interests over a period of some months and then, when some owners did not sell, partitioned out its interests. After continual lobbying from lessees, the Crown also enacted law changes in 1919 and 1920, and began buying land on lessees’ behalf. Many sales were completed in the 1920s and 1930s.

We have no evidence that the Crown bought sections at unfairly low prices. From 1905, legislation obliged it to offer at least Government valuation, and there was no Crown monopoly in Taumarunui to suppress prices. The Māori land board also seems to have actively policed prices, ensuring that owners received at least Government valuation from both the Crown and private buyers. However, it did not enquire very deeply into why owners were selling, nor whether the sale was in their best interests; and there is no evidence that it considered the interests of the wider hapū, and owners’ descendants.

(4) Did the sales benefit Māori?
If owners were able to invest the money for development as stated, then there might have been some long-term benefits for individuals who sold. For instance, one owner sold three town sections, intending to develop his own farm and also to set up his son in farming. Evidence of actual, as compared with intended, outcomes is scarce, however. Where owners had no other source of income, money gained from land sales was spent on living expenses and paying off previous debts. One report from a firm of solicitors in the 1930s gave details of several cases where individual owners received considerable amounts from Taumarunui land sales, including £4,000 in one case, but after paying off debts, spent the rest of the money and then built up further debts. Ngata reported to Parliament in 1933 that money from the sale of Te Rohe Pōtāe townships was largely gone, and ‘many families found themselves in very poor circumstances.’

As the money from sales went to individuals, any benefits went only indirectly to hapū, if at all. Therefore, the land board president’s statement about investing the purchase price and receiving interest of over £3,000 was misleading: the money would not be in one account but split up among many accounts, reducing its potential to accrue interest and making any collective use of the money for the benefit of hapū more difficult.

(5) Conclusions about the sale of township land
It is not surprising that many owners came to sell their interests; it made financial sense. The poor returns from
leases were a leading reason, and owners sensibly preferred to derive a lump sum, whether to derive funds to develop farms as often stated, or to pay off debts and use the money for living expenses.

At first, the meetings of owners system provided a mechanism for collective decision making, and limited land sales significantly in the 1910s. However, this situation changed after the 1922 partition. Owners no longer had interests in the entire township, but only in those sections that they had been awarded as a result of the partition. Sales were therefore easier because prospective purchasers could gain the approval of far fewer individual owners in order to purchase specific blocks.

The Government was largely indifferent to the plight of owners. Rather than addressing the issues contributing to the alienation of Māori land, it actively advocated its sale in Taumarunui. The Crown used its powers to buy individual interests and then partition out its purchases. It did not require the Māori land board to inquire very deeply into the circumstances of sellers; it was focused mainly on assisting lessees to purchase. There was no apparent institutional recollection that the township had been set up because this was land that owners wanted to retain.

Prices achieved were at least Government valuation, and we received no evidence to support the view that prices were unfairly low. Regardless of how much money the owners received, however, it was rarely enough to address the serious underlying financial issues facing many Māori; without other sources of income, the money achieved from the sale of township lands would never completely cover their living expenses or debts.

There was also no distinction made when it came to the sale of leased town sections and the sale of native allotments reserved for Māori occupation. Consequently, significant portions of lands of high cultural value to Māori both in and outside the town boundaries, were also sold.

17.6.6 The Māori Trustee and the remaining leases
The Māori Trustee took over the administration of the remaining leases in 1952, and then the Māori Reserved Land Act 1955 set out how the Trustee was to manage native township land.303

By the 1970s, the Māori Trustee was managing 40 perpetual leases in Taumarunui. In 1974–75, a royal commission investigated perpetual leases of Māori reserved land, including native townships. The commission heard that the Māori Trustee’s administration frustrated Taumarunui owners: they got too little information; they did not understand the legislation applying to reserved lands; and they believed they were not getting a fair deal. At least one owner wanted the land returned to owners’ control. The commission recommended that in the case of certain lands, including those in Taumarunui, the Māori Land Court should appoint two people – ideally owners – to act with the Trustee in the performance of his trust. There should also be more frequent rent reviews, and provision for lands to be returned to owner trusts or incorporations.304

Following the royal commission, the Māori Trustee began a process of returning land in Taumarunui, usually to whānau trusts under section 438 of the Maori Affairs Act 1953. For instance, section K2 was returned in 1977, and H2 went back to the Karanga Te Kere Whānau Trust in 1987. Later returns were section A9B2 and O1 in 2004.305

The returned land became Māori freehold land. There are no leases now under the Māori Trustee.306

In 1997, the Crown passed the Maori Reserved Land Amendment Act, finally acknowledging the financial difficulties that Māori owners of vested land across the country had experienced as a result of perpetual leases. The Act provided compensation to Māori beneficial owners of land under perpetual lease for the reduced rentals that they had received. Eight Taumarunui leases were listed in the Act.

The 1997 Act certainly went some way towards resolving one of the major grievances about leasing under the Taumarunui native township regime, but it did not apply to land returned to owners before 1997. Some owners therefore did not receive compensation, although they were equally affected by perpetually renewable leases. The H2 section, for example, was not covered by the 1997 Act even though it remained under perpetual lease. This was rectified in 2011, when the Crown made an ex gratia payment to the Karanga Te Kere Whānau Trust.307 However,
some questions remain: it is not clear from the evidence that we received whether this 2011 payment was also supposed to include compensation for the K2 block returned in 1977, nor whether there were other owners in a similar situation who are as yet uncompensated.

17.6.7 Māori presence in Taumarunui township
In this section, we examine the history of land reserved for Māori use in Taumarunui. Keeping this land in Māori hands as the town developed was crucial to their retaining their rightful place on their tūrangawaewae (core tribal land). How parts of it came to be sold or taken for public works, the extent to which the Crown was responsible, and the outcome for Māori: these are our key issues for investigation. We focus on particular areas that were set aside for Māori occupation, namely Mōrero, Wharauroa, and Taumarunui papakāinga. We also discuss the history of Mātāpuna, at the eastern edge of the town.

Māori comprise about 40 per cent of the population of Taumarunui. The claimants told us they believed that about nine hectares of Māori freehold remain in the town. However, Māori also own land in general title.

Mōrero, Wharauroa, Ngāpuwiwha are the only surviving marae in Taumarunui. Mōrero and Wharauroa were on sections reserved for Māori when the native township was established, while Ngāpuwiwha was kept out of the town specifically for Māori occupation. Their survival, however, was threatened for much of the twentieth century as the land around them was gradually alienated.

The claimants said that the Crown had an obligation to ensure that such areas remained in Māori possession, but it placed little importance on their protection, and significant portions were sold or taken for public works. As a consequence, Māori were left with insufficient land in the town. The Crown, on the other hand, argued that sales and public works takings of some of the allotments and papakāinga did not necessarily breach the Treaty, and must be looked at on a case-by-case basis.

(1) Individual native allotments
As outlined earlier, when the township was set up, a number of individual sections were set aside for Māori; some of them included urupā. In 1911, the president of the Māori land board reported that Māori owners seemed against leasing the native allotments in Taumarunui. But from 1908 rates were applied to all sections, including vacant ones, and it was from then that sections in native allotments began to be leased out.

Examples come from after 1910, when rates were going up at a time of intensive town development. Sections set aside for Mākere Te Uruweherua, Marumaru Hikaia, Miriama Kahuakere, and Hinaki Rōpiha were advertised for lease in 1911. Another native allotment section leased out was the one-acre section 5, block xvi. Section 5 contained the urupā of Taitua Te Uhi of Ngāti Rangatahi and Ngāti Hinewai. The brother of Tānoa Te Uhi and cousin of Tūao Ihimaera, Taitua was influential in the establishment of Taumarunui Primary School, and when he died in 1902 he was buried, according to his wishes, near the school (see map 17.8). In 1904, Hakiaha Tāwhiao arranged with the Maniapoto–Tūwharetoa District Māori Land Council that the section would be reserved.
Hakiaha’s wife, Miriama Kahukarewao, told the Māori land council she would move her house to this section and live there, but it is not clear that she ever did so.\textsuperscript{313} In 1911, the section was advertised for lease with the condition that owners could access the urupā, and that it was fenced. The South Auckland Education Board later acquired part of the lot containing the urupā and added it to the primary school, perhaps in recognition of its connection to Taitua. It is unclear whether the grave remained in the same place, but claimants directed us to evidence that suggests Taitua is buried somewhere on school grounds.\textsuperscript{314}

There was no exemption from rates for sections that contained urupā, and if sections in native allotments were vacant, it would have been difficult for owners to avoid the pressure to lease, if only to cover rates.

(2) Mōrero marae (section 1, block xiva)

To illustrate the factors that contributed to the alienation of native allotments, we now turn to the case of Mōrero marae, which was the subject of extensive submissions from Ngāti Hāua and Te Uri of Tānoa and Te Whiutahi during our inquiry.\textsuperscript{315} Ngāti Rangatahi also cited Mōrero as one of their marae but did not submit a specific claim in relation to the site.\textsuperscript{316}

Mōrero marae pre-dates the establishment of Taumarunui as a township. Ngāti Hāua witness Florence Amohia told us how the marae site originally stretched between what is now Maata Street and Tūraki Street, up to the main trunk railway line and down towards Tūmoana Street.\textsuperscript{317} The marae took its name from the taniwha Mōrero, who lived in a swamp near the marae.\textsuperscript{318} Tūao Ihimaera lived at the marae in the 1880s and, following his death in 1896, his daughter Maata Tūao, also known as Maata Hinepuku, stayed there.

About seven and a half acres of the original site was set aside for Maata Tūao and others in 1904. Section 1, block xiva, contained the wharepuni (meeting house), and a number of other buildings. We do not know how
many people lived on the block, but it was Maata’s main residence.  

Section 1 was completely alienated through a combination of public works takings and sales in the 40 years following the establishment of Taumarunui. Mōrero was partly restored when portions of the land taken for public works were returned in 1996 and 2006, and new marae buildings were constructed. We begin with the public works takings and then address the subdivision and sale of the other parts of the section.

(a) **Public works takings:** Between 1915 and 1917, the Public Works Department compulsorily acquired a total of two and a half acres from Mōrero for Government and municipal buildings, the latter for Taumarunui Borough Council. We list the takings and the compensation awarded in table 17.3. The table shows that the Crown gave notice and paid compensation. The Crown returned about half the land to Māori, but the local authority still owns most of the site taken in 1917 for municipal buildings.

The takings from the marae fit the pattern of compulsory acquisitions across the district that historian Philip Cleaver described in his evidence to us: ‘it does seem that Māori land was targeted. Where it was vacant, by European standards [it] was seen to be undeveloped, and not being made proper use of.’ Land at Mōrero would
Native Townships

also have been attractive because of its central location on the main street. The Crown considered alternative sites but repeatedly returned to section 1 because it had the best location, was not leased, and much of it was vacant. Because there were no buildings to pay for or leaseholders to compensate, it was also cheaper.

We cannot find any evidence that the takings were part of a local council plan to expel Māori and marae from Taumarunui, although the claimants had that impression. They referred us to the words of George Carrington, the son of a former taumarunui councillor. When the Taumarunui Gazette interviewed him in the 1970s, he said he had heard that

the main job of the newly formed Native Township Council was to shift the Maori Pas out of the inner town area. There was the Manuatae Pa, which was replaced by the Taumarunui Club and the Hakiha Pa, which is opposite the Bank of New Zealand. Matthews Pa [Mōrero marae] was where the Memorial Hall and Ministry of Works are now and Wallace’s Pa was where the Post Office is.\(^{322}\)

We note that Carrington was referring not to the Crown but to the native township local council.

The Crown dismissed owners’ objections to the takings on at least two occasions and seems to have given no weight to the importance of the site to Māori.

In 1915, Maata Tūao wrote to Māui Pōmare. Her letter reveals her deep frustration at the native townships regime, and poor communication between the owners, the Māori land board, and the Crown. Under the impression that the entire section was to be taken, Maata explained that there was a meeting house and dwellings on the block; that her father had occupied the site for decades before the town was set up; and that she lived there. She did not want the land vested in the Māori land board; this was a question of mana. Maata added that over three acres had already been taken, a reference to land taken for the police station and the township sections along one side of block XIVA.\(^{323}\) When Pōmare inquired about the department’s plans, he was told that Maata misunderstood the situation: only a quarter of an acre would be taken and compensation would be paid. This seems to have ended the matter. The land was taken.\(^{324}\)

In 1937, the Crown was more prepared to heed opposition from the borough than from Māori before taking land for the Public Works depot (see table 17.3). At first, the Public Works Department wanted to avoid the marae site, and proposed taking land from the section previously acquired for the borough council in 1917. However, it dropped this after the borough council objected and settled instead on taking from section 1 an area five times larger than it previously proposed taking from the borough council. No one seems to have questioned this.

\[\text{Table 17.3: Public works takings from section 1, block XIVA, Taumarunui}\]

<table>
<thead>
<tr>
<th>Date of taking</th>
<th>Date of notice of intention</th>
<th>Description</th>
<th>Area (acres roods perches)</th>
<th>Compensation award (£)</th>
<th>Compensation date</th>
</tr>
</thead>
<tbody>
<tr>
<td>25 May 1911</td>
<td>28 February 1911</td>
<td>Police Station</td>
<td>0 2 0</td>
<td>100</td>
<td>17 October 1911</td>
</tr>
<tr>
<td>3 July 1915</td>
<td>16 April 1915</td>
<td>Public Works Department buildings</td>
<td>0 1 0</td>
<td>160</td>
<td>16 November 1916</td>
</tr>
<tr>
<td>26 May 1917</td>
<td>24 October 1916</td>
<td>Municipal buildings</td>
<td>1 0 0</td>
<td>2,145</td>
<td>1 November 1918</td>
</tr>
<tr>
<td>5 April 1937</td>
<td>25 January 1937</td>
<td>Public Works depot (lots 1, 2, 3)</td>
<td>0 3 30</td>
<td>502</td>
<td>6 October 1938</td>
</tr>
</tbody>
</table>

\[\text{Downloaded from www.waitangitribunal.govt.nz}\]
By then, the owners of section 1 had partitioned it further. Mangu Pohipi, Maata Tūao’s nephew, indicated that he would object to any taking from part lot 6, where he was living. He suggested that the Crown take either the borough council land or lots 1, 2, and 3, which were vacant. However, in 1937, another owner, Meri Para, formally communicated to the Minister of Public Works her opposition to the Crown taking these lots. The assistant under-secretary of Public Works replied that it was unavoidable, for the Government required the land urgently. Again, after that the land was simply taken.

We agree with the key point in Cleaver’s report:

If the objections had been given greater attention, the [Public Works] Department would probably have gained a greater awareness of Block XIVA’s importance as an area of remaining reserve land.\footnote{326}

(b) Mitigation of prejudice by the returning of land: Three parcels of the land that were taken from block XIVA have since been returned to Māori ownership. The Crown argued that this mitigated any prejudice that Taumarunui
Māori suffered when the land was taken, but claimants disagree. Ngāti Hāua complained about the amount they had to pay for the buildings on the former Public Works depot site.327

In the early 1990s, a new police station was to be built on the main street in Taumarunui. Excavations on the site that the Crown compulsorily acquired in 1911 uncovered human remains. According to Ngāti Hāua witness Te Atawhai Archie Taiaroa, the police refused to stop construction, and, in protest, 300 people occupied traditional wāhi tapu and marae areas.328 The Prime Minister at the time, Jim Bolger, and several prominent politicians intervened. Ngāti Hāua, the Crown, and the Ruapehu District Council agreed the police station would go ahead, but on condition that:

- construction would halt if further remains were found;
- the Ruapehu District Council would transfer land to the local iwi to build a meeting house and the Government would fund its construction;
- title to the police station site would be transferred to Māori ownership, but would be leased back to the police for 30 years at a nominal rent; and
- after 30 years, the new police station would be transferred to Ngāti Hāua, and if the police still required the building, new arrangements would be entered into.329

This agreement cleared the way for the Crown to acquire 102 square metres of the town hall site. This land, along with the police station site and the former site of the Public Works Department offices, was returned to Māori ownership in 1996, and the new marae buildings were constructed.330 The wharepuni was named Hāuaroa, after a wharepuni of the same name that was once located downstream at Kaiwhakauka.331 The land is currently administered by the Hāuaroa ki Taumarunui Trust, and the police station is leased to the Crown until 12 April 2026.332

About eight years after the return of the land for Hāuaroa, the Crown also returned the Public Works depot site to Māori ownership. The Hāuaroa ki Taumarunui Trust and Land Information New Zealand, a Government department in charge of administering Māori claims to surplus Crown land, entered into an agreement whereby the site was vested in the trust at nil value. However, the trust was still required to pay the amount it would have cost the Crown to remove the buildings from the site. At $142,500, this was a substantial sum, which the trust had to borrow and has since struggled to repay.333

The return of land that the Crown compulsorily acquired did mitigate the prejudice of the original takings, but the burden of debt that came with the return of title certainly undermined the benefit to tangata whenua.

(c) The partition and sale of land in section 1, block xiva: We now turn to the fate of the other five acres in section 1, block xiva.

In 1922, 10 owners were awarded section 1, block xiva when the town was partitioned.334 Maata Tūao then applied for a further partition. The Māori land board consented, and an agreed partition scheme and plans were presented to the Native Land Court. Maata and Para Hīkaia, who between them owned more than three-fifths of section 1, were at the court hearing and approved the plans. Solicitors for the other parties stated that the scheme had been well discussed and all owners approved.335 Seventeen lots were created. Mōrero marae became lot 6, a one-acre, irregularly shaped section, with the other lots ranged around it (see map 17.9). This partition signalled the end of the section as a papakāinga. At first, some owners continued to live on their individualised sections, while other sections were leased. However, all were eventually sold.336

The owners did not tell the court why they wanted to partition, but the financial burden of rates might have been a contributing factor. Rates on section 1, block xiva, were high due to its central location.337 In 1922, the registrar of the Māori Land Court named 14 owners who owed rates, including Maata Tūao, whose debt was over £1,000.338

In 1924, the Crown purchased lots 11 to 17, on the southern side of section 1.339 We received no evidence about the sales going to meetings of owners, possibly because the Crown purchased owners’ individual interests. Partition into smaller sections, each with only a few owners, undoubtedly made it easier to sell. Lots 4, 5, 7, and 8 were sold to lessees in the 1920s.340

After the partition, Maata Tūao appears to have become
the sole owner of lot 6, which contained the marae. A strip of land for a right of way was sold in 1926, and at some point the marae buildings were removed. Maata died in 1935, and her nephew Mangu Poihipi, son of Taumata Poihipi, was her successor. He sold some of lot 6 to pay small debts that Maata owed around the town for living expenses, but she also had a rates bill of £154. Mangu wrote to the Native Minister asking for assistance in arranging a compromise payment for the rates arrears. He later reported that the borough council had accepted his offer, and thanked the Minister for his assistance.

Māori land board minutes approving the sale of part lot 6 stated that although Mangu was living on the section, he had other property that he could occupy. Furthermore, the section was in a highly rated area, unpaid rates were rapidly accumulating, and over time the section would become worthless. At this point, the rates owing were a quarter of the land’s value. Mangu himself was being pursued for debt in the mid-1930s. He sold the bulk of lot 6 in 1938, and then the final piece in 1943.

All of the land in the original Mōrero section had now passed out of Māori ownership. However, tangata whenua remained focused on getting back the land. Decades later, they repurchased some of the former block XIVA, and after the return of land taken for public works, built a marae to stand once again on ancestral land at Mōrero.

(3) Wharauroa marae (block xix)
We saw a similar pattern of partition, increasing rates debts, and sale at Wharauroa marae. Ngāti Rangatahi claimants focused on the sale of some of the marae lands as a particular grievance. At the time of our inquiry, the circumstances of the sales were not fully known, but Ngāti Rangatahi alleged that their tūpuna would not have willingly sold the land, which was close to an urupā and the wharenui.

Wharauroa was the home of the Te Ngaruipiki whānau during the nineteenth and early twentieth centuries: Tuku Te Ihu Te Ngaruipiki, his elder brother Mātakitaki Te Ngaruipiki, Tuku’s wife Te Nge, and her sister Mākere Te Uruweherua, and members of the Poihipi family, all lived there. Ngāti Rangatahi witnesses told us about their tupuna Tuku, who had an extensive orchard around Wharauroa, was one of the earliest growers of peaches in the area, and later grew fruit and vegetables for the local market. Robert Herbert’s evidence was that ‘Ngāti Rangatahi were gardeners and cultivators . . . Tukuteihu’s cultivations were famous and defined the character of Ngāti Rangatahi’. Ruapehu District Council owns some of the land Tuku Te Ihu cultivated, on the eastern edge of the marae, as Tuku Street Domain. We investigate how the local authority acquired the land for the domain here.

In 1904, the township plan showed 16 acres set aside for Wharauroa marae: this was section 15, block xix. A further 14 one-acre sections were also set aside for Māori immediately to the west of section 15. Three of these sections were sold in 1923 (see map 17.10). When the Māori owners partitioned their interests in the township in 1922, section 15 was awarded to ‘Taumata Poihipi and others’. In another partition of October the same year, the marae
became section A4. Section A4 was partitioned further in June 1923, February 1924, and February 1925.\footnote{348}

(a) \textit{Partitions begin}: Te Whitu Hiriwētere, who was living in Te Kūiti, applied for the 1923 partition of the marae section. At the court hearing in June that year, Hiriwētere’s lawyer said he had given notice to the other three beneficial owners of A4, and spoken to one of them, Taumata Poihipi. He explained to the court that Hiriwētere was not resident in Taumarunui, rates for A4 were about £80 a year, and she therefore wanted ‘to be liable for her own portion only’. She did not want to ‘interfere with the kāingas’ of the resident owners, and so preferred to locate her interest at the eastern end of the papakāinga. The court divided the marae section into A4A (2.2 acres, ‘to be cut off at the eastern end by line parallel to the east boundary’), and A4B (13 acres 2 roods), for the other 3 owners.\footnote{349} The Crown bought A4A, bordering Tuku Street, in April 1924.\footnote{350}

The marae was on section A4B, which was subsequently partitioned even further. By 1948, the marae buildings were on section A4B6B1, and Te Whitu Hiriwētere was the sole beneficial owner of the A4B3 section (adjacent to the former A4A section).

(b) \textit{Sales begin}: Bishara, a local sawmiller, offered £370 for section A4B3 in 1948. Hiriwētere, who still lived in Te Kūiti, consented to the sale. The Waikato-Maniapoto District Māori Land Board asked the borough council to confirm the amount of unpaid rates on the section. The land board at first disputed the borough’s figure of £202, but eventually recommended that the Minister of Māori Affairs consent to the sale. Delays, however, caused the recommendation to lapse. Although Bishara pursued the sale again, there were lengthy disputes, this time between the Māori Trustee (successor to the district Māori land board) and the borough council over reducing the rates demands, which by 1952 amounted to £254. The council finally agreed to settle for £136. The sale went ahead, and when it was completed in 1954, Hiriwētere got £293.\footnote{351} Bishara later sold the section to another owner, who in turn sold it to the council in 1958. From section A4B3 and the neighbouring section A4A, the council created the Tuku Street Domain, and the Crown transferred ownership to the council for that purpose. That was how the council came to own these two sections, originally part of the marae.\footnote{352}

Meanwhile, debts on section A4B6B1 increased until, in 1939, owners owed £180 for overdue rates, and £10 for survey liens. One of the owners paid off the rates arrears in 1947. The Māori Land Court recommended putting allotments 1 to 9 of section A4B6B1 into a Māori reservation for a marae, but this did not happen, and further rates accrued. Mātakitaki Te Ngarupiki’s great-great grandson, Robert Herbert, informed us that in the 1950s his grandfather, Tūkōrehu Te Ahipū, called the family back to Wharauroa from Te Kūiti. About four families lived together at the marae at this time. Some of the buildings had fallen into disrepair, and the Herbert whānau helped to rebuild the marae. Families still struggled to keep it safe, though, as they confronted rates demands and public works takings.\footnote{353} The borough council wanted to widen the road in the 1950s, threatening an urupā. Ngāti Rangatahi successfully resisted, and erected a monument to Tuku Te Ihu to mark the extent of the unmarked graves. Finally, over 30 years after the Māori Land Court first recommended it, the marae was gazetted as a reservation in March 1972.\footnote{354}

(4) \textit{Mātāpuna}
Further along from Wharauroa, just to the east of modern-day Taumarunui, near where the rail and road bridges cross the Whanganui River, is the area known as Mātāpuna. It is the site of an ancient kāinga called Ōtikōke. In 1883, Tīraha Poihipi built a meeting house there for his wife Parekahurangi, with the assistance of her relatives Te Porou, Poukaka, and Tākinikini. He called the house Mātāpuna.\footnote{355} The Crown took land in the area for public works connected with the railway, a small portion of which tangata whenua bought back in the 1990s. The railway line from Auckland reached Taumarunui in 1903.\footnote{356} Work then began on the route south from Taumarunui. Before going south, the route ran east, right through Mātāpuna. When Taumarunui was proclaimed
as a native township in November 1903, the township’s north-eastern boundary was defined by the railway and a ballast reserve at Mātāpuna. Ballast is the crushed stone underneath railway tracks. Perhaps the ballast was stored there, and used during railway construction and afterwards for track maintenance.

Giving evidence in the native land court in a case about the ownership of Mātāpuna in December 1903, Tīraha said that Mātāpuna stood ‘on the riverbank, just on the north side of the railway’. He had built a number of buildings there, including a ‘big house where I could entertain travellers’, smaller houses, kitchens and a pātaka (food storehouse). He expected it to ‘become a place of some consequence’. Parekahurangi died in childbirth and was buried there with her child. Other children were also buried there. Tīraha supplied food to the railway workers and when the railway line was first laid, he negotiated with Rochfort the surveyor, and Louch, an engineer, for the track to avoid his urupā. Louch told him there would be no damage to his kāinga and ‘the Government moved one of my houses for me to the town side of the line’. He had given up living there as he had let out the house to a settler, but he still used the land for orchard, and had a waikāinga (waterside lodging) at the river.

Tribunal hearing, Wharauroa Marae, Taumarunui, 2008. The claimants spoke about their ancient and recent history, their tūpuna – the people behind the town’s street names such as Katarina, Ngātai, Te Huia, Mākere, Taitua, and Tuku, and their current claims against the Crown.
It is not clear if Tiraha knew the extent of the ballast reserve. He had discussed the railway with officials, and the reserve was marked on the surveyor’s 1903 map. However, the land was not formally taken until 1905: 25.5 acres of Māori land acquired from the Ōhura South G block for railway purposes under the Public Works Acts 1894 and 1903. This seems to have been mostly for the ballast reserve. Because the land taken comprised less than 5 per cent of its parent block, the Crown did not have to pay compensation to the owners, and does not appear to have done so.

Monica Mātāmua thought that the meeting house was taken down as a consequence of the land being taken. However, it is not clear if the meeting house was affected at this time as it was on the northern side of the railway and the taking was mostly on the southern, or town, side. It could have been taken down later. On the other hand, the ballast reserve was taken even though the Crown knew that there was an urupā there: a grave was marked on the 1903 survey map of the township. Section 93 of the Public Works Act 1894 specified that burial grounds could not be taken without the consent of the Governor in Council. We have no evidence about whether this consent was obtained, but in any case the section failed to protect the burial ground.

By 1980, 5,611 square metres (about 1.4 acres) of the ballast reserve was set aside for use as an electricity line depot, as it was no longer required for railway purposes. By the mid 1990s, it was no longer needed for the line depot, and it was advertised for sale. Roger Herbert told
us that the property should have been land-banked for use in future Treaty settlements, but instead they were told that ‘if we are not interested in the property – buying it – it was going to be auctioned’. The Ngāti Rangatahi Whanaunga Association guaranteed a bank loan, and the Hinengākau Development Corporation bought the land. We do not know the purchase price, and it was not clear from the evidence whether the price was for the land itself or included the Crown’s ‘improvements’. At the time of our hearings the line depot area was home to a toi whakairo (traditional carving) school. The rest of the ballast reserve land appears now to be in private ownership; we do not know when the Crown sold it.

(5) Taumarunui papakāinga and Ngapūwaiwaha marae

Taumarunui papakāinga, as it came to be known, was located outside the native township boundaries on an area known as Ngāhuihuinga (Cherry Grove), and is of special significance to all hapū in Taumarunui. Not only was it the location of Ngapūwaiwaha marae, but it was the home of three Ngāti Hāua rangatira who figure prominently in the story of Taumarunui: Te Manuaute Piripi tūhaia, Hakiaha Tāwhiao, and Miriama Kahukarewao.

When the native township was first set up, the leaders of the community ensured that this area was kept outside the native township boundaries and remained Māori freehold land. It did not come under the control of the Māori land council, and was not partitioned. All owners in Ōhura South G4 therefore retained land interests there.

Up to the 1940s, and in some cases later, Māori often had cultivations and houses at several marae around the borough. For instance, in his evidence for Ngāti Rangatahi, Robert Herbert described how his whānau maintained extensive māra (gardens) at Taumarunui papakāinga, Te Peka pā, and Wharauroa. Ngāti Hekeāwai witness Bryan Wilson described the close connections between people at Te Peka and Ngapūwaiwaha: ‘the same people go to each marae, it’s all family’.

However, as with other township land, Taumarunui papakāinga was partitioned and sold off during the twentieth century. Claimants contend that rates debts led to the sale of parts of this land, that the sale process was flawed, and that local government authorities pressured Māori to move away in order to re-zone and develop the land.

(a) Owners initially resist partition: At first, the majority of owners did not want to partition the papakāinga. When the Native Land Court heard an application for partition in 1910, Hakiaha Tāwhiao explained that the land ‘was specially set apart for all’ and should not be partitioned. Judge Holland reported to the Government that there were disputes among owners at the partition hearing and, at the request of leading owners, he had adjourned the case without assigning the next hearing day. There was another attempt in 1916, when an owner applied to partition out a section on which she had recently built a house. Her family supported the application, and also suggested that a road be laid off right around the riverbank so that all people might have access to the river. The court did not grant the application, however.

(b) Partitions begin: The situation changed in 1920. That year, the court partitioned the papakāinga into 22 sections, and more followed. According to court minutes, the 1920 partition was by ‘mutual agreement,’ with many owners attending the hearing. They presented plans to the court showing the layout of sections and streets. Owners did not say why they wanted to partition the land, but there are indications that some were reluctant. In 1921, Hakiaha Tāwhiao expressed his disapproval of both the partition and sale of some sections ‘to the Pakehas’. He commented that it was absentee owners who wanted to sell their lands in Taumarunui. It also seems likely that, as at Mōrero and the other papakāinga, the imposition of rates put owners under financial strain.

The partition plans show two meeting houses. One, on section 8, survives today as Ngapūwaiwaha marae. In 1925, Te Huia Pikikōtuku and others applied to the Native Land Court to put sections 6, 7, and 8 back into one block. Owners told the court that all three sections were used as a marae, and that section 8 was too small on its own. All but one of the owners consented to combining the three sections, and the court cancelled the previous partition. In 1951, owners told the Māori Land Court they wanted...
to put the marae put into a reservation for Ngāti Hāua: the land was ‘regarded as tribal land’; the meeting house on section 8 was built in 1912; and the wharekai (dining room) on section 6 had been there since 1916. The court recommended the reservation, and it was gazetted in 1966. An adjacent urupā was added to the marae reserve in 1979.\textsuperscript{375}

The other meeting house no longer survives. Located on section 3 near Mōrero Terrace, and marked on the partition plans as Te Manuaute’s residence, it may have been the marae known as Te Puru-ki-Tūhua. Claimant evidence was that this marae was originally moved from near Mōrero marae to a position near the Whanganui River but was then taken down again when land was taken for Victory Bridge, constructed in 1921.\textsuperscript{376} There may be a connection with the bridge, as land was certainly taken around the approach to the bridge. However, it was after the bridge was constructed that, in October 1922, section 3 was further partitioned between owners on the condition that Te Manuaute’s successors and the Hakiaha Tāwhiao
whānau dismantled the meeting house and a neighbouring cottage occupied by Rangipōra Whakauruhanga. Tradition has it that the carvings were then divided between family members. Section 3B3, containing the meeting house, was awarded to Harata Parāone and others. Some of section 3B3 was later taken for public works when the position of Mōrero Terrace was altered.\(^\text{377}\)

(c) *Sales*: Other papakāinga sections were sold. Of particular concern to the claimants was the 1923 sale of sections 21 and 22, the place from where Ngāti Rangatāhi departed with Te Rauparaha and Ngāti Toa for Heretaunga (Wellington) in the 1820s.\(^\text{378}\) With over 20 owners in each section, meetings of owners were held to vote on the sales, but the sale process for section 21 does not appear to have been tika (proper). Only two owners, who between them had a total of nine proxy votes, were at the meeting that resolved to sell the land to Houpapa Whakauruhanga. Shortly afterwards, Whakauruhanga withdrew from the sale but requested that Frances Gardner become the purchaser. The Māori land board had some doubts about the proceedings but consented. Although the other owners apparently knew about the sale to Whakauruhanga, it is not at all clear that they approved the transfer to Gardner. The sale of section 22 was more straightforward – a meeting of owners agreed to sell it directly to Gardner. Some years later, the Taumarunui Borough Council bought both sections, and later transferred them to the Department of Conservation, which continues to administer them as a recreation reserve.\(^\text{379}\)

(d) *Rezoning*: Florence Amohia recalled a time of great worry and uncertainty in the late 1950s as the borough council condemned and demolished many Māori houses on the Taumarunui papakāinga, including her own family home. When owners wanted to re-build, they were turned down, because certain areas had been re-zoned as commercial land, and residential use of the land was no longer permissible. Mrs Amohia’s whānau resisted, and eventually obtained permission to rebuild their home with the help of a Māori Affairs housing loan – although to qualify for the loan they were required to convert the land to from Māori freehold to general title. However, Mrs Amohia told us that it was all too much for some families, especially given how high the rates were in that part of town, and they left the area altogether.\(^\text{380}\)

(e) *Improvements*: Signs of regeneration and a better understanding between local government and Māori appeared in the 1970s. Taumarunui’s Māori population grew from 297 in 1951 to 1,228 in 1971. The rising Māori population was one reason why, in 1975, a new wharepunī was built at Ngāpūwaiwaha marae. This enterprise attracted considerable public support. A publication marking the opening described mayor Les Byars as ‘an inspiring figure behind the development of Ngāpūwaiwaha Maraeb.\(^\text{381}\)

(6) **Conclusions about Māori presence in Taumarunui**

When Taumarunui was set up, native allotments were the Crown’s answer to preserving culturally important sites and sufficient land for Māori occupation within the town. However, it soon lost sight of this purpose. The changes to the native townships regime of 1910 swept away previous protections, enabling leasing and sale of papakāinga. While there were provisions for the creation of inalienable marae reserves under the new regime, in practice the existence of large rates debts probably delayed their creation until after the Second World War. Certainly this was the case with Wharauroa. The partition, sale, and compulsory acquisition of culturally important sites undermined the ability of Māori to maintain their presence in the town on their own terms.
The Crown’s actions caused land loss in the native allotment sections. It did not hesitate to make compulsory purchases of land for public works in and around Mōrero, both for its own purposes, and for those of local government. The central location of the marae land and other factors made it a target for compulsory acquisitions for public works. The Crown dismissed owners’ objections and in no way addressed their concerns, and took land more or less to the doorstep of the wharenui itself. The return of some of the land was a positive step. We partook in events at Mōrero marae during our Taumarunui hearings, and learned about the work of the Hāuaroa ki Taumarunui Trust, all of which enabled us to experience first hand the benefit to tangata whenua of regaining their proper place in the centre of town. Unfortunately, the Crown diminished the benefit of returning the land when it required tangata whenua to pay a considerable sum for the removal of buildings from the site.

We are encouraged by recent moves to restore land to hapū. The Waitangi Tribunal process was an opportunity for claimants to discuss their claims with local government bodies. As a result, Ruapehu District Council set up a working party with claimant representatives to discuss the return of lands that it currently owns, including the Ngāpūwaiwaha Reserve Strip (consisting of accreted land, formed near the marae when the Whanganui River changed course), Cherry Grove, the Tuku Street Domain, and Tūwhenua (Taumarunui Airport). In principle, the district council agreed that it would return Tuku Street Domain to a suitable Māori body. At the time of writing this report, the district council was also negotiating the return of a paper road and the reserve strip near Ngāpūwaiwaha marae.

17.6.8 Conclusions about native townships
The administrative and legal framework governing the townships was dismantled long ago and is barely remembered today. For Māori, though, the regime left a legacy of disempowerment, missed opportunities, and land loss.

In summary, this chapter has shown that, as a response to difficulties in establishing townships, the Crown’s 1895 native township legislation was unreasonably autocratic. In some cases, such as Pipiriki, the development of towns was discussed over a period over some years, and the Crown eventually did take into account some Māori preferences such as leasing rather than selling land, and not using the Public Trustee. However, in the end the legislation seems to have been drawn up and introduced quickly, probably without discussion of its details with Māori, and with only limited debate in Parliament. It cannot be said that Māori consented to it. It shut them out of owning and managing their own land. The 1902 legislation was a modest improvement, but only until Māori land boards replaced Māori land councils.

Neither the Pipiriki nor the Taumarunui township was imposed outright on the owners, but their creation left much to be desired.

In the case of Pipiriki, Māori attempts to create a partnership with the Crown were stymied by the legislation, and Crown resistance to including Māori in the management of the town. In Taumarunui, the way the Crown negotiated and its subsequent actions led to a significant section of owners not consenting to the town. Once established, the safeguards for Māori in the legislation proved insufficient to protect Māori interests and, in the case of Taumarunui, contributed to further land loss. In our view, the Crown also contributed to the failure of the towns to provide a good rental income for owners: the regime was too favourable to settlers’ interests, and the Crown did not try to solve problems that threatened the viability of the scheme for owners as they emerged.

17.7 Findings on Native Townships
The Crown breached the Treaty of Waitangi and its principles both in creating the native townships legislation and in applying it in Whanganui.

17.7.1 Findings on the legislation
(1) Consent to the native township legislation
Article 2 of the Treaty promised Māori that they could retain their land and exercise te tino rangatiratanga over
it for as long as they wished. As the Central North Island Tribunal expressed it, these guarantees obliged the Crown to consult Māori on matters of importance to them, and to obtain their full, free, prior, and informed consent to anything which altered their possession of the land, resources, and taonga guaranteed to them in article 2.386

The first and second native townships regimes involved radical changes in the ownership and management of Māori land, but the Crown did not adequately or sufficiently discuss the legislation with Māori. They did not consent to important aspects of the regime contained in the Native Townships Acts of 1895 and 1910. The Crown acted inconsistently with its guarantee of te tino rangatiratanga and its duty of active protection, and did not fulfil the obligations of a good Treaty partner.

(2) Compulsion

We analysed the Crown’s duties as regards compulsory acquisition of Māori land for public works in chapter 16. Compulsory acquisition is justified ‘only in exceptional circumstances and as a last resort in the national interest’.387 Public works legislation has its own legislative history and rationale, but there are the same elements of compulsion in the legislation establishing the first and second native township regimes, and we consider that the same test applies. There was no exigency such as to justify compulsion. Before acquiring land for townships, the Crown should have obtained all the owners’ consent, but native township legislation did not require it to do that.388 This breached the fundamental guarantee in article 2 of te tino rangatiratanga over Māori land until its owners wanted to sell.

(3) Ownership and management

Creating townships in and around kāinga Māori brought together often conflicting objectives of Pākehā settlers paying rent to Māori for the land they were occupying in a new town, and tangata whenua seeking to preserve their tūrangawaewae and traditional culture and also derive a decent income from rent. The scheme for native townships was fundamentally disempowering for Māori, reposing ownership and management of their land in others. Inevitably, over time, the preferences of those in whom power and ownership was vested prevailed.

The Tūrangatūria a Kiwa Tribunal found that where the Crown takes over and manages Māori land on owners’ behalf, it must include Māori in the development of policy about the administration of their land; failing to do so breaches the Crown’s duty of active protection.389 We agree, and apply this finding to native townships. The regime at no stage provided an avenue for Māori interests to be expressed and met, even when there was one Māori representative on the Māori land board before 1913 – although that was better than nothing. The Crown undermined te tino rangatiratanga, breached its duty of active protection, and acted inconsistently with the principle of partnership.

(4) Survey costs

Previous Tribunals found that Māori shouldered survey costs to an extent that was disproportionate and unfair. The Crown should have contributed much more, because surveys were necessary for Pākehā settlement, and the whole population benefited.390 These findings apply to native townships. Māori were not the only beneficiaries of native townships: the Crown declared their importance for all of New Zealand. Māori should not have borne the whole burden of township survey costs. The Crown’s failure to share expenses in the development phase of townships sabotaged the likelihood of their ever delivering meaningful economic returns to Māori. The Crown should have had this objective to the fore from the outset. Its failure to do so breached its duty of active protection.

(5) Rent distribution

The main benefit of native townships for Māori was supposed to be the rental income. The Te Tau Ihu Tribunal found that distributing rent to each owner was one of the unsatisfactory effects of ‘individualising’ land titles. Where there were many owners among whom the rent
Native Townships

(6) Perpetual leases

In 1910, the Crown empowered district Māori land boards to issue perpetually renewable leases, partly to address the demands of lessees. Māori had little opportunity to comment on the change before it happened.

On the introduction of perpetual leases to the Motueka and Nelson tenths reserves, the Te Tau Ihu Report stated that that perpetual leases ‘may well have been . . . an arrangement that had a sound economic rationale, but the failure to consult with beneficiaries about such a fundamental change to the administration of their estate was a serious omission.’ We agree, and find that both the change and the Crown’s failure to discuss it with Māori constituted a breach of the duty of active protection.

(7) Land sales

The Treaty obliged the Crown to both protect Māori ownership of their land for as long as they wished to retain it, and to ensure that they did not divest themselves and their uri (descendants) of too much land. This applied perforce to land they owned in townships, because a strong rationale for townships was facilitating the retention of Māori land in Māori hands.

The Crown acted in breach of its obligations when, in 1910, it introduced provisions allowing Māori owners to sell land in townships through meetings of assembled owners, or by giving their written consent to the Māori land board. This move flouted the recommendations of the Stout–Ngata commission of 1907, and undermined the ability of Māori to hold on to township land. At the very least, the Crown should have sought Māori consent before introducing the 1910 legislation.

We agree with claimants that the 1910 Act breached the Crown’s duties to act in good faith, and to uphold te tino rangatiratanga.

(8) Māori occupation of the towns

In our view, the Crown failed to provide adequately for Māori to continue to occupy land in townships, nor for them to hold on to the land they owned and occupied once the townships got underway.

Native allotments were crucial to Māori maintaining sufficient township land for them to retain their cultural integrity as tangata whenua, and to exercise mana in the town. The Crown wrongly limited native allotments to 20 per cent of township land in the 1895 Act, and although the later Act removed the cap, this did not address the fundamental failure of the Crown to provide for meaningful expression of mana Māori when it designed the township concept. The failure to include Māori in the management of their marae, papakāinga, and urupā under the 1895 Act was a harsh and unnecessary aspect of that regime, as was their later transfer to Māori land boards.

The Crown should also have gained Māori consent before opening up native allotments to lease and sale in 1910. The law changes at that stage allowed individuals to sell interests in land that tangata whenua had previously identified as places of vital importance to hapū.

This indifference to the cultural integrity and mana of tangata whenua again found the Crown wanting as a Treaty partner, and breached its guarantee of te tino rangatiratanga.

(9) Public works provisions

This Tribunal, and others before us, have found that when the Crown conferred on itself legislative authority to acquire Māori land compulsorily, it breached the Treaty guarantee of te tino rangatiratanga (see our findings at section 16.6). Treaty jurisprudence leaves open to the Crown the possibility of acquiring land compulsorily consistently with the Treaty in the rare situation of national exigency.

Native townships legislation was even worse than public works legislation: it permitted the Crown to acquire Māori land compulsorily without notice or compensation, even though Māori had given over the ownership of their land to the Crown or a trustee body on the basis that it would be leased and not sold. These italics express the...
sense of outrage that this Tribunal feels about the egregious breach of the Treaty that these legislative provisions, and the Crown's implementation of them, entailed. None of the arguments that the Crown tendered in justification – for instance, that the value of Māori land in the town would increase as a result of the public works – are solidly based. If it was to the benefit of Māori for their land to be used for public works, it follows that they would probably have agreed to sell land for that purpose. They should in any event have been paid, because public works would benefit not only Māori but the whole community.

We see no basis whatsoever for using compulsion, much less compulsion without notice or compensation. This was a flagrant breach of article 2.

17.7.2 Findings on Pīpīriki
(1) Setting up Pīpīriki
We consider that there was an element of compulsion in the negotiations for Pīpīriki Native Township. Tangata whenua did want the town, but their consent was conditional. The site of the town was to be within certain boundaries; a particular urupā was to be reserved, with other reserves agreed later; and a Māori committee was to be set up, which the Government would deal with as representing the owners. There was no sign that tangata whenua favoured giving over to the Crown legal ownership, management, and control of their land at Pīpīriki. However, the 1895 legislation provided only one model for a native township, so it was that or nothing.

We saw no evidence of the Crown's forging a relationship with a Māori committee as Te Keepa envisaged, so that tangata whenua would retain their mana in the township. The Crown also failed to follow its own legislation and reserve the urupā on Pukehīnau. This exposed the urupā to inappropriate use while under the management of the Department of Conservation.

The Crown made no effort to ensure that public works were fairly compensated and offered back when no longer needed. Instead, it leased out land taken for public works, and kept the rents.

Taken together, the Crown's actions in setting up Pīpīriki showed an unfortunate lack of regard for its Māori owners that amounted to a breach of the principle of partnership.

(2) Economic benefits, and managing Pīpīriki
The Crown understood that tangata whenua gave up their control over Pīpīriki lands in a manner not entirely of their choosing, in exchange for certain administrative and economic benefits. We find that this and the Treaty obligations inherent to the principle of partnership imposed a duty on the Crown to do its utmost to realise these benefits for Māori. It was in the nature of an exchange, and the Crown should have done everything in its power to deliver.

The Crown, however, largely withdrew from this responsibility. Tangata whenua were effectively excluded from the official administration of the town while it was under Crown management. Even when the township was transferred to the Aotea District Māori Land Board (without Māori consent), the Crown did not make sure that there was adequate Māori representation on the land board or that owners were consulted adequately.

Many economic benefits were also never realised – an outcome brought about in no small part by the Crown's decision to make the township's development costs the responsibility of tangata whenua. We agree with the Crown that the wider economic situation played a significant role in the declining income from rents in Pīpīriki, but it could – and should – have limited the amount that owners were expected to pay for development and survey costs. This would have lessened the impact on tangata whenua of Pīpīriki's financial collapse.

The way that the Crown implemented the regime at Pīpīriki prejudiced tangata whenua. Owners received very little money individually, and until 1922 there was no capacity to manage rental income communally. Tangata had no say in township management, so the Māori land board was able to issue perpetual leases without consultation or consent. Perpetual leases later delayed the return of land to its Māori owners.

The Crown therefore failed to fulfil its obligations as a Treaty partner, and undermined te tino rangatiratanga of Pīpīriki Māori. The Crown could have ameliorated
the very disappointing results of the township scheme at Pipiriki – a concept that it promoted and pushed through without properly evaluating its real prospects – if it had helped the Pipiriki Incorporation financially when it took over the land in 1960. The Crown neither acknowledged accountability for any part of what happened, nor demonstrated a sense of responsibility towards tangata whenua, who paid the full price of the township’s failure.

17.7.3 Findings on Taumarunui

(1) Setting up Taumarunui township

In setting up Taumarunui, the Crown went against the express wishes of tangata whenua. It postponed partitioning the township, and deliberately limited input from the Māori land council simply to avoid delay to its self-imposed timetable.

The Crown failed to gain the full consent of owners to the town. It did not negotiate with them in good faith, and breached its guarantee of tino rangatiratanga.

By gazetting Taumarunui under the second regime, the Crown introduced a system of identifying native allotments that, for the most part, benefited Māori owners. Native allotments were laid out in the original survey plan, and the Māori land council added more sections when tangata whenua applied for them. However, the regime should have obliged it to gain hapū consent for the size and location of native allotments. Nor did the council have authority to adjust the boundaries after the Crown proclaimed the town, and this meant it could not exclude Mātāpuna land from the township as some owners wanted.

In Taumarunui there are also questions about whether the agreement of owners was sought or obtained to: the inclusion of a large recreation reserve in the township; the reduction of the Mōrero marae native allotment; and several street alterations.

In short, the system did not sufficiently respect tino rangatiratanga of tangata whenua to ensure that Taumarunui native township was established in a manner that was fair to Māori, or to which they agreed. The Crown should have done more to fulfil its duty of active protection.

(2) Local government in Taumarunui

The Crown has a duty that stems from article 3, which conferred on Māori the rights of British citizens, to ensure that Māori are represented on bodies that make decisions affecting them. When it set up local government in Taumarunui on which Māori were not fairly represented, it failed to meet its Treaty obligations. Although the Crown provided for Māori representation on the first native town council, one temporary seat was as far as it would go. After that, tangata whenua had no effective voice in local government. The local authority harmed Māori interests by supporting lessees who lobbied to be able to purchase freehold title in land in the town, and by imposing rates on unoccupied and culturally significant Māori land. If tangata whenua had been afforded a voice in decision-making affecting their land that even approximated their proportion in the population, they might have had a prospect of averting the sale of their land.

(3) Lease management and land sales in Taumarunui

While it was a native township, Taumarunui was beset by problems that negatived the financial benefits that Māori were expected to derive from leases, and ultimately made selling their land a financially prudent decision.

Financial management of the town was generally poor, and not in the interests of the beneficial owners of the land. The leasing system that the Crown set up allowed perpetual leases and informal subletting, and also achieved low rents because reviews were too infrequent, and the valuation and arbitration system consistently valued the Māori land in Taumarunui too low. The Crown refused to partition the township before setting up the town, which delayed the distribution of rent until 1910, and exposed Taumarunui owners to disproportionate rates and levels of land tax. It then expected owners to cover all the costs of town development, survey, and river protection works from rents. The Crown passed the Acts that provided for native townships, taxation, rating, and public works, the compounding effect of which was all to the detriment of the beneficial owners of land in the native township.

These factors made it extremely hard for owners to hold on to their land. The Crown argued that it could not be
assumed that owners were unwilling sellers. Owners who moved away from Taumarunui might have been less motivated to keep land in the town, but otherwise we saw no evidence that owners who began selling land in the 1910s and 1920s were ‘willing sellers’. The Crown was not worried about these sales, nor motivated to support retention of Māori land interests in the town – although it was aware of the problems of rent distribution and increasing costs. Its unconcern about whether or not Māori held on to their land extended in 1913 to facilitating their selling it, because from then individuals could sell their interests with no input from the collective.

Many Tribunals before us have found that the Treaty obliged the Crown to ensure that hapū were empowered to make decisions about their land, and to keep it if they wanted to. This required the creation of tribal reserves that could not be sold, reflecting the communal nature of Māori land tenure, and the importance to their culture of retaining land for present and future generations. The Crown did not fulfil these obligations as regards the township land in Taumarunui. Neither seeking nor finding remedies for the problems that beset the leases, facilitating sale of township land, and ignoring the interest of hapū in land retention, the Crown breached its obligation to uphold te tino rangatiratanga of Taumarunui Māori, and to protect their interests actively.

(4) Māori presence in Taumarunui

At the outset of this chapter, we stated that it was reasonable to expect the Crown to protect places in townships that Māori occupied and wanted to keep. This duty, as many Tribunals have found, resides in the plain meaning of article 2 of the Treaty. We consider that to fulfil its obligations, the Crown had to set up a system that provided for hapū to make decisions about leasing or selling land in native allotments.

The Crown plainly did not safeguard sites of importance to Māori in Taumarunui, and that is why they no longer own them. The Crown stood by when owners partitioned and sold land because of rates debts, as happened on the native allotments Mōrero and Wharauroa. The whole township regime, in which Māori had too little power, derived too little financial benefit, and were left to cope alone with problems that were not of their making, led first to disconnection from and then to sale of land, and a role for hapū that was ultimately only vestigial.

In the case of Mōrero marae, the Crown contributed to the alienation of land, targeting the marae land for public works takings. It later returned some of this land, but it required Taumarunui Māori to pay $142,500 for what it would have cost the Crown to remove the buildings on site. We find that, in making this payment a precondition of the return, the Crown did not act fairly or in accordance with Treaty principles. The Crown should have taken into account the impact of the takings on the Mōrero community; the cultural and spiritual significance of the site; and the benefits that the Taumarunui community had gained from the public works. It should have allowed tangata whenua to keep the buildings at nil cost. The Turangi Township Tribunal found that the Crown should make provision for surplus public works land to be returned ‘at the earliest possible opportunity and with the least cost and inconvenience to [the former] Māori owners’. A failure to do so, said that Tribunal, was ‘inconsistent with the Crown’s Treaty obligation under article 2 actively to protect Māori rangatiratanga over their ancestral land’ and caused prejudice to the owners in question.

We agree with these findings, and apply them to Mōrero marae. At Mātāpuna, the Crown took 25.5 acres of Māori land in the Ōhura South G block for railway purposes under the Public Works Acts 1894 and 1903. It took the land without compensation, and almost certainly against the wishes of its owners, who were using it at the time, and for whom it had obvious significance given the location of the wharepuni of the same name, and an urupā. There is a rigorous standard for Treaty-compliant public works takings: the circumstances must be exceptional, and the taking must be necessary after all alternatives have been exhausted, and the national interest requires it. Here we have a compulsorily acquisition of 25.5 acres of culturally-significant Māori land for a ballast reserve. It did not meet the test, and the acquisition breached the guarantee of te
tino rangatiratanga. The Crown compounded its breach by failing to offer the land back to its former owners when it was no longer needed for the purpose for which it was taken. It seems to have sold most of it to private purchasers. Even in the 1990s, in the era of Treaty claims and land banks, the Crown proposed to sell the land where the line depot was located when it became surplus. Why it was to be sold rather than land-banked, and why the claimants had to pay to get it back, was not explained.

17.7.4 Recommendations

Our general recommendation is that the prejudice flowing to Whanganui hapū from the Treaty breaches outlined in our findings should be taken into account when claimants negotiate a settlement with the Crown. We also make specific recommendations.

(1) Land taken for public works and other Crown land

We recommend that the Crown gives back to the relevant body or bodies the $142,500 plus interest that it inappropriately exacted as a condition of its return to them of Mōrero marae land. Given the prejudice tangata whenua of Mōrero suffered as a result of the wrongful compulsory acquisition from them of land without notice or compensation, the Crown should have gifted the buildings located on Mōrero land to tangata whenua. We also recommend the Crown return the money paid for the Mātāpuna bal-last pit land for the same reasons.

We recommend that the Crown continue the process of returning to representative hapū bodies in Pipiriki and Taumarunui as cultural redress any land in former native allotments that is now under the control of the Crown, and that it also offers to local authorities all necessary assistance to encourage them to do the same. Claimants specifically seek the return of the recreation reserve at Ngāhuihuinga that was formerly part of the Taumarunui papakāinga to a ‘collective of interested claimants and co-managed between Maori, the Council and DOC [the Department of Conservation].’¹⁹⁷ We recommend that the Crown work with the claimants to establish how best that might be achieved.

(2) Perpetual leases

We recommend that the Crown takes the necessary steps to ascertain whether there is native township land in this inquiry district that was perpetually leased, but has not been the subject of compensation under the Maori Reserved Land Amendment Act 1997. If so, owners of that land should receive such compensation, irrespective of whether their land was Māori reserved land in 1997.

Notes

1. At the time of our hearings, it was not realised that another native township, Turangarere, was just within the borders of the Whanganui district inquiry. Claims concerning that settlement will be inquired into by the Tribunal for the Taihape district inquiry.
2. Submission 3.3.54, pp 2, 5; submission 3.3.140, pp 2–3
3. Submission 3.3.54, p 5; submission 3.3.102, p 36
4. Submission 3.3.54, pp 9, 12; submission 3.3.140, p 11
5. Submission 3.3.54, pp 6–8, 12, 15; submission 3.3.140, p 10
6. Submission 3.3.87, pp 3–4; submission 3.3.85, p 101
7. Submission 3.3.54, pp 2, 15; submission 3.3.140, p 2
8. Submission 3.3.140, p 12; submission 3.3.85, p 4
10. Submission 3.3.71; submission 3.3.73; submission 3.3.84; submission 3.3.102
11. Submission 3.3.71, p 18; submission 3.3.73, pp 46–47, 49; submission 3.3.84, pp 25; submission 3.3.102, pp 36–39; submission 3.3.140, pp 17–18
12. Submission 3.3.71, p 21; submission 3.3.102, pp 50–51; submission 3.3.73, pp 54–55; submission 3.3.84, pp 24–26, 30–31
13. Submission 3.3.73, pp 49–50; submission 3.3.102, p 41
14. Submission 3.3.102, pp 42–43; submission 3.3.73, p 58
15. Submission 3.3.102, p 43; submission 3.3.73, p 59
16. Submission 3.3.73, pp 51–55; submission 3.3.102, pp 41–44, 46; submission 3.3.71, pp 18–20
17. Submission 3.3.54, pp 9, 12; submission 3.3.124, pp 4, 9–10
18. Submission 3.3.54, pp 7–8, 15; submission 3.3.124, pp 4, 7–8, 14, 17, 19, 22, 33
19. Submission 3.3.124, pp 2, 6–8, 17, 22
20. Ibid, p 28
21. Ibid, p 26
22. Ibid, pp 28–29
23. Ibid, p 13
24. Ibid, p 19
26. Ibid, pp 22–26
27. Submission 3.3.124, pp 9–12
28. Submission 3.3.124, pp 5–6, 15–16
29. Ibid, p 21
30. Ibid, pp 8, 23
31. Ibid, pp 27–30
32. Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage One, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 1, pp 292–293, 301. We note that in Carroll’s view Rotorua was a failure. He did not elaborate, but may have had in mind the significant problems Māori had with collecting the rent from lessees: see James Carroll, 16 July 1895, NZPD, vol 87, p 595.
34. 'Pakeha and Maori: A Narrative of the Premier’s Trip through the Native Districts of the North Island,’ AJHR, G-1, p 8
35. 'A Township at Pipiriki,’ Wanganui Herald, 26 June 1895, p 2; John McKenzie, 27 June 1895, NZPD, vol 87, p 180; Dr Alfred Newman, 27 June 1895, NZPD, vol 87, p 180; James Carroll, 16 July 1895, NZPD, vol 87, p 595.
37. Hōne Heke, 16 July 1895, NZPD, vol 87, p 593.
43. Waitangi Tribunal, He Maunga Rongo, vol 2, p 605.
45. ‘The Premier at Pipiriki,’ Wanganui Herald, 22 November 1895, p 2.
47. Henry Scotland, 24 July 1895, NZPD, vol 88, p 162.
49. Ibid; Henry Scotland, 24 July 1895, NZPD, vol 88, p 162.
51. Ibid, ss 6, 14, 18(1).
52. Ibid, ss 8, 9.
53. Native Townships Act 1895, s 18(1).
54. Submission 3.3.54, p 8; submission 3.3.140, p 20.
55. See the speeches of John McKenzie and James Carroll, 27 June and 16 July 1895, NZPD, vol 87, pp 180, 595.
56. Native Townships Act 1895, ss 7, 9.
57. Henry Scotland, 24 July 1895, NZPD, vol 88, p 162.
59. Native Townships Act 1895, ss 12(1)–(2).
60. Submission 3.3.124, p 33.
62. Submission 3.3.124, p 17.
63. Submission 3.3.130, p 24.
64. Waitangi Tribunal, He Maunga Rongo, vol 1, pp 292–293, 301. We note that the Central North Island Tribunal found that this Act had the potential to enable Māori to develop their lands in partnership with the Crown, with benefits for both Māori and settlers, but that the Crown did not apply the Act as intended.
65. Waitangi Tribunal, Te Whanganui a Tara me ona Takiwa: Report on the Wellington District (Wellington: Legislation Direct, 2003), p 380. The provision seems to have been little used however.
68. Maori Lands Administration Amendment Act 1901, s 8(11); repealed by Maori Land Laws Amendment Act 1903, s 17(2).
70. Ibid, s 10.
71. Ibid, s 10(d).
72. Ibid, s 10(e).
73. 'Regulations,’ 13 February 1903, New Zealand Gazette, no 15, 1903, pp 617–618, regs 6, 10(1)–(9). Regulation 10(7) read, ‘the lease may provide for renewals from time to time for a period not exceeding twenty-one years.’ There was some debate later as to whether this allowed perpetually renewable leases, but it seems it did not: see section 17.4.10.
74. Document A166 (Loveridge), p 61; Maori Land Settlement Act 1905, s 2; doc A39 (Boulton), p 75.
75. Maori Land Laws Amendment Act 1908, s 34; James Carroll, 9 October 1908, NZPD, vol 145, pp 1114, 1120; Āpirana Ngata, 9 October 1908, NZPD, vol 145, p 1125; doc A166 (Loveridge), pp 61–63, 66.
76. For William Jennings’ longstanding support for the freehold, see Joseph Ward, 11 October 1910, NZPD, vol 151, p 336.
77. The Government issued regulations for leasing to accompany the township legislation and may have thought that perpetual leases were allowed. For early regulations on leases, see ‘Regulations,’ 13 February 1903, New Zealand Gazette, 1903, no 15, pp 617–618; ‘Regulations,’ 8 February 1904, New Zealand Gazette, 1904, no 11, p 470; ‘Regulations,’ 17 December 1908, New Zealand Gazette, 1908, no 106, p 3260. See also Carroll’s speech in Parliament in 1910: James Carroll, 2 September 1910, NZPD, vol 151, p 272.
78. ‘Native Lands in the Rohe-Potae (King country) District, an
81. Ngata, 24 October 1907, NZPD, vol 142, pp 176–177
80. James Carroll, 24 October 1907, NZPD, vol 142, p 176; Āpirana Ngata, 24 October 1907, NZPD, vol 142, pp 176–177
891
137. 'Pipiriki Township', Wanganui Herald, 27 July 1897, p 3
138. Document A39 (Boulton), pp 120–122; doc A39(a) (Boulton errata), p 3
139. Document A39 (Boulton), pp 126–129; transcript 4.1.5, p 198; doc E19 (Gray), p 3
140. Document A39 (Boulton), p 138
141. Ibid, pp 129, 137–138
142. Native Townships Act Amendment Act 1899, s 2
143. Document A39 (Boulton), pp 140–141
144. Ibid, p 71
145. Ibid, p 75; Maori Land Laws Amendment Act 1908, s 2
146. Document A39 (Boulton), pp 70, 75; Native Land Amendment Act 1913, s 23(1)
147. Document A39 (Boulton), pp 76–77, 163–164
148. Ibid, pp 129, 137–138
149. Native Land Amendment and Native Land Claims Adjustment Act 1922, s 9(1)–(3); Native Land Act 1931, s 422(e). This extended the wartime measure in Native Land Amendment and Native Land Claims Adjustment Act 1915, section 6, which enabled assembled owners to resolve that rents could be spent on 'patriotic purposes.' The 1922 Act enabled rents to be spent on 'patriotic purposes or other purposes,' with the Native Ministers' approval. Later, section 315(f) of the Maori Affairs Act 1953 enabled assembled owners to resolve that any money held by the Māori Trustee on their behalf could be applied for 'any purpose specified in the resolution.' The Māori Land Court was still required to confirm all resolutions.
150. Document E19(a) (Gray supporting documents), app 5, p 3; doc A39 (Boulton), pp 137–138; Mātenga Keepa and Hōri Erueti, application, 24 July 1938, Pipiriki township application file, MA-Wang w2140 Wh 528B vol 1, Archives New Zealand, Wellington
151. Document A39 (Boulton), pp 78–79
152. List of leases in Pipiriki Native Township, attached to H Marumaru, memorandum, 17 June 1932, s29 (9/2/0) Pipiriki Native Township general correspondence, vol 1, Office of the Māori Trustee, Whanganui (cited in document A39 (Boulton), p 286 n 807)
153. Document A39 (Boulton), p 151
154. Native Purposes Act 1937, s 8; doc A39 (Boulton), p 152
155. Document A39 (Boulton), pp 150–153
156. Document A37(p) (Berghan supporting documents), p 9157; doc E19 (Gray), pp 10–13
157. Document A37 (Berghan), p 594
158. Document A39 (Boulton), pp 171–173
159. Sections 1, 2, and 10 on block IV: see doc A34 (Hodge), p 38; doc E19(a) (Gray supporting documents), app 1, p 1.
160. Document E19 (Gray), pp 8–9
161. Submission 3.3.87, pp 19–20; doc E19 (Gray), pp 10–13; doc E19(a) (Gray supporting documents), app 1, p 1
162. Aotea Native Land Court, minute book 80, 8 December 1923, fols 31–34
163. Document A39 (Boulton), pp 155–156
164. Document A37 (Berghan), pp 594–595; doc A23 (Herlihy), pp 3–4
165. Document A39 (Boulton), pp 157–158; doc A23 (Herlihy), p 4
166. Document E3 (Taurerewa), p 10
167. Document E1 (Dixon), p 9
168. Document E16 (Pucher), p 7
169. Document E19 (Gray), p 9; doc E14 (Whitu), p 9
170. Document A108 (Young and Belgrave), pp 12–13; doc A59 (Oliver and Shoebridge), p 21
171. Document J6 (Herbert), pp 6–7; submission 3.3.73, pp 42–43; submission 3.3.71, pp 23–24
172. Document K8(a) (Turner supporting documents), pp [9], [25]
173. Document A59 (Oliver and Shoebridge), pp 31–36, 81–84
174. Alfred Burton, The Maori at Home: A Catalogue of a Series of Photographs Illustrative of the Scenery and of Native Life in the Centre of the North Island of New Zealand; also, Through the King Country with the Camera: A Photographer's Diary (Dunedin: Burton Bros, 1885), p 16
175. Sir Julius Vogel, 28 July 1886, NZPD, vol 56, p 317
176. Document A61(d) (Rose supporting documents), p 1854
177. Document K8(a) (Turner supporting documents), pp [11], [13], [24]
178. Ibid, pp [11], [13], [19], [24]
179. Document A51 (Walzl), p 30
180. Document A59 (Oliver and Shoebridge), pp 31–36, 81–84
181. Document K8(a) (Turner supporting documents), p 27. At the other end of the future town, Mākere Te Uruwhērera leased land and premises to a Mr Gardiner who built a boarding house: Ōtorohanga Native Land Court, minute book 42, 22 August 1904, fol 365.
182. Document A59 (Oliver and Shoebridge), p 98. For the identities of these three, see Pei Te Huirinui Jones, 'Taumarunui . . . An Important Centre of Maori Tribal History,' in Ngapuwaiwaha Marae, Souvenir Booklet to Commemorate the Official Opening of the New Carved Meeting House, Ta Taura-whiri A Hinengakau, Saturday 20th December, 1975
183. Document A39 (Boulton), p 41
184. Ōtorohanga Native Land Court, minute book 40, 3 April 1901, fols 12, 13; doc A59 (Oliver and Shoebridge), p 78
185. Charles Richard and others to Acting Premier, 13 September 1902, MA1031, 1910/4701, Archives New Zealand, Wellington
186. Ibid; doc A39 (Boulton), p 44; doc E18(a) (Robinson supporting documents), app 1, p 2. Little else is known about Hōri Hakihaha, but he seems to have been a different man from the more well-known Hakihaha Tāwhiao. In 1916, both he and Tāwhiao lived at Taumarunui. They both had land interests in Kōiro and gave evidence on the same day at the hearings before a royal commission concerning scenic reserves being made on this and other blocks along the Whanganui River, Tāwhiao being distinguished as the 'Head Chief': doc A34 (Hodge), pp 95, 107, 109; Whanganui River Reserves Commission, judges notebook, evidence, meeting at Taumarunui on 13 December 1916, W5278, 81, 228.1, Archives New Zealand, Wellington.
188. Copy of George Wilkinson, report sent to Lands and Survey
Ibid.

It has not been possible to identify those who owned land in both Pipiriki and Taumarunui, although some surnames are common to both lists of owners, such as Wātene, Hīkaia, Te Rākeiwaho, and Te Porou: Ōtorohanga Native Land Court, minute book 13, 28 October 1892, fols 183–184; doc K8(a) (Turner supporting documents), p [14].

‘Personal Matters’, Evening Post, 3 March 1903, p 5

Simm to the assistant surveyor-general, 15 September 1903, and plan of subdivisions of Taumarunui Township, 25 September 1903, MLA 1, 1910/4701, Archives New Zealand, Wellington

James Simms, assistant surveyor, memorandum concerning Taumarunui Township subdivisions, 25 September 1903, MLA 1, 1910/4701, Archives New Zealand, Wellington

James Simms, assistant surveyor, memorandum re Taumarunui Township subdivisions, 25 September 1903, and plan of proposed subdivisions of Taumarunui Township, 25 September 1903, MLA-MLA 1, 1910/4701, Archives New Zealand, Wellington

Document A39 (Boulton), p 252–253


Wai 898 R01, doc A62 (Bassett and Kay), pp 100, 112

Fisher, under-secretary of the Native Department, to president, Waikato–Maniapoto Māori Land Board, 20 May 1908, MA 1908/126, Archives New Zealand, Wellington

Document A39 (Boulton), p 260

Maniapoto–Tūwharetoa District Māori Land Council, minute book 1, 26 April 1904, fols 115, 118, photocopy masters, Archives New Zealand, Wellington; photograph of ‘Maori Committee, Taumarunui (sometime before 1906)’ (doc A39(g) (Boulton slides), p [44]). The Whanganui Māori council was first constituted in 1901 and...
included Māeke Wairoa and Te Pikikōtuku Te Huia, two prominent Taumarunui rangatira. By 1906, Hōri Kingi Hakiha of Taumarunui was also an elected councillor: ‘Maori Councils Election’ Wanganui Herald, 8 March 1901, p 2; ‘When Bilious and Sallow’, Wanganui Herald, 9 February 1906, p 5.

226. ‘Definition of Maori Villages under the “Maori Councils Amendment Act 1903”,’ 12 October 1904, New Zealand Gazette, 1904, vol 84, p 2450

227. Alcohol was banned in the King Country under the Licensing Act 1881. In 1887, the whole of the upper Whanganui area was included in the King Country prohibition area. Prohibition was not completely removed until the 1950s: doc A61 (Rose), p 153. In addition, however, Māori councils were also given specific powers to issue bylaws prohibiting anyone from bringing alcohol into a Māori kāinga, whether Māori or not, and to collect any fines on conviction. All liquor brought in breach of bylaws would be forfeited and seized by the chairman of the district Māori council. The exception was medicinal liquor for personal consumption, for which a doctor’s certificate was necessary: Maori Councils Act 1900, s 16(4); Maori Councils Amendment Act 1903, s 3.

228. ‘The “Ruling” Race: Maorifying the Colony’, Observer, 25 February 1905, p 3; Campbell, Rapids and Riverboats, p 97; doc A39 (Boulton), pp 208, 217


230. Wilkinson to Sheridan, superintendent, Māori Lands Administration Department, 20 February 1905, MA1 1031, 1910/4701, Archives New Zealand, Wellington; doc A39 (Boulton), p 209

231. James Carroll, 16 October 1905, NZPD, vol 135, p 738. The 1876 Act excluded a number of areas from its provisions, see the Counties Act 1876, sch 2.

232. Native Townships Local Government Act 1905, ss 3, 7

233. Ibid, s 4(a), (c)

234. Submission 3.3.140, p 28

235. Waitangi Tribunal, Tauranga Moana, 1886–2006: Report on the Post Raupatu Claims, 2 vols (Wellington: Legislative Direct, 2013), vol 1, p 319; Tom Bennion, Maori and Rating Law, Waitangi Tribunal Rangahaua Whanui (Wellington: Waitangi Tribunal, first release, 1997), p 15. Māori were often excluded from voting because often they were not registered on the ratepayer’s rolls which formed the basis of voting rolls in county districts.

236. Document A39 (Boulton), pp 217–218, 221–222

237. Ron Cooke, compiled, Taumarunui Borough: A Selection of Images Celebrating 100 Years 1910–2010 (Taumarunui: Taumarunui and Districts Historical Society, 2010), pp 7–8; doc A39 (Boulton), p 219

238. Document A39 (Boulton), p 41. The estimate for Māori is very approximate, based on a Māori population of 122 in the borough in 1926, the first year for which there are census figures for the Māori population in the town, see Census of New Zealand, 1926.

239. Sections 5 and 175 of the Municipal Corporations Act 1900 set out the requirements for a settlement to become a borough: doc A39 (Boulton), p 41.

240. Ron Cooke, Taumarunui Borough, pp 8–9, 38; doc A39 (Boulton), pp 221–222

241. Document A39 (Boulton), pp 219–221

242. Ibid, pp 220–221; ‘Amending boundaries of Taumarunui Maori village or kainga’, 11 November 1911, New Zealand Gazette, 1911, no 90, p 3405. This Gazette notice amended the proclamation that had defined the boundaries of the kainga so that ‘all sections within these boundaries leased to Europeans are excluded’.

243. Document A39 (Boulton), pp 220–221

244. JE Slattery, town clerk, to Jennings, 16 September 1911, MA1 1031, 1910/4701, Archives New Zealand, Wellington


246. ‘Sale of Native Lands’, Wanganui Herald, 18 October 1904, p 3; ‘Lands in the Rohe-Potae (King Country) District, An Interim Report’, AJHR, 1907, G-18, p 14; see also Judge Browne to under-secretary, Native Department, 23 January 1909, MA1 975, 1909/225, Archives New Zealand, Wellington

247. For rent in 1907, see ‘Lands in the Rohe-Potae (King Country) District, An Interim Report’, AJHR, 1907, G-18, p 14. We do not have yearly rental figures for the first seven years. Total rent collected by 1911 was £4,043, an average of £628 a year: see Bowler to Fisher, 19 June 1911, MA1 1031, 1910/4701, Archives New Zealand, Wellington. For the 1922 rent, see doc A39 (Boulton), pp 198, 211. By 1951, Taumarunui had more than 3,000 people, and the population grew from 3,344 in 1956 to 4,961 in 1961. Taumarunui’s population peaked at 6,541 in 1981 and dropped from that point. Today, it is about 5,000: Kerryn Pollock, ‘King Country places – Taumarunui’ , http://www.teara.govt.nz/en/king-country-places/7, last modified 13 July 2012.

248. Submission 3.3.124, p 2

249. Native and Maori Land Laws Amendment Act 1902, s 10(e)

250. Bowler to Fisher, 19 June 1911, MA1 1031, 1910/4701, Archives New Zealand, Wellington


252. Kingi Ngātai and others to James Carroll, 24 June 1910, Wharawhara Tōpine Te Mamaku to Carroll, June 1910, Bowler to under-secretary, Native Department, 19 June 1911, MA1 1031, 1910/4701, Archives New Zealand, Wellington


254. Submission 3.3.140, p 30

255. ‘Sale of Native Lands’, Wanganui Herald, 18 October 1904, p 3

256. ‘Amending Regulations Prescribing Terms under which Allotments in Native Townships under “The Maori Land Administration Act, 1900” and its Amendments may be disposed of’, 17 October 1904, New Zealand Gazette, 1904, no 84, p 2431; doc A39 (Boulton), pp 194–195
257. Document A39 (Boulton), pp 198, 228
258. Document A108 (Young and Belgrave), p 103; doc A39 (Boulton), pp 197–198
259. ‘Regulations prescribing Terms under which Allotments in Native Townships under “The Maori Lands Administration Act, 1900” and its Amendments may be disposed of’, 26 February 1903, New Zealand Gazette, 1903, no 15, pp 617–619
261. Document A39 (Boulton), p 198
262. Ibid, pp 196–198
263. ‘Sale of Native Lands’, Wanganui Herald, 18 October 1904, p 3; Waikato-Maniapoto District Māori Land Board, consent to sublease in Taumarunui, 9, 29 May 1913, record numbers 5441, 5563, register of applications for confirmation of alienation, 1913–1915, BACS 10206/8A, Archives New Zealand, Auckland.
265. For evidence of owners leasing and transferring leases, see ‘Sale of Native Lands’, Wanganui Herald, 18 October 1904, p 3; certificate of title, Taumarunui, 9 January 1905, CT 124/1, 1.NZ. For subletting, see the activities of Miriama Kahukarewao and Hakiha Tāwhiao: doc A39 (Boulton), p 249; Maniapoto–Tūwharetoa Māori Land Board, minute book 2, 1907, fol 242.
267. Document A108 (Young and Belgrave), pp 114–116
268. Document A39 (Boulton), pp 192–193, 198
269. Bowler to Fisher, under-secretary, Native Department, 19 June 1911, MAI 1031, 1910/4701, Archives New Zealand, Wellington.
270. Maniapoto–Tūwharetoa Māori Land Board, minute book 3, 14 December 1908, fol 238; Pare Marukai and Hēnare Rēweti to James Carroll, 3 June 1911, MAI 1031, 1910/4701, Archives New Zealand, Wellington; petition from Miriama Kahukarewao and 49 others to Parliament, 23 February 1912, MAI 1079, 1912/2477, Archives New Zealand, Wellington.
271. Document A39 (Boulton), pp 202–204
272. Ibid, pp 205–207
273. Ibid, pp 205–206
274. Ibid, pp 206–207. The commission was set up under the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1918.
276. Document A39 (Boulton), pp 211–213
277. Ibid
278. Ibid, p 90; doc A67 (Shoebridge), p 38; see also Native Townships Local Government Act 1905, s12; Maori Land Laws Amendment Act 1908, ss 3(1), 3(2); Rating Act 1908; Rating Amendment Act 1910.
279. Nathaniel A Winter, Taumarunui Old and New: An Illustrated Record of the Growth of a New Zealand Town (Taumarunui: Taumarunui Press, 1913), p 10
281. Document A108 (Young and Belgrave), p 108; doc A114 (Young and Belgrave), pp 69–71
282. Bennion, Maori and Rating Law, p 21; doc A67 (Shoebridge), p 39; doc A61 (Rose), p 308; doc A61(e) (Rose supporting papers), p 2252
285. Document A39(b) (Boulton supplementary information), p 7; doc A39 (Boulton), p 288
286. Document A39 (Boulton), p 261
287. Ibid, pp 261–262
288. By 1937, the Government had purchased 37 subdivisions, some 169 acres, on behalf of lessees. The total price charged to lessees by the Government for this land was £108,589. However, we do not know how much of this was interest and other charges: doc A39 (Boulton), pp 230–231.
289. Submission 3.3.102, pp 41–43, 74–75; submission 3.3.73, pp 52–56; submission 3.3.140, pp 33–36; submission 3.3.124, pp 3, 28–29.
290. Ngatai Te Mamaku and 38 others to James Carroll, Native Minister, 2 January 1907, MAI 90 9, 1907/40, Archives New Zealand, Wellington.
291. Alexander Bell to Native Minister, 23 October 1907, TW Fisher, under-secretary, Native Department, to Judge Browne, 9 November 1907, Browne to Fisher, 18 November 1907, Fisher to Native Minister, 22 November 1907, Fisher to Bell, 29 November 1907, MAI 935, 1907/731, Archives New Zealand, Wellington.
292. Petition of Miriama Kahukarewao and 30 others to Parliament, report on the petition 14 November 1913, President of the Waikato-Maniapoto District Māori Land Board to under-secretary, Native Department, 1 October 1913, MAI 1111, 1913/3832, Archives New Zealand, Wellington.
293. Document A39 (Boulton), p 228
294. Ibid, p 232
295. Ibid, p 229; ‘Taumarunui Town’, Hawera and Normanby Star, 14 March 1919, p 5; ‘Meeting of the Waikato-Maniapoto District Māori Land Board’, 24 July 1918, New Zealand Gazette, 1918, no 105, pp 2793, 2796; Waikato-Maniapoto Māori Land Board, recommendation for consent to sell lot 2 (1 rood 19 perches) block XVIA following a meeting of owners on 13 March 1919, and lot 3 (1 rood 20 perches), 15 September 1919, MAI 1213, 1919/488, and 1919/487, Archives New Zealand, Wellington. Lots 2 and 3 had been leased out in 1904, and were situated next to section 1, block XVIA, containing Mōrero marae.
296. Document A39 (Boulton), pp 233–234; doc A108 (Young and Belgrave), pp 112–113
297. Document A39 (Boulton), pp 229–231
298. For the standard recommendations from the Māori land board to allow the sale of a section, see registrar, Waikato–Maniapoto Māori land board to Native Department, 9, 15 September 1919, MAI 1213, 1919/488, MAI 1213, 1919/487, Archives New Zealand, Wellington.
299. Document A39 (Boulton), pp 240–242
300. Document A37(ee) (Berghan supporting documents), pp 17918–17920
301. Apirana Ngata, 'Native Land Development', 1932, AJHR, 1932, g–10, p 16
302. Boulton’s evidence is that the total purchase price lessees were charged by the Government was £108,589, but it is not apparent how much of this was the price paid to Māori and how much was other charges such as interest: doc A39 (Boulton), pp 228, 231; doc A108 (Young and Belgrave), pp 112–130; doc A37(ee) (Berghan supporting documents), p 17920.
303. Document A39 (Boulton), p 224
304. Document A108 (Belgrave and Young), pp 120, 124–128
305. Ibid, pp 125–130; doc k12 (Taiaroa), app b
306. Document A39 (Boulton), pp 76–78, 92
308. Submission 3.3.73, p 53
309. Submission 3.3.84, pp 37–39; submission 3.3.102, pp 44–46; submission 3.3.124, pp 43–45; submission 3.3.124, p 31
310. W H Bowler to under-secretary, Native Department, 19 June 1911, MAI 1031, 1910/4701, Archives New Zealand, Wellington
311. ‘Sections in the Township of Taumarunui for Lease by Public Auction,’ 16 March 1911, New Zealand Gazette, 1911, no 22, pp 1068–1069
312. Document A152 (Hémana), p 157; doc A55 (Clayworth), p 44; doc A114 (Young and Belgrave), pp 202–203
314. Correspondence relating to Hakiha Tāwhiao’s complaint regarding proposal to remove Taitua’s grave, MAI 1139, 1915/701, Archives New Zealand, Wellington; doc F6 (Te Huia, Taiaroa, and Edwards), p 3; ‘Land taken for the Purposes of a Public School in Block 1, Piopiotea Survey District (Taumarunui),’ 22 September 1920, New Zealand Gazette, 1920, no 83, p 2736; certificate of title, SA 47018/178, LINZ; plan of subdivision of part lot V, block xvi, Taumarunui, DP51348, LINZ; doc J13 (Wright), p 8; doc J12 (Tānoa), p 15; doc H (Le Gros), p 41; doc F6(a), p 1
315. Submission 3.3.102, p 45; submission 3.3.73, pp 54–55
316. Document A14 (Herbert), para 15
318. Document K11 (Hīkaia), p 29
319. Document A39(d) (Boulton written responses), p [7]; doc A55 (Clayworth), p 111
320. Document A57 (Clayworth), p 214
321. Transcript 4.1.8, pp 141, 160
322. Document A39 (Boulton), p 256
323. Document A57 (Clayworth), p 220
324. Ibid
325. Para to Minister of Public Works, 2 March 1937, w 1 24/429, part 2, Archives New Zealand, Wellington
326. Document A57 (Clayworth), p 231
327. Submission 3.3.140, p 38; submission 3.2.527, pp 4–6; submission 3.3.102, pp 45, 59
328. Document K12 (Taiaroa), p 13
329. Ibid
331. Document K9 (Amohia), p 1; doc K11 (Amohia), app KAO1, p [56]
332. Submission 3.2.527, pp 4, 5–6
333. Ibid, pp 4–5; transcript 4.1.12, p 238
334. Ōtorohanga Native Land Court, minute book 63, 1 March 1922, fol 264, gives the list of owners.
335. Document A57 (Clayworth), p 216, n 540; Ōtorohanga Native Land Court, minute book 64, 7 October 1922, fol 19; survey plan DP 17949, South Auckland Land District, LINZ. The dates on this map suggest the subdivision was first planned in 1917.
336. When the lots 1, 2, and part of 3 were taken for the public works depot in 1937, one of the owners informed the Minister of Lands that all three sections were vacant: doc A39 (Clayworth), p 225.
337. Document A39 (Boulton), pp 240–241
338. Document A108 (Young and Belgrave), p 108
340. Documents relating to the sale of lots 4, 7, and 8 in 1924, and lot 5 and part lot 6 in 1926, MAI 1339, 1924/223, MAI 1330, 1924/65 and 66, MAI 1531 1930/294, Archives New Zealand, Wellington
341. Document A37(e) (Berghan supporting documents), p 231; doc A37(ee) (Berghan supporting documents), p 17922; Aotea Native Land Court, succession of Mangu Poihipi to Maata Tiao, deceased, 20 May 1937, Ownership schedules, Taumarunui Native Township Y2 block; doc H (Le Gros), pp 16, 30
342. Document A61(e) (Rose supporting documents), pp 2246–2251
343. Document A39 (Boulton), p 241; certificate of title, 437/101, South Auckland district, LINZ
344. Plan of partition, DP 17949, LINZ; certificate of title, 437/101, South Auckland district, LINZ; certificate of title, 700/243, LINZ
345. Submission 3.3.84, p 35
346. Document 16 (Herbert), pp 3–4; doc 17 (Herbert), p 4
347. ‘Proclaiming Native Land to Have Become Crown Land’, 6 August 1923, New Zealand Gazette, 1923, no 62, p 2187
348. Ōtorohanga Native Land Court, minute book 64, 9 October 1922, 19 June 1923, 4 February 1924, fols 27–28, 174–175, 370; Ōtorohanga Native Land Court, minute book 65, 3 and 5 February 1925, fols 250, 266. In 1922, the whole of block XIX was partitioned between various owners. Sections 3, 4, 12, 13, 14, and 15 of block XIX were awarded to ‘Taumata Pohipi and others’. Sections 1, 2, 5, 7, 8, and 11, block XIX, were awarded to Parāone Rōpiha’s list. Sections 9 and 10, block XIX, went to Hinaki Rōpiha’s list; Ōtorohanga Native Land Court, minute book 63, 3 October 1922, fols 112–113.
349. Also known as Taruna Hiriwētere, she seems to have been the daughter of Peti Mātakitaki, daughter or grand-daughter of Te Ngarupiki; Ōtorohanga Native Land Court, minute book 64, 30 January, 19 June 1924, fols 174–5, 339.
350. ‘Proclaiming Native Land to Have Become Crown Land’, 9 April 1924, New Zealand Gazette, 1924, number 26, p 904
351. Document A114 (Young and Belgrave), pp 80–85
352. Certificate of title SA1207/45, LINZ. For the transfer from the Crown to Taumarunui borough council of section A4A in 1956, see certificate of title SA 437/112, LINZ.
353. Document J6 (Herbert), p 2
354. Document 17 (Herbert), p 8; ‘Setting Apart Land as a Maori Reservation’, 17 March 1972, New Zealand Gazette, 1972, no 26, p 636; doc J6 (Herbert), app [p 15]
355. Document k8(a) (Turner), p 19; Ōtorohanga Native Land Court, minute book 41, 9 December 1903, fol 335
356. Document A67 (Shoebridge), p 16
357. ‘Proclaiming Native Township of Taumarunui’, New Zealand Gazette, 3 December 1903, p 2506. The ballast reserve can also be seen in a survey plan of the same year: doc A39(g) (Boulton), p 31.
358. Ōtorohanga Native Land Court, minute book 41, 9 December 1903, fols 335, 339
359. Ōtorohanga Native Land Court, minute book 41, 9 December 1903, fol 337
360. ‘Land Taken for a Further Portion of the North Island Main Trunk Railway’, New Zealand Gazette, 1 June 1905, p 1240. For the areas of land, see SO 13099 and 13099A.
361. Document A67 (Shoebridge), p 49
362. Document A108 (Young and Belgrave), p 112. For an explanation of the 6 per cent rule, see document A57 (Cleaver), pp 21–28.
363. Tūwharetoa District Māori Land Council minute book 1, 27 April 1904, p 120; Simm to Mueller, Assistant Surveyor General, 15 Sept 1903, MA 1/1031 1910/4701, Archives New Zealand, Wellington
364. ‘Declaring Land Taken for a Government Work (Railway Purposes) at Matapuna and Not Now Required for that Purpose to be Set Apart for the Transmission of Electricity Purposes (Line Depot)’, New Zealand Gazette, 27 March 1980, p 909
365. Transcript 4.1.11, p 137
366. Submission 3.3.84, p 31
367. Document k12 (Taiaroa), p 14
368. Document 17 (Herbert), pp 7–8
370. Muhi Ruihi per H M Stowell to James Carroll, 7 July 1910, Judge Holland to under-secretary, Native Department, July 1910, MAI 1031 1910/4701, Archives New Zealand, Wellington; Ōtorohanga Native Land Court, minute book 51, 7 June 1901, fols 330–331
371. Ōtorohanga Native Land Court, minute book 58, 18 April 1916, fol 242
372. Ōtorohanga Native Land Court, minute book 63, 30 September, 6 and 14 October 1920, fols 218, 233–234, 237
373. Hakiaha Tāwhiao to Māui Pōmare, 28 February 1921, MAI 1111 1913/3832, Archives New Zealand, Wellington
374. Ōtorohanga Native Land Court, minute book 65, 28 September 1925, fol 377
376. Document k8 (Amohia), p 3
377. Ōtorohanga Native Land Court, minute book 63, 2 June 1922, 2 and 3 October 1922, fols 295, 356–370; doc k11 (Amohia), p [52]; doc k8(a) (Turner supporting documents), p [11]; plan of Taumarunui Papakāinga 38 nos 1, 2A, 2B, 3, ML 13468, Auckland Land District, LINZ
378. Submission 3.3.84, pp 37–38; doc A114 (Young and Belgrave), p 74
379. Document A114 (Young and Belgrave), pp 74–80
381. Document k2 (Barrett), p 4; doc k4 (Fox), pp 11–12
382. Document k9 (Amohia), pp 5–7; doc k12 (Taiaroa), app c
384. Submission 3.3.478, p 3, app 2; memorandum 3.4.106, pp 2–3; memorandum 3.4.107, p 2
385. Memorandum 3.4.107, p 2
386. Waitangi Tribunal, He Maunga Rongo, vol 1, p 173
387. Waitangi Tribunal, Tauranga Moana, 1886–2006, vol 1, p 294
388. We note that for a short time, from 1901 to 1903, the Māori land councils were able to set aside vested land as a native township at the request of a majority of the owners, but it is unknown if this legislation was ever used: see Maori Lands Administration Amendment Act 1901, s 8(11), repealed by Maori Laws Amendment Act 1903, s 17(2).
389. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 568
392. Native Land Amendment and Native Land Claims Adjustment Act, 1922, s 9
397. Submission 3.3.84, p 39

**Taumarunui and Land Titles in the Native Land Court**
1. Ōtorohanga Native Land Court, minute book 16, 25 October 1892, fol 161; doc A114 (Young and Belgrave), pp 234–235
2. Document A59 (Oliver and Shoebridge), pp 70–72; doc A114 (Young and Belgrave), pp 234–235

3. Ōtorohanga Native Land Court, minute book 40, 3 April 1901, 19 November 1901, fol 12, 13, 139; doc A59 (Oliver and Shoebridge), p 78
4. Document K8(a) (Turner supporting documents), p [29]

**Map sources**


**Map 17.3:** Plans SO 13990, ML 793, LINZ

**Table source**

**Table 17.2:** Ōtorohanga Native Land Court, minute book 63, 4 February 1922, fol 256
CHAPTER 18

THE ‘VESTED LANDS’ IN WHANGANUI

18.1 Introduction
Between 1902 and 1912, with the Crown’s encouragement, Whanganui Māori transferred about 115,000 acres to the trusteeship of the Aotea District Māori Land Council.1 The term ‘vested lands’ came to be applied to Māori land vested in trust in Māori land councils and boards.

Most of the land was leased out to European farmers. About 4,100 acres were set aside as papakāinga for Māori owners’ occupation, but most of these areas were later also leased when owners and their descendants left the land.2 In 1970, much of the land was transferred to the Ātihau–Whanganui Incorporation.3 Over the next several decades, as leases came up for renewal, the incorporation paid millions of dollars to buy out lessees and take over direct management of the land. Between 2006 and 2008, the Crown paid substantial sums to the Ātihau–Whanganui Incorporation so that it could resume remaining leases and farm the land directly.

Claimants told us that vesting their lands scheme was a failure for Māori: from beginning to end, Crown actions – actually, more often inaction – undermined their ability to control the terms of development, to remain on the land, and, until recently, to benefit from the scheme financially.

Today, the incorporation runs large-scale farms. Although Māori still own the land, few tangata whenua have lived on it since the 1960s.

The chapter is in four parts:
♦ The initial vesting of lands and setting-up of leases, 1901–06;
♦ Management of leases of the vested land, 1906–54;
♦ Amalgamation and incorporation, 1955–2009; and
♦ Māori occupation of the vested lands.

This chapter is concerned only with land that was vested under legislation enabling it to be leased on general leases. There was a significant, though much smaller, amount of land compulsorily vested in the Aotea land board under other legislation specifically for Māori occupation. That land became the Morikau farm scheme, and some of it was later included in the Rānana development scheme. We look into those schemes in the following chapter.
18.2 The Parties’ Positions

18.2.1 What the claimants said

Claimant counsel argued that although the land councils and boards were theoretically independent of the Crown, the Crown was closely involved in setting up the vested lands scheme; it favoured the interests of settlers over those of Māori owners; it intervened in land council business to advance those interests; and it did not assist when problems were brought to its attention. It tried to make the land council vote for perpetually renewable leases, and when that did not succeed, pressured it to offer a compromise – compensation for improvements. The Crown knew that this would create de facto perpetual leases, as Māori would never be able to pay lessees compensation for the full value of improvements. The Crown colluded with Pākehā members of the council to keep Māori members in the dark about this.

The Crown did not provide reasonable assistance with roading and subdivision costs, and did not act to ensure that Māori received full value from the timber on the vested lands.

Claimants said that the Crown did not prioritise, and handled poorly, the job of reserving land for Māori use in the vested lands. It did not ensure that:

- papakāinga were adequately protected;
- sufficient land was set aside promptly;
- there was a fair method of selection;
- land was set aside for all owners;
- the council followed owners’ selection of land they wanted reserved; or that
- all wāhi tapu, urupā and tūpuna whare were protected.

Today only one or two papakāinga remain. Claimants asked how it was that papakāinga came to be absorbed into the incorporation’s land, so that former owners have no right of occupation.

Claimant counsel submitted that it was not inevitable that prejudice would result from the compensation clauses, and steps could have been taken to manage the process better. The Crown was aware that there were possible solutions, but did ‘not assist in any practical way’. In particular, it failed to:

- rectify valuation problems that adversely affected rentals in the 1920s;
- do anything about the two blocks that were subject to perpetually renewable leases;
- ensure that rent reductions given to lessees during the Depression ceased as soon as conditions improved; or
- offer owners compensation for those rent reductions.

Moreover, having reduced and then removed Māori representation from the land boards, the Crown had an increased duty to consult directly with Māori owners about the management of the leases, particularly the compensation for improvements provisions. It failed to fulfil this duty, and the 1954 legislation did not adequately protect Māori interests in the vested lands.

After the 1954 Act, the Crown still did not ‘provide adequate financial assistance’ to pay the compensation for improvements, although it ‘would have been reasonable for the Crown to have made sufficient funds available for land resumption in a manner that did not further encumber the land with debt’. Also, the Crown failed to consult owners about the Māori Trustee regime introduced under the Act, and should have required the Trustee to consult with owners about the management of their land. The Minister of Māori Affairs’ rejection of the option of a statutory trust (that was preferred by Whanganui Māori) to manage the land rather than an incorporation was ‘not a reasoned decision but simply one of expedience’. The financial assistance that the Crown provided recently was not ‘within a reasonable timeframe’, and did not take account of the significant opportunity costs to Māori of the land being leased out for so long.

The Ātihau–Whanganui Incorporation was party to the inquiry, making opening (but not closing) submissions. The substantial sum of money that the incorporation received from the Crown in the years from 2006 to 2008 towards the cost of resuming leased land was outside the Treaty process. In 2008, after its negotiations with the Crown, the incorporation informed the Tribunal that it would welcome the inclusion in the Tribunal’s report of reference to the evidence presented and the Tribunal’s finding as to
setting aside money would have a direct impact on owners’ income and were properly decisions for the board to make: ‘any intervention by the Crown to further limit returns is likely to have been extremely unpopular’. On valuation problems, the Crown submitted that it provided a ‘fair and reasonable process’ for valuation; that the valuation method chosen was not ‘inherently flawed’; and that valuation methods were not the only cause of rental declines.

On the question of any perpetually renewable leases issued by the boards, the Crown stated that a Supreme Court ruling meant that introducing any legislation to remove the right, once granted, would have challenged ‘the fundamental principle of indefeasibility of title’, and it was unreasonable to have expected it to do this.

The Crown did not directly address the claimants’ argument that it had an increased duty of consultation once the land boards no longer included Māori representatives. However, it maintained that the change from land councils to boards was not opposed by Whanganui Māori and did not prejudice the owners because the boards’ fiduciary obligations remained the same. Indeed, the evidence showed that they ‘appear to have made every effort’ to act in the best interests of the owners. It also denied that the 1954 legislation was inadequate.

It rejected the suggestion that it was under a Treaty obligation to provide any funds to assist claimants to resume the lands – still less, that it should have provided more funds, or funds more quickly. It also submitted that owners were not unhappy with the Māori Trustee’s management under the 1954 Act. It stated that, having weighed up the alternatives, it was reasonable for the Minister of Māori Affairs ‘not to promote the requested legislation [to set up a statutory trust]’ and to return the lands to an incorporation. It questioned whether the outcome today would have been any different if a statutory trust had been set up.

18.3 Vesting Land and Setting up Leases
In this section, we investigate the Crown’s role in vesting the land and setting the initial lease terms. We consider
whether delays in the formal process of transferring land caused prejudice to owners; and whether the inclusion of compensation-for-improvements clauses in the leases, and failure to reserve certain areas for future timber cutting, were breaches of the Treaty. We ask:

- What were Māori intentions and aspirations when they vested land?
- Was the process of vesting the land well managed?
- Were the lease terms reasonable?

### 18.3.1 The land and the people

The vested lands stretched from the Whanganui River across to Ōhākune near Mount Ruapehu. In table 18.1, we list the land blocks that were transferred, the Acts under which they were vested, and the dates of vesting. Map 18.1 shows their location.

<table>
<thead>
<tr>
<th>Category</th>
<th>Block</th>
<th>Size (acres)</th>
<th>Date vested</th>
</tr>
</thead>
<tbody>
<tr>
<td>Land vested under section 28 of the Maori Lands Administration Act 1900</td>
<td>Ōhotu 1, 2, 3, 8</td>
<td>63,644</td>
<td>November 1902–October 1903</td>
</tr>
<tr>
<td></td>
<td>Paetawa A, B</td>
<td>3,370</td>
<td>August 1903</td>
</tr>
<tr>
<td></td>
<td>Morikau 2</td>
<td>14,560</td>
<td>August 1903</td>
</tr>
<tr>
<td></td>
<td>Ōtiranui 2</td>
<td>515</td>
<td>November 1902</td>
</tr>
<tr>
<td></td>
<td>Ōtiranui 3</td>
<td>801</td>
<td>November 1902</td>
</tr>
<tr>
<td></td>
<td>Waharangi 1–5</td>
<td>12,097</td>
<td>August 1903</td>
</tr>
<tr>
<td></td>
<td>Raetihi 3B</td>
<td>1,943</td>
<td>September 1907</td>
</tr>
<tr>
<td></td>
<td>Raetihi 4B</td>
<td>3,257</td>
<td>September 1907</td>
</tr>
<tr>
<td>Land vested under section 3 of the Maori Land Claims Adjustment and Laws Amendment Act 1904</td>
<td>Tauakirā 2 (parts of)</td>
<td>11,600</td>
<td>May 1905</td>
</tr>
<tr>
<td>Land vested under section 352 of the Native Land Act 1909</td>
<td>Rētāruke 1</td>
<td>500</td>
<td>March 1912</td>
</tr>
<tr>
<td></td>
<td>Rētāruke 2</td>
<td>185</td>
<td>March 1912</td>
</tr>
<tr>
<td></td>
<td>Rētāruke 4B</td>
<td>496</td>
<td>March 1912</td>
</tr>
<tr>
<td></td>
<td>Rētāruke 4C</td>
<td>1,364</td>
<td>March 1912</td>
</tr>
<tr>
<td></td>
<td>Raetihi 3A*</td>
<td>1,295</td>
<td>September 1911</td>
</tr>
</tbody>
</table>

* Crown land, vested in exchange for 1,290 acres of part 4B that the Crown wanted to designate as a scenic reserve

Table 18.1: Land blocks vested in the Aotea Māori Land Council and Board for development under the legislation of 1900, 1904, and 1909

Hapū and iwi with interests in the land include Ngā Poutama-nui-a-Awa, Ngāti Pāmoana, Ngāti Hinearo and Ngāti Tuera, Ngā Whākiterangi, Ngāti Ruakōpiri and Ngāti Tūmānuka, Uenuku and Tamakana hapū, and Ngāti Rangi. In 1897, there were 4,073 names on the titles of the Ōhotu blocks alone. Allowing for owners having interests in more than one block, this must still have been, as historian Tony Walzl states, ‘a significant proportion of the entire Whanganui Maori population.’

### 18.3.2 Māori intentions and aspirations in vesting land

In December 1901 and March 1902, there were two important meetings between the Government, the Aotea District Māori Land Council, and Whanganui Māori, at which Māori landowners signalled their interest in vesting several land blocks and began the process of vesting.
Whanganui Māori were chiefly focused on ensuring that no more of their land was sold. To allay such concerns, Native Minister Carroll and Premier Seddon both explicitly stated that the Government did not wish to purchase more land – except, in Carroll’s words, ‘for very special purposes’. Both also promised reserves for Māori use. In December 1901 Carroll went so far as to say that, if land were vested,

\[
\text{every provision will be made by the Councils to set apart reserves for the owners and areas which they will improve and utilise for their own benefit, so that every provision is made to}
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prevent the natives becoming landless while stimulating them to industrial pursuits. . . \[20\]

He also said, though, that he hoped large areas would be thrown open for settlement for Europeans.\[21\]

(1) Owners keen to farm the land
Initially, Whanganui Māori did not envisage vesting all of Ōhotu 1. In May 1902, Tiemi Te Wiki and Hāwira Rehe held a meeting at Parapara about the block. Te Wiki and another key player at the meeting published letters reporting on the day’s discussions in the Māori-language newspaper Te Puke ki Hikurangi. Taking the two letters together, it seems that over 300 people were present, including Takarangi Mete Kingi and a Crown commissioner (unnamed). By the end of the meeting, the owners had decided that of the 46,533 acres in the block, they wanted to retain as papakāinga, farms, and reserves for themselves 22,533 acres on the Mangawhero River side and 4,000 acres on the Whanganui River side. The latter area was to include the settlement at Matahiwi. The rest, less than half, they would vest in the land council.\[22\]
In the event, all of Ōhotu 1 was vested (as well as other Ōhotu subdivisions). We saw no evidence about how or why the meeting's decision to vest only 20,000 acres was superceded.\footnote{In the event, all of Ōhotu 1 was vested (as well as other Ōhotu subdivisions). We saw no evidence about how or why the meeting's decision to vest only 20,000 acres was superceded.}

(2) **Possible motives for vesting the whole block**

Two years later, the *Maori Record* – a recently launched not-for-profit newspaper – gave an account of the Ōhotu owners' motives and aspirations: they chose to vest their lands as 'an act of self-denial', and 'defaced [sic] their own immediate interests in favour of their children, whom they wished to have a good opportunity of becoming farmers'. They did this in the expectation that 'the block would be handed back to them as farms for the rising generation of Maoris, whom they wish to equip for battle in the new order of things which is giving place to the old.'\footnote{Perhaps they were satisfied that this goal could be met through reserves. Te Whatahoro Jury commented to the Aotea land council in April 1904 that the 'natives in [the]}

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**Taanewai meeting house at Matahiwi marae, circa 1917. At the instigation of the Aotea Māori Land Council, a township was laid out at Matahiwi on the Ōhotu block.**
block (Ohotu) wished that 5,000 acres promised to natives by Hon Mr Carroll [illegible] be marked out. Historian Marian Horan observed that this showed that the Ohotu owners had discussed with Native Minister Carroll how much land was to be reserved for them. The same article in the Maori Record recounted how the owners tried to get the Native Land Court to partition out the 5,000 acres ‘to gain a home and cultivations for themselves’, and when the judge said the court had no authority to do this, they became angry with him – although, as the article pointed out, he was only acting in accordance with the legislation. The following month, the Maori Record published another article on Ohotu, which ended with the pertinent opinion that: ‘Farming settlements for natives must be made before the lands are placed in the hands of the Council for lease’ (emphasis added).

**(3) Summary of known facts**

It seems that the owners of Ohotu 1 originally wanted to retain over half the block themselves, and farm much of that. Then they vested the whole block, and apparently accepted the idea of reserving for their own use a much smaller area – 5,000 acres.

That is really all we know. However, we speculate that Carroll and possibly other leaders persuaded the owners of the merits of vesting the whole block to protect it from sale – and perhaps also convinced them that they could achieve their goals through a combination of leasing land and occupying and farming papakāinga reserves. However, there was clearly still some confusion about the status of vested land; as we have seen, in about 1903 owners tried to have some of the land partitioned out and returned to their ownership.

**18.3.3 Was the process of vesting the land well managed?**

Under the Maori Lands Administration Act 1900, owners could put their land in trust with the land council as follows:

- Where owners were not incorporated, *all* the owners were required to sign the deed of vesting (section 28).
- Where there were more than 10 owners, owners could form themselves into an incorporation under the provisions of the Native Land Court Act 1894. The incorporation could transfer the land with the consent of the majority of owners (section 30(2)).

By the time discussions were underway in Whanganui about which blocks would be vested, an amending Act had modified the vesting process. Section 6 of the Maori Lands Administration Amendment Act, passed in November 1901, amended section 28 of the main Act: now, if owners were not incorporated, a *majority* could authorise, in writing, for 10 of their number to sign a deed of vesting. This, less onerous, requirement was applied in Whanganui, where most Māori land was in blocks with more than 10 owners, but was not incorporated.

**(1) Legislative requirements hard to fulfil**

It soon emerged that it would be very difficult to meet these requirements. For one thing, about two thirds of the blocks vested during the first couple of years of the scheme had more than 100 owners. Of these, half had more than 400 owners, and the largest, Ohotu 1, had over 1,070 owners. Tracking down and obtaining signatures from a majority of the owners – with two people to witness each signature – was, as they say, a big ask. It is true that many owners attended meetings to discuss vesting, like the one with the Native Minister on 4 March 1902 at Hiruhārama, and some clearly signed on the spot. However, a 31 July 1902 progress report on signature collection in 10 blocks spelled out the difficulties. For nearly half the blocks, it noted: ‘Balance [of] owners very scattered.’ In the case of Ohotu 1, gathering signatures began at the March 1902 meeting, but it took several months to obtain another bundle – each one duly attested – and the final 46 names were not added until November 1906.

The process for the majority of owners in a block to authorise 10 representatives to sign the deed was unspecified. In the case of Ohotu 1, the 10 could have been approached individually between October 1902 and January 1903. We know nothing about how they might have been chosen. Historian Dr Horan commented under cross-examination that ‘it seems a strangely complicated system because I don’t know why you need the 10 owners to be listed at the top [of the deed of transfer] and also
have the majority owners approve the 10 owners who sign it over.\textsuperscript{31}

By April 1902, the list of blocks ‘agreed upon to be transferred’ to the land council included Ōhotu 1 and 8, Whitianga 2, Whakaihuwaka 1 to 3, Puketōtara, Urewera, Ngāpākihi, and Raetihi 2B and 5B. However, too few signatures had been collected for any of the blocks to be vested immediately.\textsuperscript{32} But according to the \textit{Gazette}, the first land was not vested until the end of 1902 (see table 18.1), and some of the blocks were never vested.

\textbf{(2) Pressures at play}
Throughout the period leading up to the vestings, countervailing tensions were at work.

On the one hand, the Crown was keen for the vested land to be available to settlers for them to lease as soon as possible. To meet this objective, it wanted Māori to vest maximum land in minimum time. Whanganui Māori, on the other hand, wanted to be able to consider and debate, because although they were certainly interested in the scheme, it was new and untested. There were aspects of it that they were unsure about, and needed to discuss among themselves and with Government officials.

All the deeds that were finally signed included the assurance that the contents had been explained to the signatories by a licensed interpreter and that they had only signed it after ‘appearing clearly to understand the meaning of the same’. Patrick Sheridan Superintendent of Maori Land Administration, also later stressed that at the 4 March 1902 meeting, the conditions had been ‘fully explained by two Licensed Interpreters to every Native who signed the deeds’.\textsuperscript{33} Even so, there was a large amount of information to absorb and, just as one example, it seems that the mechanics – and likelihood – of obtaining land for their own use after vesting might not have been adequately explained.

\textbf{(3) Vesting Tauakirā}
It was a different process for the Tauakirā blocks.

In 1901, Tauakirā was surveyed. When the owners could not pay the surveyor, he threatened to move for sale of parts of the block to get his bill paid. Carroll got involved, and advocated the Government’s advancing the money to pay the surveyor. The land council’s president, Judge Butler, wrote in 1903 that the owners agreed to vest most of the land in the council on the understanding that the Crown would pay the bill. An amendment Act was passed in 1904 enabling Tauakirā (and other blocks) to be vested by order in council. However, the schedule to the Act mistakenly included Tauakirā 2M, which owners did not want included as this was where they lived. It took some years for it to be returned to them (see section 18.6.6).\textsuperscript{34}

Although the owners reportedly agreed to vest their land in the council, it is fairly clear that they did so because the less appealing and only alternative was that their land would be sold to pay the surveyor.

We do not know why the land was surveyed, nor whether in that case it was fair for the owners to bear the whole cost. It was certainly preferable for their land to be vested rather than sold. However, in the situation described, owners had no real choice.

\textbf{18.3.4 Were the terms of the leases reasonable?}
\textbf{(1) What were the owners’ expectations?}
The 1900 Act stipulated that land would be vested ‘upon such terms as to leasing, cutting up, managing, improving, and raising money \ldots as may be set forth in writing between the owners and the Council’.\textsuperscript{35} Political debates in 1898 and 1899 should have made it clear that Māori throughout the country were wary of lease terms that could mean that owners would lose permanently the right to occupy their land. For example, Wi Pere, as Member for Eastern Māori, had proposed several amendments to the Government’s land administration Bill of 1899, one of which precluded leases longer than 42 years.\textsuperscript{36} A Bill that the Kotahitanga Parliament drew up in 1900 also specified a maximum of 42 years.\textsuperscript{37} In Whanganui, land council member Thomas Fisher later recalled that Māori owners had rejected vesting the Ōhotu block in the Public Trustee (before 1900) as it would have meant accepting perpetually renewable leases.\textsuperscript{38} Whanganui Māori also remembered that they said at a meeting at Hiruhārama (probably in March 1902) that 42 years was the maximum term they would accept.\textsuperscript{39}
Despite this, the Crown prepared a standard vesting form which included five conditions of transfer, the first of which allowed the land council the option of leasing the land ‘by perpetual lease or lease in perpetuity’. Owners could reject any of the conditions before the deed was finalised. Whanganui Māori returned most deeds with 42 years specified as the maximum term for leases, and with the words ‘perpetual lease or lease in perpetuity’ crossed out. Only for Waharangi, Morikau 2, and Paetawa were the deeds returned without the phrases on perpetual leasing crossed out. The three deeds did, however, still specify that 42 years was to be the maximum for leases.\(^4\)

All the Whanganui deeds of vesting thus specified a maximum term of 42 years for the leases, and most expressly rejected perpetually renewable leases or leasing in perpetuity. They also specified that the land council’s right to lease would be

on conditions as nearly as may be similar to those of “The Land Act, 1885” and “The Land Act 1892”, to take effect in

Original Bartrum homestead, circa 1909, surrounded by the remains of felled or burnt trees. The 3,000 acres on which the homestead stood were not far from the Whanganui River at Matahiwi. The land was vested in the Aotea Māori Land Council, and leased to the Bartrums around 1907. The Bartrum family remained leaseholders until at least the 1990s.
possession at the best rent or rents that can reasonably be obtained, and with or without covenant for renewal.\textsuperscript{41}

Both the 1885 Act and the 1892 Act had clauses concerning compensation for improvements carried out by the lessee. We do not know whether Whanganui Māori looked closely at compensation before they signed the deeds.

\textbf{(2) Preparing to lease the land}

Once the land was vested, the land council could set about organising the leasing. In theory, under the 1900 Act, this meant surveying blocks into sections, borrowing money for roads, and setting the terms and conditions for the leases. In practice – in Ōhotu, at least – the land council focused only on setting up leases.

At the 1898 meeting at Pūtiki, Seddon talked about setting up Māori land boards or councils, and said Parliament would be asked to ‘give money to these Boards to be expended in making roads and in opening up the land for settlement’. He went on:

\begin{quote}
I should say that a very large area of Native land is away back from settlement, and has no roads leading to it – there are no means of getting to and from it. Without roads the Europeans will not lease it . . .\textsuperscript{42}
\end{quote}

But in 1903, when the surveyor of the Ōhotu blocks, Morgan Carkeek, suggested the early construction of roads, he was informed ‘in confidence’ that this was ‘counter to the distinct expressed opinion and wish of the Rt Hon The Premier’ who wanted the block leased as soon as possible using the ‘unsurveyed system’.\textsuperscript{43}

The surveyor described the land as mostly ‘rough hilly country’, although there were good river flats along the Whanganui and Mangawhero. The best land was to the east of the Mangawhero. Overall, he classified it as second-class land. There were to be 71 leased agricultural sections of between 168 and 3,530 acres, with most between 400 and 750 acres.\textsuperscript{44} In addition, two township sites were planned: one would be known as Ōhotu (next to the Mangawhero River, in the centre of Ōhotu 1), and the other as Matahiwi (also on Ōhotu 1 next to the Whanganui River and opposite Karatia). Other areas were reserved for papakāinga.\textsuperscript{45}

\textbf{(3) Rules and regulations}

Under the 1900 Act and its amendments, the land council had the power to lease out the land subject to the conditions set out in the vested land deeds, the 1900 Act (its amendments in 1901 and 1903), and the associated regulations of 26 December 1900, 20 April 1903, and 24 August 1903.\textsuperscript{46}

The regulations of December 1900 restricted leases to a term of 21 years, but this was amended in April 1903 to ‘not exceeding 30 years’. They also contained provisions for valuations, compensation for improvements, and renewals. Under regulation 83, a valuation of all ‘substantial improvements of a permanent character’ was to be made not later than three months before the end of a lease. In accordance with the Act (which in turn relied on section 3 of the Land Act 1892), such improvements could include:

\begin{quote}
reclamation from swamps, clearing of bush, gorse, broom, sweetbriar, or scrub, cultivation, planting with trees or live hedges, the laying-out and cultivating of gardens, fencing, draining, making roads, sinking wells or water-tanks, constructing water-races, sheep-dips, making embankments or protective works of any kind, in any way improving the character or fertility of the soil, or the erection of any building . . .
\end{quote}

Then, at the end of the lease, the lessee would have the option of accepting a new lease for another 21 years at 5 per cent of the unimproved value of the land. If he refused a new lease, any incoming tenant would be liable for the cost of improvements. The regulations also provided a standard form for leases, which included regulation 83 as a clause unless the lease was not subject to renewal. These provisions were almost exactly the same as those in the Land Acts of 1885 and 1892 dealing with perpetual leases of Crown lands. Under regulation 67, the land council could create its own set of regulations with different ‘covenants, conditions and agreements’, as long as these were not inconsistent with the 1900 Act and the regulations already published.\textsuperscript{47}
Meeting about the vested lands in Whanganui

In March 1903, Judge Butler (president of the Aotea land council), Carroll, the surveyor-general, and the commissioner of Crown lands met to discuss the Whanganui vested lands. Following the meeting, the commissioner drew up notes that set out the steps leading up to putting the leases for the Ōhotu block on the market, and sent Butler a copy. The term was to be ‘21 years . . . subject to its renewal for a further term of 21 years . . . Proposed to be 42 years lease’. In effect, leases with a right of renewal every 21 years were perpetually renewable. When the Ōhotu blocks were advertised over May and June 1903, though, the lease was for two 21-year terms. The advertisements said that other conditions were those of the 1900 Act and ‘its amendments and regulations’. The regulations gazetted on 7 January 1901 provided for terms of 21 years with one right of renewal, and required that ‘substantial improvements of a permanent nature’ were made during the first six years. The annual rent for a second term was to be calculated at not less than 5 per cent of the gross value of the land after deducting the value of the improvements. Upon termination of the lease, there was provision for the lessee to be reimbursed for the cost of improvements, although the conditions attached to that were not particularly clear. There was also a requirement for the lessee to live on the land. There was no explicit mention of compensation for improvements. The offer did not attract much interest: by June 1903, only six tenders had been received for the 71 sections, two of which were for the same piece of land.

Leases for 42 years, or perpetually renewable?

All of this pointed to understanding on all sides that leases were not to exceed 42 years in total. But only a month later, on 7 April 1903, the typed-up version of the Aotea land council’s minutes (which were brief and recorded no detail) astonishingly recorded the decision of the land council, with all members present, to offer Ōhotu on 21-year leases ‘renewable every 21 years with revaluation every 21 years’. In effect, leases with a right of renewal every 21 years were perpetually renewable. When the Ōhotu blocks were advertised over May and June 1903, the lease was for two 21-year terms. The advertisements said that other conditions were those of the 1900 Act and ‘its amendments and regulations’. The regulations gazetted on 7 January 1901 provided for terms of 21 years with one right of renewal, and required that ‘substantial improvements of a permanent nature’ were made during the first six years. The annual rent for a second term was to be calculated at not less than 5 per cent of the gross value of the land after deducting the value of the improvements. Upon termination of the lease, there was provision for the lessee to be reimbursed for the cost of improvements, although the conditions attached to that were not particularly clear. There was also a requirement for the lessee to live on the land. There was no explicit mention of compensation for improvements. The offer did not attract much interest: by June 1903, only six tenders had been received for the 71 sections, two of which were for the same piece of land.

Failure of the first lease offer

The failure of the first tender caused consternation for both the Aotea Maori Land Council and the Government. Politically, it promised to be a disaster: Ōhotu was effectively a test case for the Government’s whole vesting and leasing scheme.

In June 1903, debating possible reasons for the lack of interest from potential lessees, the Aotea land council identified as possible factors the poor road access; the lease period not being long enough; the requirement to live on the land; and regulations not being well understood. The land council resolved that ‘tenants are entitled to value of permanent improvements at end of the term of 42 years and that the regulations be amended accordingly’ – a move presumably designed to make the leases more popular.

Regulation 78A – compensation for improvements

Sheridan, who led the Native Department as head of Māori Land Administration, drafted regulation 78A. It provided that lessees would be entitled to the value of improvements at the end of the first term, or, if they chose to renew, at the end of the second term. It also specified that the council could return the land to the owners on payment of compensation and any other charges. Importantly, some aspects of how compensation would be assessed and paid were left obscure, and there was no cap on the value of the improvements a lessee could be compensated for. The regulation stated:

In any case where a lease is granted with a right of renewal for one further term only, not exceeding twenty-one years, the Council shall, on the expiration of such further term, or on the expiration of the original term, or in the case of a lease where the right of renewal is perpetual, on the expiration of any term, if the right of renewal has in any case been surrendered or otherwise determined, weight the land with the value of the improvements of the outgoing tenant on again offering it for lease; or the Council may in its discretion retransfer the land to the Native owners on payment of the value of the
improvements and all other charges to which the land may be
lawfully subject. The value of such improvements, or the bal-
ance thereof after deducting any amounts which may be due
to the Council by the outgoing lessee, shall, when recovered
by the Council, be paid over to him.

The Aotea council approved the proposed wording of
78A, and it was gazetted in August 1903. In Wanganui, reg-
ulation 78A received positive notice, with the Wanganui
Herald reporting in September 1903 that it had remedied
a defect in the lease terms. It was ‘unfair and unreason-
able’, said the article, to expect that settlers would leave
lands they had settled with ‘no consideration for the fruits
of their industry’. The journalist attributed the failure of
the earlier offer to this unfairness. The new regulation
improved the situation, but perpetual leases ‘would be a
still greater inducement’ to settlement.56

The land council had on its agenda proposals to reduce
the rent for some sections, and insert in some leases
longer terms.

(8) Road access
It was also keen to improve road access. In June, Carroll
wrote to Seddon with proposals for how much money
might be advanced on the Ōhotu blocks for costs like
roads, and suggested that the loan would extend ‘over a
period of 42 years’, which was the length of the leases. The
loan would cover all bridle tracks, but Carroll thought the
Government should give a ‘£ for £ subsidy’ for any arterial
dray roads, and ‘the Colony’ should bear the whole cost
of any main roads, except where they ‘specially affect the
block’. In that case, ‘some principle of contribution might
be agreed on’. In a final handwritten note, he commented:
‘Pending the raising of a loan on Ōhotu the Lands and
Survey Dept might arrange to do all the work necessary to
form horse tracks, clear bush and lay off road lines’.57

In September, the land council’s surveyor, Morgan
Carkeek, expressed his view that there would not be much
demand for the land ‘until the Block was opened up by
constructed roads’ and that this would ‘no doubt take
some time’.58 Butler echoed this view, telling Sheridan a
few weeks later that road access was ‘essential to success’,
especially as roads were shown on the plans.59

(9) The Crown presses for perpetually renewable leases
By October 1903, there were still no further tenders. Butler
believed that Ōhotu would not be taken up while the con-
dition that limited the lease to 21 years plus one renewal
remained, and he asked the government about offering
perpetual leases. In fact, as we saw, the council decided in
April 1903 to offer the Ōhotu leases as 21-year leases that
were renewable every 21 years – making them perpetually
renewable in effect – but for reasons that we do not under-
stand, advertised them on the 21-plus-21-year basis that
Māori had agreed to. The council went on to decide at its
meeting on 28 August 1903 to offer the Paetawa block on
perpetually renewable leases, although on that occasion it
is not clear that all council members were present.60 On
the basis of the limited information available to us, it is
hard to get to the bottom of the council’s position on the
lease terms at this point.

In Wellington, officials seem not to have known that
Whanganui Māori had insisted on a maximum term of 42
years. In 1903, for example, both Sheridan and Robert Sim
of the Māori Lands Administration Department, set up to
assist with the implementation of the Māori land coun-
cils, were giving advice on perpetual leases without ever
mentioning that Whanganui Māori had specified no more
than 42 years for the Ōhotu leases.61 In July 1903, Sheridan
told Carroll that the owners had transferred Ōhotu on ‘the
widest basis’, which would allow renewable leases. He sent
Carroll a copy of the standard form on which Māori had
vested the lands, critically failing to point out that own-
ers had altered the first condition by specifying 42 years
and deleting ‘perpetual lease and lease in perpetuity’.Sheridan made similar statements to the surveyor-general
in January 1904, saying that although the terms of vest-
ing were not the same for all blocks, in Ōhotu ‘the terms
are sufficiently wide to allow of the perpetual right of
renewal’.62
To make crystal clear the position of Whanganui Māori on the length of lease terms, in April 1904 Te Whatahoro Jury (see sidebar) addressed the land council on the subject on behalf of owners. Attendees included Fisher (presiding in Butler’s absence), Mete Kingi, Hipango, and Nikitini. Jury’s message was that leases should not exceed 21 years with one right of renewal, and liability for improvements should be capped at £3 per acre. He also asked that beneficial owners be allowed to re-occupy the land at the end of the leases, paying for improvements paid by means of ‘mortgage covenants’. His letter of 27 April reiterated the owners’ position.

(10) Important meetings of the Aotea Māori land council

In July 1904, the Aotea District Māori Land Council held four important meetings to set the terms for leasing Paetawa and Ōhotu. It thoroughly canvassed the possibility of perpetually renewable leases but in the end decided to issue limited leases with compensation for improvements under regulation 78A. We set out what happened in some detail, as it goes to the heart of the claimants’ contention that the Crown applied undue pressure on the issue.

(a) The meeting on 2 July: On 2 July, Paetawa was the first block discussed. Nikitini stated that he did not recollect having been at the meeting in August 1903 that had apparently agreed to perpetual leasing, and he spoke strongly against such terms. Sheridan arrived during the morning, and Carroll and Minister for Lands Thomas Young Duncan joined the meeting for the afternoon session.

Nikitini told Carroll that Māori in the district ‘have given vent to feelings, charging Council with having brought “mate” [calamity] upon them – in respect of duration of leases etc’. Carroll drew a distinction between leases in perpetuity and perpetual leases. He believed the real objection was to leases in perpetuity, that is, for 999 years, and reassured those present that such leases were not expected for the vested lands. On the other hand, the land council should offer perpetually renewable leases. Carroll believed he already had an agreement with owners about this, dating from his meeting with owners in Whanganui after the vesting of the Ōhotu block. He had
told them that ‘to ensure success’ they should have ‘perpetual leases, that is, term after term of 21 years each,’ and ‘the “iwi” then agreed – not one objected’.

The need for Ōhotu to succeed was uppermost in Carroll’s mind. He was happy to leave the details of the leases for other blocks to the land council and owners, but for Ōhotu ‘their course is clear’. An ‘early settlement’ of the block would ‘show what benefit would be derived from so dealing with lands’. The minutes do not record any reaction from Māori members to this aspect of Carroll’s speech; they moved on to discuss what assistance the Government could give on roading and surveys.65

(b) The meetings on 4 and 5 July: At the next two meetings, on 4 and 5 July, the new president of the Aotea land council, Judge H Dunbar Johnson, and the other European member, Fisher, both argued for perpetual leases. Māori councillors, however, were strongly against.66 On 4 July, Fisher raised the subject of Paetawa again, suggesting it be offered under regulation 78A, and striking out any reference to perpetual renewal. The motion was carried.67 When the discussion turned to Ōhotu, Mete Kingi – with Nikitini supporting – proposed that the term be limited to 42 years. Johnson stated that he thought it had been agreed to follow Carroll’s advice and issue perpetually renewable leases. Hipango disagreed, saying that lessees would not have such leases but would still get the value of their improvements.68

The next day, 5 July, the councillors discussed the minutes of April 1903 when they had effectively resolved to lease Ōhotu on perpetually renewable leases. Nikitini disputed that the minutes were correct, later repeating that ‘it did not correspond with his recollection of the matter’. Moreover, he said: ‘That was not what the people had agreed to when they signed the deed’. Taraua Marumaru also spoke, contributing the pertinent observation that, if the minutes had been read and confirmed at the following meeting, all doubt might have been avoided. This presumably had not happened.

Trying to find an acceptable way forward, Nikitini proposed leasing Ōhotu on leases of 21 years with the right of renewal for another 21 years ‘subject to valuation of land, less improvements, in terms of Regulation no 78A, as in the case of Paetawa block – the improvements to belong to the lessee’. Mete Kingi and Hipango spoke in support of Nikitini’s proposal, but Hipango queried how improvements would be paid for at the end of the term ‘if the Europeans did not wish to continue occupation’. According to the handwritten minutes, taken on the day, Nikitini responded that ‘that matter might be left to be settled when it arose’ (a comment which is omitted from the ensuing typed version).69

At this point, Fisher explained the provisions of regulation 78A, saying that it was ‘virtually equal to a perpetual lease to a person understanding land tenure’. He also said: ‘The objection of Natives is to the term “mutunga-kore” [without end, in perpetuity] which has been given to perpetual leases.’70 Fisher seems to have been saying that because there was no prospect of Māori being able to pay the compensation for improvements, including regulation 78A in leases would enable the council to keep renewing them, but without actually using the objectionable terms ‘perpetual lease’ or ‘mutunga-kore’.

The minutes record the Māori councillors’ attention as having focused exclusively on Fisher’s reference to ‘mutunga-kore’: Rū Rēweti immediately responded that ‘he felt sure that, if the Council were to grant perpetual leases, the Act would be a dead-letter all over the country’, and Taraua Marumaru supported him. Both Fisher and Johnson then argued strongly for perpetual leases, Johnson saying ‘that it was only by perpetual lease that the land would be properly settled and that Native owners would derive benefit’.71

On the same day, 5 July, Sheridan telegraphed Johnson that it would be ‘a pure waste of both time and money’ to offer Ōhotu with anything but a perpetual lease and the president should hold a vote on the issue at once. He telegraphed Fisher and Rēweti in a similar vein, informing the latter,

It is not the slightest use offering Ohotu on any terms which are not equivalent to Crown lands or nearly so. One or two men should not be allowed to spoil arrangements by proposing terms which would end in another frost.72
(c) The aftermath of the meetings: In the end, Johnson refused to hold a vote and the meeting adjourned for two weeks. He telegraphed Carroll:

> Fisher and I in hopeless minority all five native members refuse agree perpetual lease but will agree to lease for two periods of twentyone years each under regulation number seventyeight A which provides for further lease in event of non-payment of lessee improvements.

Fisher also suggested obtaining the opinion of the Crown Law office on whether the council’s minuted April 1903 decision to offer perpetual leases could be rescinded as Nikitini had suggested. This was, according to Johnson’s telegramme, in order ‘to gain time’. Carroll does not appear to have responded.

The next day, Fisher telegraphed Sheridan that, in his view, leases under regulation 78A should be acceptable to would-be farmers:

> in fact I consider it a perpetual lease as it is beyond a doubt that Natives will not at end of 42 years be able to pay over £240,000 which would be value of improvements at that period. [Emphasis in original.]

Sheridan did not respond directly, instead pressing for leases that were overtly perpetual, and insisting that such terms were agreed previously. He was irked by the position of the Māori council members, but they comprised a majority, and were unlikely to change their views. He suggested to Carroll that same month that the Aotea council should be amalgamated with the Ikaroa council. There is no record of Carroll responding. Indeed from mid-July onwards, Carroll seems to have taken no further part in the debate. Sheridan, however, remained a staunch advocate of perpetually renewable leases.

(d) The issue of lease terms goes back to the council: What kind of behind-the-scenes manoeuvring took place over the next two weeks is unknown, but at the next council meeting on 21 July, a large deputation of owners appeared. Te Whatahoro Jury again spoke on the owners’ behalf, and made a number of requests regarding the lease of Ōhotu 1. Owners wanted to see a copy of the vesting deeds, as there were rumours that the lease term had been altered to 999 years. Jury repeated that owners wanted leases to be for 21 years with one right of renewal for another 21 years. Improvements should be paid for by allowing a discount on the rent for a certain number of years, and there should also be a cap on the value of improvements. Reweti and other council members, including the president, then explained the terms agreed for Paetawa, namely: ‘At the end of 42 years, if improvements not paid for, further lease to be arranged in terms of Regulation no 78A’ (emphasis added). The minutes record that Te Whatahoro said that he ‘would agree to similar terms for Ohotu’.

The minutes are too brief to allow us to say exactly what the council was offering and what terms Te Whatahoro thought he was accepting. A new lease could be very different from a simple renewal: perhaps councillors thought a new lease might be negotiated to enable compensation for improvements to be paid by rent abatement over time.

(11) The land council decides on lease conditions

Council members then made a series of resolutions on the terms for the leases. They rescinded the resolution of 7 April 1903, apparently agreeing to perpetually renewable leases for Ōhotu. Hipango put forward a new resolution to lease Ōhotu for 21 years, with a right of renewal for a further 21 years under regulation 78A, with valuation of lessees improvements ‘in [the] same way as had been arranged in [the] case of Paetawa’. Mete Kingi seconded, and the motion was carried.

Paetawa and Ōhotu were advertised in late 1904, the terms being, as agreed, 21 years, with a right of renewal for a further term, and improvements to be paid for at the end of either term. In the end, it was the land council’s decision to offer leases with compensation for improvements under regulation 78A, which it agreed to in response to the failure of the first lease offer. On the face of it, the land council did what it was designed to do: represent the Māori beneficial owners interests. The Crown’s attempts to push the council to offer perpetually renewable leases were unsuccessful.
– and actually it was not open to the council to offer perpetual leases, because owners had struck out that option in the vesting deeds for Whanganui. On the other hand, coming up with a plausible alternative to what the Crown wanted it to do demanded so much of the council's time and effort, that it did not sufficiently deliberate, or answer, the question of how improvements would be paid for at the end of the leases, something that owners themselves were very concerned about.

(12) Regulation 78A
Ostensibly, regulation 78A entitled tenants to recover the value of their improvements when their lease expired. It spelled out no process for how the compensation would be paid, nor what would happen if it could not be paid.

Because the council could re vest land in its former owners only if they paid lessees the compensation for improvements, Fisher thought that the council had the power to keep renewing leases until compensation was
paid.\textsuperscript{80} It is not clear if the other councillors saw it this way too. Johnson’s telegram of 5 July and the meeting minutes of 21 July, cited above, suggest that councillors thought regulation 78A enabled them to offer at least one new lease after the two original lease terms, but we do not know whether they thought there was any limit to this, nor what they thought the terms of any new lease would be.\textsuperscript{81}

Fisher and the other councillors were probably wrong, in any event. The royal commission that from 1949 to 1951 looked into land vested in the Māori land boards and reported in 1951 (‘the 1951 Commission’) found that the legislation and regulations did not allow the council to issue further leases.\textsuperscript{82}

(13) \textit{Māori views on compensation for improvements}

One of the issues raised by these events is whether the Māori members of the Aotea land council fully grasped the financial implications of the compensation for improvements clauses; and if they did, what did they think of them?

(a) \textit{No limit on improvements that would be compensated:}

The regulations for the vested land scheme set no maximum value for improvements that had to be compensated. A newspaper article about the Whanganui lease offers assured its readers that based on the information in the public advertisements, ‘there is no limit placed on the amount of improvements with which the lessee may load the land.’\textsuperscript{83} Under questioning during Tribunal hearings, Dr Horan agreed with claimant counsel that the Māori councillors could not have understood Fisher’s remarks about the potential cost of compensation for improvements during the land council meeting of 5 July, or they ‘would have protested at the meeting.’\textsuperscript{84} This evidence raised questions about whether Māori understood the implications of regulation 78A: claimant counsel alleged that the Crown and European members of the land council colluded to keep Māori in the dark about its true effect.

However, the issue of compensation for improvements on leased Māori land was by no means new. In 1890, a royal commission had investigated the West Coast Settlement Reserve leases in Taranaki. Te Keepa Te Rangihiwinui gave evidence in the inquiry (as did Thomas Fisher, at that time a Native Land Court agent). Te Keepa sat as an arbitrator to set the rents on some of the leases in question, but resigned when he discovered that the lease terms included compensation for improvements. He had sought legal advice on the provision and objected strongly to it: ‘I knew that the Maoris would never be able to redeem the improvements; this law was only good for the Europeans of the district.’\textsuperscript{85}

(b) \textit{Māori awareness of redemption issues:}

In 1904, the Māori councillors and beneficial owners were aware of the issues. During the land council’s discussions, Te Whatahoro and Hipango raised the question of how to pay for compensation. Nikitini, as we have noted, proposed just leaving the matter to be ‘settled when it arose’. Te Whatahoro, though, came up with three suggestions for managing the liability. The first was to impose a cap on the compensation of £3 per acre; the second was to introduce mortgage covenants, so that owners could take back the land and pay off the debt over time; and the third was to provide the lessee with a discount on rent for a number of years.\textsuperscript{86} (The 1890 commission that investigated West Coast Settlement Reserves also recommended that lessees should pay a low yearly rent for the first 15 years, so as to ‘recoup the lessees for all improvements’: for the second 15 years, rents should be 5 per cent of the total value including improvements.\textsuperscript{87}) A few weeks later, Te Whatahoro offered a fourth suggestion, namely that money be set aside from land council receipts, to pay for improvements when the Ōhotu leases expired.\textsuperscript{88}

In mid-December 1904 an important meeting was held, this time at Karatia (or Galatea, formerly known as Hikurangi), across the Whanganui River from Matahiwi.\textsuperscript{89} Māori owners, land council members, Carroll, Hōne Heke (the member for Northern Maori), Sheridan, and an official from the Roads Department were among those present. By this time, Paetawa and Ōhotu had been advertised. In addition to querying how roading and surveying were being handled, Te Whatahoro asked ‘questions
of importance with regard to whether or not the natives would be enabled to discharge the land at the termination of leases. Sheridan apparently ‘explained the terms and put the matter of the tenure on a clear footing’, but no details were recorded.  

(14) Improvements an issue of the day

The following year saw more commentary on compensation for improvements. In July 1905, an article in the Maori Record criticised the push for perpetual leases as interference from Wellington, and said that the idea had eventually been dropped. On the other hand, the writer explained, a right to compensation for improvements had been introduced, with no limits placed on the value, and the land council had calculated 42 years, at a reasonable rental, as the time needed for the lessees to afford to improve the land while making a fair profit. Someone at a meeting ‘up the Whanganui river’ (possibly the Karatia meeting mentioned above) had suggested that the average value of improvements would probably be about £3 per acre, and ‘[i]t was felt that even that amount would stand in the way of the natives regaining occupation’. The report noted that a letter written to another newspaper, Te Puke ki Hikurangi, also mentioned this potential problem and advocated ‘that the European lessees be allowed a further term of occupation in extinguishment of the claim for improvements.’

In August the same year, Te Whatahoro wrote to Carroll with suggestions for the Government’s proposed new Bill on Māori land. He again raised the issue of compensation for improvements, elaborating on one of his suggestions of the previous year: he now proposed that the land councils be given the power to retain two shillings in the pound from all income such as land rents, timber royalties, and any other transactions, to be set aside to pay for improvements when the time came, or to be spent when appropriate – effectively, a sinking fund.

Finally, we note that in September 1905, the issue of the Maori Land Settlement Bill was discussed in the Native Affairs Committee. Hone Heke asked Pēpene Ēketone, member of the Maniapoto–Tūwharetoa District Land Council, for his views on compensation for improvements. Ēketone said that of course all Māori wanted vested land to come back to them and ‘[n]o Maori will object to refund to the European tenant the value of improvements, so long as he gets a rent that is a fair rent for the value of the land’. Neither did Whanganui Māori have a principled objection to compensating for improvements: their issue was how they would pay for them.

(a) Māori councillors surely grasped the implications: In summary, it is clear that some Māori, at least, were aware of the financial consequences of compensation provisions, as far as they could be predicted at that time, and actively discussed the issue with both the council and the Crown. We do not consider it credible that Māori councillors, immersed as they were in the question of lease provisions, did not understand the potential implications of compensation for improvements. Rather, councillors were focused on readvertising the land at terms attractive to lessees, and resisting moves for perpetually renewable leases. They may well have thought that compensation was a matter that could be addressed later, once lessees were in place and owners were receiving income from their land.

(15) Trees and timber

Claimants argued that owners did not gain fair value from the timber on the Ōhotu blocks. They blamed the Crown for not including provisions about timber in the vested deeds; for not providing road access to the blocks to make timber milling viable; and for allowing the Aotea land board, on which owners were not represented, to make decisions about how the timber would be dealt with.

(a) Deeds silent on timber: The deeds for vesting the land did not mention how the land councils would deal with timber. However, section 29 of the 1900 legislation enabled the land councils, at the request of owners, to set aside areas for papakāinga and also ‘reserves for the protection of native birds, or the conservation of timber and fuel for the future use of the Māori owners.’ The accompanying regulations empowered the councils to sell standing
timber on any land vested in it, ‘on such terms as it shall think fit, in the best interests of the owners of the land.’

(b) Timber on Ōhotu sections: In 1904, the surveyor identified 10 sections on Ōhotu with millable timber, although it is not clear how much. The options for the land council were: (1) to reserve the sections (or parts of them) for future milling; (2) to require lessees to mill the trees and pay royalties for them; (3) to require lessees to pay royalties if they milled and sold the trees. The land council chose the third.

Ōhotu owners soon became concerned that the Aotea land council might not deal with their timber in the most advantageous way. The owners wrote to Carroll in March 1904 requesting him to ensure that they benefited from the timber on leased blocks. Carroll replied that he had required the surveyors to identify any suitable milling timber ‘in order that an adequate rent may be demanded’, and as we noted above, the Ōhotu surveyor marked 10 millable sections. Te Whatahoro told the council on 21 July that owners wanted leases to have clauses about timber. They also asked the council to preserve blocks of bush of not less than 50 acres on various sections, although this could have been for the purposes of timber or firewood or bird snaring rather than milling.

Two weeks earlier, on 4 July, the council had resolved to include a provision in the leases that if lessees sold any of the timber on any Ōhotu blocks, half the royalties would go to the beneficiaries. The royalties were charged at the standard Crown land board rates for timber on Crown lands. The council told Te Whatahoro about this development – and also that it did not plan to preserve bush, although it would create reserves ‘at request of the Scenery Preservation Commissioners’.

Timber on vested lands remained a live issue, though, because in March 1905 Carroll asked for a report on timber on Ōhotu, perhaps with a view to its being reserved. On 11 April, Aotea land council minutes recorded that in response to the ‘proposed reservation of assumed blocks for milling timber purposes . . . it was not the intention of Council to reserve any unless the places mentioned were at once pointed out to Mr Carkeek.’ Fisher later recollected that the Survey Department, owners, and Māori members of the council wanted to keep parts of Ōhotu from being settled until access was improved for the purpose of milling the timber later. Fisher, however, took a rather different view, as he explained to the Native Affairs Committee in 1912:

I . . . could not see that the suggested benefits existed, when one had to consider the advantages gained by the settlement of the country. The Native members . . . looked to the loss of revenue from the timber being destroyed but I considered that, as they were to receive rents in the interval (as to the date of the timber being a legitimate asset) they were recompensed.

It appears that Fisher’s views prevailed.

Once the conditions of the leases were set and the land was leased out, the option to reserve land was gone, unless lessees agreed to vary their leases, which seems unlikely.

(c) Lower royalties: Lessees were required to fell a certain amount of bush each year as a condition of their leases. But they complained that milling and selling was not viable; it was more practical to ‘cut and burn’.

In 1911, one of the vested land lessees told the Native Affairs Committee that the land he leased contained ‘magnificent milling timber – the best milling timber I have ever seen. It was mostly rimu and matai’. He estimated that, in the surrounding area (it is not clear how much of this was vested land), of the approximately 10,000 acres of millable timber within 10 miles of the main trunk railway, about half had been felled and burnt. He tried in 1907 to negotiate an agreement with a timber company to take out the timber but could not: the company would have to build about eight miles of tram line to get the timber out, and paying royalties at the stipulated rate – £4 per acre, which the Crown lands board set for Crown land – there was no profit to be had. Other lessees reported the same experience, and petitioned the Aotea District Māori Land Board to lower royalties to £1 per acre. The board said no. In March 1912, Fisher expressed the view that £1 per acre was ‘a price altogether too low’, but he began to
change his mind. Now Under-Secretary for Native Affairs, he visited Ōhotu, and thought it timely to hold a meeting with the Aotea District Māori Land Board to see whether a compromise could be reached.\textsuperscript{109} We do not know whether the Crown or the Aotea land board took any further action in relation to the remaining timber on Ōhotu.

(d) Situation different on Raetihi blocks: Timber on Ōhotu was plainly a different proposition from timber on Raetihi blocks vested in the Aotea land board between 1907 and 1911. Here, milling company Gammon and Co. was keen to negotiate leases on these blocks, and once they were vested in the board, it approved timber leases that required the company to clear a certain amount of land per year, with royalties set at £7 per acre. The land reverted to the board after it was mostly cleared, and was then leased out for farming. Horan told us that the farming leases reserved any remaining pockets of timber on the land to the board, and rent was not charged on those areas.\textsuperscript{110}

(e) The role the Crown played: Legislation provided for ‘reserves for . . . the conservation of timber and fuel for the future use of the Maori owners’, and there is no evidence that the Crown discouraged the Aotea council from setting areas aside as the legislation envisaged.

Where there was timber on leased land, Carroll ensured
the resource was identified, and expected the land counsel to take account of its value when the leases were being arranged. However, it was the Aotea land council and later the land board that decided how to deal with the timber. The report on Ōhotu timber that Carroll commissioned in March 1905 might have been for the purposes of seeing whether timbered areas should or could be reserved, but we saw no evidence of the Crown involving itself in the question after that, nor playing a role in the level of royalties.

Claimants suggested that, if the Crown had improved the road access to the blocks, this would have increased the value of the timber,\(^{111}\) and lessees argued in 1911 that milling would be viable with better roads. Road access to the blocks was certainly poor, and who should pay to improve it was a source of contention. We did not receive enough evidence on this point to form a view on who should have done what. The milling companies’ calculations were based on building tram lines through the bush to haul logs to a railway station. If the economics of extracting logs on tram lines did not stack up, it is unlikely that building roads for the purpose would have made more sense.

\(\text{f) Delivering benefit to landowners from the timber:}\) In the end, some royalties were paid for Ōhotu timber, but much of it was destroyed.\(^{112}\) It is possible that more would have been milled if the land board had lowered the royalty rate in 1907. However, one milling company said it would not pay more than £1 per acre in royalties on two sections of Ōhotu. At that rate, it may simply have been the case that the land board did the right thing to stick with simply leasing the land, because offsetting royalties against rent made rent the better option. Perhaps the wisest course would have been to conserve the bush for a future day when milling would be more profitable. However, this involved making predictions about an uncertain future, and moreover the overwhelming imperative of the time was to remove trees so that land could be farmed. From the evidence available to us, it does appear that the cost of extraction was too high to make timber the best land use at the time.

18.3.5 Conclusions on the early years of the vested lands
Devising a scheme that ensured Māori retained ownership and ability ultimately to regain possession of ancestral land, while at the same time facilitating its development and the generation of income for its owners, had much to recommend it. Once the vested lands scheme began to be defined and legislated, however, flaws emerged – although some more apparent in hindsight than at the time.

Crown Ministers and officials actively encouraged Whanganui Māori to vest as much land as possible, and were very keen for the scheme to be a success. As we have seen, some owners might not have understood the implications of the scheme for their ownership of the land, nor how they would still be able to use the land once it was vested. Furthermore, the vesting process itself was cumbersome and time-consuming. However, it was not rushed, and owners were given the opportunity for debate and negotiation.

The leasing out of the land was a different story, however, and we have concerns about how leasing got underway. Certainly there was a convergence of interest in getting land leased out as soon as possible, although not necessarily agreement on how much. Still, Whanganui Māori were keen to see their land improved, and to earn income from it. But the Crown had so much political investment in the public’s quickly hailing its ‘opening up’ of the large Ōhotu block as a success that it exerted too much influence, and cut corners.

\(\text{(1) The Crown compromises surveying and roading}\)
Our first concern relates to the Crown’s interference in preparing the blocks for leasing. Seddon recognised the importance of road access to making the land attractive to lessees, but when it came to leasing Ōhotu, he seems to have decided that meeting the timeframe for advertising the land for lease was more important. As we have seen, he expressly rejected Carkeek’s plans for an early start on surveying and roading in the block, and so the first lease offer was advertised before Ōhotu 1 was properly surveyed into sections or the roads marked out.\(^{113}\) Poor access was a major contributor to the failure of the first lease offer, and for this aspect at least the Crown was responsible.
(2) **The Crown is pressed for perpetual leases**

After the failure of the first lease offer, the Crown began exerting pressure on the land council to issue perpetually renewable leases, with Sheridan particularly insistent. By this time, however, it must have been clear to the Crown that owners did not want perpetual renewals. They took an active interest in the management of the land, writing to the land council and appearing before them, and at the council’s 5 July 1904 meeting, the Māori members emphatically rejected perpetual leases.

Even if all the council members had supported this type of lease, the Aotea land council could not have introduced them: the vesting deeds did not allow perpetually renewable leases. Nevertheless, the Crown's insistence on perpetual leases to make the terms attractive to lessees put the councillors in an invidious position. They too wanted the leases to be taken up, but they also wanted to ensure that the Māori owners could resume their land in the future. In the end, the Crown’s pressure obliged the council to introduce limitless compensation for improvements as an enticement for lessees, even though no one could see how beneficial owners would have the means to pay compensation and get their land back.

(3) **Management of costs**

One of the landowners’ main concerns about a large-scale leasing scheme was the potential to lose land through costs. The Crown was careful to reassure Whanganui Māori that the costs of the scheme would not overwhelm their ownership of the land. The main costs were, first, surveying and roading, and secondly, compensation for improvements. When roading and surveying did finally get underway, the Crown’s loan terms to cover costs, while not particularly generous, were at least carefully worked out so as to make the land debt-free (at least in theory) within two lease terms. In this, the Crown behaved responsibly. The management of the costs of improvements was otherwise.

(4) **Managing compensation for improvements**

The Crown argued that a price had to be paid for development; that compensation for improvements was that price; that it was reasonable to expect Māori to pay it; and that the land council and not the Crown made the decision to introduce Regulation 78A into leases for vested lands.

Whanganui Māori did not dispute that it was reasonable for lessees to expect some compensation for their improvements. Māori members of the land council did not object to the compensation provisions of regulations issued in January 1901, which specified compensation at the end of the first term or a rent reduction for the second term if the lease was renewed to the same person; nor did they argue against modifying the regulations in 1903, when the latter option was dropped in favour of a lump sum payment. But Māori landowners were entitled to set limits on the price they were prepared to pay for development of their land, and the Crown did not engage with them about what those limits could, or should, be.

Neither at the time of introducing Regulation 78A, nor subsequently, when Te Whatahoru put forward ideas for addressing the compensation problem, did the Crown involve itself in finding ways to mitigate the problems inherent in agreeing to compensate lessees for unlimited improvements. The regulations did set guidelines for the amount that lessees should spend on improvements, but no upper limit was prescribed. Sheridan’s only concern was that the terms would still not be attractive enough to lessees, and only perpetually renewable leases would do.

(5) **Managing the timber resource for landowners**

The Crown took steps to ensure that the timber resource was identified, and initially expected the land council to take account of its value when the leases were being arranged. The land council introduced a measure requiring lessees to pay 50 per cent of any revenue received for milled timber – a scheme which might have earned some income for the beneficiaries, but which largely failed because milling companies said royalties were set too high.

It is difficult to know whether the land council could have afforded to leave the sections untenanted as owners wished. It had to find immediate income to repay development debts. The Crown could have assisted here by
looking closely at the economics of the Aotea land council’s decisions, and questioning whether it really was the case that it was better to let out the timbered sections rather than reserve them or, later, whether lower royalties would have been constructive. There is no evidence that the Crown offered this kind of assistance to the land council and later the board, nor is there any evidence that the land board discussed the royalties with Māori owners. It was a complex issue that would have taken considerable focus to solve, and we cannot say now what the correct answer would have been.

What is clear, though, is that the Crown’s provisions for protecting owners’ interest in conserving areas of bush for birds and fuel, rather than felling all the bush for farmland, were insufficient. The Aotea land council was able to refuse owners’ requests and instead defer to the Scenery Commission, a response we find difficult to understand.

18.4 Management of the Vested Land
In March 1906, the Aotea District Māori Land Board took over from the land council. The land board successfully leased out the remaining Ōhotu lands later that year, and the other land blocks over the next several years. Most sections were leased as farms, but two areas were surveyed as townships.

The Ōhotu settlement was not a success. A town plan was drawn up in 1901, and Ōhotu was proclaimed a native township the same year. But after Ōhotu 1 was vested in 1902, the native township designation was no longer thought to be necessary, and the proclamation was cancelled in 1904. The advertisement for lease of that land was delayed to coincide with that of other Ōhotu sections. It might still have become a town under the vested lands legislation, like Matahiwi was. Some sections were later leased and a school was set up, but the area never became sufficiently populated to make a township viable.

Matahiwi township, situated on the eastern bank of the Whanganui River, fared better. A papakāinga area was established there, with cultivations, urupā, and whare sites marked out. Areas were created for owner-occupation or lease, and settlers leased other sections.

Overall, though, rental income from the vested lands proved disappointing. Total rents were £3,124 in 1907, £6,543 by 1910, then rose to £8,428 before declining dramatically from the 1920s. In 1951, when the leases were in their second 21-year term, rent was £3,899. Other disheartening developments for owners were that some land was sold, and in one case a perpetually renewable lease was issued. Also, crucially, no rent was set aside to pay for compensation for improvements. Māori beneficial owners therefore could not resume the lands immediately on the expiry of the leases in the 1940s and 1950s. The 1951 Commission’s report led to legislation in 1954 to deal with the situation.

The Crown argued that the lease conditions were mainly set during the time of the district Māori land council, when Māori had a seat at the decision-making table. This is correct, but we have seen how it came about that the council agreed to lease the land on condition that lessees’ improvements were entirely compensated. Legislation also affected vested lands, as we discuss.

We ask:

- Why and how was land permanently alienated despite being in the vested lands trust?
- Why were rents so dismally low in the second term?
- Why did the land board not create a sinking fund to pay for compensation for improvements, and what part did the Crown play?

18.4.1 Why and how was land permanently alienated?
By 1954, despite owners’ original intention to vest land in order that Māori would remain its beneficial owners, 1,810 acres had been sold, while another 1,416 acres were mistakenly leased out on perpetually renewable terms. (2,356 acres were eventually returned to Māori owners, as we discuss in section 18.6.6 below.)

(1) Sales of vested lands
In this period, Whanganui Māori were very concerned about more of their land being sold, especially to lessees, who assiduously advocated for legislative change and the right to purchase vested land.

Between 1911 and 1913, the lessees of Ōhotu petitioned
The Government several times for the right to purchase the freehold of their leases. The Māori owners counterpetitioned vehemently. For example, in 1911 Maehe Ranginui and 138 others stated: ‘We are not willing that Ohotu Block should be sold lest we be left, and our descendants, without land!’

(a) Law on sale of vested land: The relevant law at the time was the Native Land Act 1909, which contained sections about the sale of vested land. Sections 290 and 291 were to the effect that Māori Land Boards could lease but not sell vested land, but section 346, which set out the resolutions that assembled owners could pass, provided at subsection (1)(g) that ‘any land vested in the Board under Part xv of this Act may be sold by the Board in accordance with Part xiv of this Act’. Subsection (2) provided, though, that, as regards land vested in a Māori land board, the only resolution assembled owners could pass was ‘to accept an offer of purchase or exchange made by the Crown’.

The net effect of these provisions was that the land boards could not sell Māori land vested in them, but assembled owners could vote on and pass a motion to sell vested land to the Crown.

The Crown seems not to have tried to buy vested land in Whanganui until the Reform Government passed the Native Land Amendment Act 1913, which enabled the Crown to buy vested land by purchasing individual interests. Native Affairs Minister William Herries later informed Whanganui lessees that the 1913 Act was passed ‘in order to give relief and to enable the Government to buy freehold from the Natives and then pass it over to the settlers’. As long as Māori were willing to sell, the Act ‘gave his Dept power to purchase any vested lands and then declare them Crown Lands, and the Crown Lands Department arranged with tenants for taking over the freehold’.

Māori protested strongly that these provisions in the 1913 Act undermined the original purpose of vesting lands, which was to protect them from sale and at the same time facilitate their development and use. In 1914, Waata Hipango led a Whanganui Māori petition asking the Government to except their land from the application of section 109, because they had vested their lands ‘so that our descendants and their generations may not be landless.’ In 1915, Rēneti Te Kaponga and 321 others urged the Crown to resist would-be sellers of vested land:

If you receive any applications by Maoris for the sale of Ohotu and other lands under the control of the Land Board of Aotea do not on any account consent to it. Because all our lands outside of the control (mana) of the Board have all now been sold. The only part left to us for our support is Ohotu and other lands now vested in the Board.

(b) Lessees renew pressure to be allowed to buy: After the First World War, lessees renewed pressure to be allowed to purchase. In August 1920, a deputation representing lessees in various Whanganui blocks met with the Prime Minister, the Minister for Native Affairs, and the Minister of Lands to make their case. They met with a sympathetic response. Indeed, David Guthrie (the Minister of Lands) commented that ‘a number of his friends’ were lessees in the land concerned, and he thought that ‘whatever the Government could do to right the matter would be done in order to protect the tenants’.

(c) The Crown buys vested land in the Tauakirā block: Between 1923 and 1927, the Government bought 1,810 acres of vested land under the 1913 Act. It purchased subdivisions 2R, 2S, 2T, and 2U of the Tauakirā block in order to on-sell them to the lessees. In the event, the on-selling arrangements fell through, and the Crown held on to the land for some time. It also tried to buy parts of Tauakirā 2M but failed, partly due to opposition from owners and partly because the lessee did not want to pay for a new valuation. Dr Horan found no other evidence of the Crown purchasing vested land in this district, although there was private purchasing and public works takings as we discuss next.

(d) Vested land purchased in Rētāruke: Part of the vested land in the Rētāruke blocks came to be alienated as well, through a combination of sales to private owners and public works takings.
In 1912, meetings of assembled owners vested Rētāruke blocks 1 (500 acres), 2 (185 acres), 4B (496 acres), and 4C (1,364 acres) in the Aotea land board. All four blocks were advertised for lease the same year. Of the total area vested (2,545 acres), a significant amount was later sold: part 4C (567 acres) in 1957, and all 496 acres of 4B in 1961. Part block 1 (155 acres) might also have been sold: the evidence discusses a ‘transfer’, but it is unclear whether this referred to a lease only, or to a lease and then later sale. In 1966, the remaining parts of the blocks were included in an amalgamation of the vested land. In 1969, they went into the Ātihau–Whanganui Incorporation where, at the time of our hearings, they remained.

(e) Vested land in Raetihi 3B1: We also note here that in 1938, Raetihi 3B1 (322 acres) was transferred out of the vested lands to four Māori beneficial owners, and then to the Crown to become part of the Raetihi Small Farms Settlement Scheme. This block was leased out in 1908, but we do not know whether it was still under lease in 1938. The Aotea land board must have been involved in the transfer back to the Māori owners, but the Tribunal received no further information on its role.

(2) Perpetually renewable leases in Ōtiranui

There was another alienation of vested land in our inquiry district that was tantamount to sale, or anyway permanent alienation. It occurred in 1910, when two blocks of vested land, Ōtiranui 2 (515 acres) and 3 (901 acres), were leased out with provision for perpetual renewal. The vesting of these blocks was under negotiation between 1902 and 1907, when it was finalised. Owners specified a maximum lease term of 42 years. However, the Aotea land board issued a perpetually renewable lease in error. When the lease came up for renewal in the 1930s, the land board attempted to remove the clause enabling perpetual renewal, but the lessee took legal action, and in 1945 the Supreme Court ruled in his favour.

In 1948, the Under-Secretary of the Native Department put down the Ōtiranui lease as a matter for investigation by any commission set up to inquire into grievances. In the event (as we shall see in section 18.4.5), the 1951 Commission focused solely on compensation for improvements requirements and did not look into the Ōtiranui situation. The Crown took no further action, and at the time of our hearings the blocks were vested in the Ātihau–Whanganui Incorporation under perpetually renewable leases with revaluations every 21 years.

18.4.2 The Crown and compensation for improvements

We now return to one of the major points of contention about the vested lands: who was responsible for the provisions in leases that guaranteed lessees compensation for all improvements? The Crown argued that the land council made the decision to incorporate regulation 78A in leases, and lease terms under the Aotea Māori land boards from 1906 onwards were generally the same as leases under the council. The argument goes that Māori were well represented on the council, so if the council made poor decisions, they cannot be sheeted home to the Crown.

(1) Legislative changes

In 1907 and 1909, the Crown brought in legislation that affected conditions in leases (see the sidebar). In summary, the provisions were:

- Māori land boards determined the term of leases of vested land, and the number of years was at their discretion except that all were required to end within 50 years of 25 November 1907 – that is, in 1957. No lease could go beyond that date.
- Vested land leases were required to include compensation for improvements, which would be a charge on the land and all revenue received from it.
- Māori land boards could set aside money in a ‘sinking fund’ to pay for compensation, at the direction of the Native Minister. From 1909, any charge for compensation was enforceable by the appointment of a receiver by the Native Land Court, who could lease the land for up to 10 years and use the revenues to pay off the debt.

Limiting leases to terms that would end by 1957 seemed to spring from a recognition that the land should revert to its Māori owners before too many years elapsed. However, the provisions requiring the landowners to compensate lessees for improvements became more draconian. The
difficulty of paying the compensation had the potential to negative the 1957 end date.

(2) Enforcing payment of compensation
It was lessees who pressed the Government for a legislated entitlement to compensation for improvements. Under the 1901 regulations, if an incoming lessee failed to pay an outgoing lessee for improvements, the latter had no avenue of redress: he could claim against neither the Māori land councils nor the Māori beneficial owners. It was in 1907 that the Government brought in the legislation that allowed land boards to set up sinking funds. They could be used to pay compensation, but there was still no way of enforcing compensation clauses – or, as the Attorney-General said, 'making them effective'. He raised this in Parliament in 1909, describing lessees as 'disheartened from improving their land by the fact that they cannot get compensation.'

The 1909 Legislation on Leasing and Compensation for Improvements

Part I of the Native Land Settlement Act 1907 contained several new provisions for leasing Māori land. These provisions were repeated and in some cases elaborated on in Part XIV of the Native Land Act 1909. Here, we set out the relevant sections from the 1909 legislation.

Section 31(5) (enforcing payment of charges):

a receiver so appointed for the purpose of enforcing a charge may, in his own name and with the leave of the Court, grant leases of any land so charged, or licenses to remove timber, flax, kauri-gum, or minerals therefrom, for any term not exceeding ten years, on such conditions and for such rent or other consideration as he thinks fit.

Section 262 (ending the leases after 50 years):

All such land may be leased for any term which the Board thinks fit, with or without a right of renewal; but every such lease and every renewal thereof shall terminate not later than fifty years after the twenty-fifth day of November, nineteen hundred and seven, being the date of the coming into operation of the Native Land Settlement Act, 1907.

Section 263 (rights to compensation and sinking funds):

(1) Every such lease the term whereof (including the term of any renewal thereof under a right of renewal) is not less than ten years shall confer upon the lessee a right to compensation, on the termination of the lease or of any such renewed lease by effluxion of time, for all substantial improvements of a permanent character (as defined by the Land Act, 1908, or any other Act amending or substituted therefor and in force at the time when the improvements were effected) . . .

(4) Any such charge shall be enforceable by the Native Land Court by the appointment of a receiver in the same manner as in the case of a charge imposed by an order of that Court under this Act.

(5) For the purpose of providing a fund for satisfying any such charge the Board shall from time to time during the currency of the lease and of any renewal thereof set aside, out of the revenues received from the land, such sum as the Native Minister from time to time directs.

(6) Moneys so set aside shall be invested, together with the interest arising from such investment, in manner prescribed, and shall at the expiration of the lease and of every renewal thereof be applied in payment of the amount of compensation payable under this section.

(7) If the amount so set aside, together with the accumulations of interest thereon, exceeds the amount of compensation so payable, the excess shall be paid by the Board to the persons then entitled to the revenues of the land.
The Native Land Act 1909 accordingly contained clauses that enabled compensation to be enforced by the appointment of a receiver. Now, if owners could not pay the compensation and resume the lease at the end of the 42 years, the lease would continue year to year until 1957, when they had to end. A receiver would then be appointed and given the task of accumulating funds to pay for improvements. He would have powers to lease out the land at rentals based on full capital value, rather than just the unimproved value, but the owners would receive no rental payments until improvements were paid off. Instead, the previous lessees would receive the rents as payment for their improvements.

These measures did not satisfy lessees who had found that their leases would not provide good security for loans due to the compensation provisions not being clear. They questioned the effectiveness of the compensation provisions in 1911 and 1912. Thomas Fisher – by this time Under-Secretary for the Native Department – sent a letter in March 1912 to Wanganui town member of Parliament Veitch, repeating the view he first expressed in 1903: it was very unlikely that owners would be able to pay for improvements at the end of the leases. The Government did nothing to shore up the compensation provisions to assuage lessees’ fears immediately, but in 1920 it passed the Native Land Amendment and Native Land Claims Adjustment Act which, at section 19, confirmed compensation provisions.

### 18.4.3 Why was rent not set aside to pay compensation?

The 1909 Act's provisions were gradually introduced into all the leases in the vested lands. A significant portion was first leased in the 1910s – for example, parts of the Raetihi, Waharangi, and Ōtiranui blocks, and township sections in the Ōhotu 1c block – and so came under the 1909 Act from the outset. Moreover, when the leases originally signed before 1910 came to be renewed in the late 1920s, the provisions of sections 262 and 263 of the 1909 Act (on payment for improvements to the land) were incorporated in the renewed leases.

Given the entitlements in the leases for lessees to be compensated for improvements, why did neither the Aotea land council nor board set up a sinking fund to pay compensation? What was the Crown’s role, if any?

#### (1) The first 21-year term

The Aotea Māori Land Council and Board always considered that rental income was insufficient for any 'sinking fund'. There was just not enough income to set any aside to pay for compensation at the expiry of leases.

This continued to concern the Māori owners. As we noted in chapter 14, a month after the Reform Government came to power in July 1912, a deputation of Whanganui Māori presented a petition to the new native Minister, William Herries (see section 14.5.1(1)). Te Whatahoro recounted the history of the vested lands, including the owners’ disappointment that the land board had ignored requests to set a limit on compensation for improvements or to establish a sinking fund.

The Government sent the owners’ petition to Aotea land board president JB Jack. He rejected the idea of capping the value of improvements as this would 'have depreciated the tenure from a lessee's point of view and possibly prevented the lands being taken up'. He accepted the sinking fund idea as 'reasonable' but impracticable, because the blocks were still heavily in debt, and reducing the rent income for owners would cause 'discontent'. We do not know whether Mete Kingi, the Māori member of the land board, supported this view.

The Government was only too aware that compensating lessees of Māori vested land was an issue, because in the same year it reared its head in Taranaki, where the West Coast Settlement Reserve leases had expired. After much debate and two royal commissions in 1912 and 1913, Māui Pōmare, member for Western Māori, negotiated a compromise with lessees, resulting in the West Coast Settlement Reserves Act 1913. That Act gave lessees new leases of 10 years, with two-thirds of the rentals to be set aside as a sinking fund and the Public Trustee to lend any additional money required to compensate lessees at the end of the 10 years.

Given this experience in Taranaki, there is a strong argument that the Government should have – must have – seen the problem coming when leases expired on vested
lands in Whanganui. Why did the Native Minister not direct the land board president to set money aside for compensation? Under the legislation of 1907, 1909, and 1931, the Native Minister's role was pivotal: the clause that enabled the board to set aside money as a sinking fund stipulated that it was to comprise 'such sum as the Native Minister from time to time directs.' Judge Browne, a later president of the Aotea land board, commented some years later: 'The creation of a fund for the payment of compensation is provided for in the Act, but it has never been brought into operation.'

The Waikato–Maniapoto land board registrar was more explicit: he said that his land board had 'taken up the attitude that until steps be taken by the Native Minister . . . to direct that a fund be provided, it was not required to set aside any sum for the purpose.'

(2) The second 21-year term

Although the annual income from rents in the Aotea district rose as high as £8,428 at one point during the first lease term, and debts for roads and surveys were largely repaid, in the second lease term it became clear that rents would not be enough to fund compensation for improvements, and indeed provided little income for owners.

It was not anticipated that rental income would drop in the second lease terms. In February 1924, land board president Browne confidently predicted that 'there will be a substantial increase of rent payable by the lessees when the first term of 21 years ends a few years hence.' But the valuations did not support increases. According to the terms of the leases, the second term rents were to be set at 5 per cent of the unimproved land value. The first three valuations were in by September 1924, and the registrar reported that: 'It is disconcerting to find that a revaluation just made will justify a rental less than that paid for the expired term.'

In 1926, Māui Pōmare, by this time a member of the Executive Council, asked to know the new valuations and the plan for compensation. He received 62 valuations for Ōhotu farms, showing an overall rent reduction of 6 per cent for the second term, from £2,819 to £2,653 per annum. The value of improvements on these blocks now totalled £187,124, but the unimproved value was only £33,047, or 15 per cent of the capital value. While the reduction in rents did not appear particularly acute at this stage, the implications were quickly understood. The Under-Secretary for the Native Department commented to the Native Minister that even if the total amount of rent for the second term was set aside as a sinking fund, it would not be enough to cover the cost of improvements. This was 'a difficult problem' and the Aotea land board was considering the matter.

(3) The impact of valuations on rents

Valuations were necessary for calculating the new rental when leases came due for renewal. In the context of the vested land lease renewals, the important figure was the property's 'unimproved value.' But how was that figure arrived at?

(a) Valuations pre-1910: For leases signed before 1910, the board was required to follow the method of valuation set down in regulation 83 (gazetted in 1901). This directed obtaining two valuations, one for the capital (or total) value, and one for improvements. The value of improvements was then deducted from the capital value. The balance, or 'residue,' was the unimproved value. The rules also stipulated that valuations were to be made by arbitration; two valuers would be appointed, one for the board and one for the lessee. An umpire decided any disagreements.

(b) 'Residue method' continued to be used on leases after 1910: Leases signed from 1910 onwards came under the Native Land Act 1909 and its associated regulations. Under the standard lease form published as part of the 1910 regulations, valuations were again arrived at by arbitration. However, no particular method was described for arriving at the 'unimproved value.' Nor did the legislation specify any particular percentage figure for rent. However, according to the 1951 Commission, it was likely that valuers continued to follow the 'residue method' for calculating unimproved value, and Aotea land board leases from the 1910s indicate that the board continued existing
practice, setting renewals at 5 per cent of the unimproved land value.\textsuperscript{153}

c) New valuation methodology: The ‘residue method’ of calculating unimproved value was not unusual at the time. The Land Act of 1885 and the Government Valuation of Land Act 1896 both used it. The Government Valuation of Land Amendment Act 1900 brought in another method of calculating unimproved value, for rating purposes. Under this Act, the unimproved value was not the figure left after the value of improvements had been deducted from the capital value: it was what the land might be expected to sell for if no improvements had been added. The ‘value of improvements’ was the value added to the land as a result of improvements carried out by the owner or occupier, whether through labour or expenditure of capital. The added value could not, however, be deemed greater than the estimated replacement cost of the improvements at the time of valuation. These definitions were carried through into the Valuation of Land Amendment Act 1912 and the Valuation of Land Act 1925.\textsuperscript{154}

Contemporaries thought that the aim of this new method of calculation was to raise unimproved land values, but we received no evidence about whether this aim was achieved. Information in the New Zealand Official Yearbook for 1955 indicates that in the long term it did not. For New Zealand land generally, there was instead a continuous decline in unimproved land values from 1929 to 1943, with 1934 marking the lowest point in real terms.\textsuperscript{155}

d) ‘Unimproved value’ defined: Nor is it clear that the second method would give a ‘truer’ result as to the unimproved land value. In theory, as long as either set of calculations was carried out using valuations based on reasonable and consistent criteria, then the results should have been valid. This was the judgment in Cox v Public Trustee (1918). The judge in that case also identified a number of factors to be taken into account when valuing improvements: the original state of the land, what the improvements had actually cost, what they would cost if made at the time of valuation, what benefit the improvements gave to the land, and what a new tenant would pay for them if the existing tenant did not renew. He determined that ‘unimproved value’ should be taken to mean the value of land in a natural state, affected by extrinsic circumstances (meaning the surrounding infrastructure and services) but not by improvements.\textsuperscript{156}

The point is that at the time of setting the rents for the first term, most of the vested lands were unimproved, so the rental was determined by the value of the land only. Valuing improvements only arose to determine rent for the second term of the leases. Historians Bassett and Kay calculated that in Whanganui vested lands overall, the main reason for a 46 per cent decrease in rentals between the first and second terms was the increasing value of improvements.\textsuperscript{157}

e) Land board seeks legal advice on valuing improvements: In 1926, Judge Browne, the president of the Aotea District Māori Land Board, sought legal advice on how improvements were to be valued. His concern was that where costs had gone up over time but capital values had not, the practice of valuing improvements at their current cost would result in a corresponding decrease in unimproved land values (and hence rents). He was directed to Cox v Public Trustee.\textsuperscript{158} It seems unlikely that this triggered any great change in practice, for according to the 1951 Commission’s report, ‘the changed economic conditions have been such that even at the end of the first term of the leases [generally in the 1920s] the increases in the costs of improvements have been such as to reduce very seriously the residue value of the land’. The commission said it was aware of some cases where land in a leased block was credited with improvements that benefited other blocks as well – blocks that sometimes included freehold land belonging to the lessee – which unfairly skewed the valuation of the vested land block.\textsuperscript{159}

(f) Improvements not valued on usefulness to property: A key problem, as the Native Trustee observed in 1934, was valuing improvements without reference to ‘their necessity or usefulness to the property on which they are situated’.\textsuperscript{160} The Native Trustee also commented, that same year, that improvements should be ‘valued in relation to their value
to the land upon which they stand'. To clarify, he stated, 'a house ordinarily valued at say £1500 should not be valued at that amount if a house worth say £1000 would be suitable for such area.'\textsuperscript{161}

\textbf{(g) The decline in value of unimproved land:} Estimates of just how much unimproved land values decreased over the period vary. Writing in 1934, Judge Browne cited a figure of ‘over 50%’ at the time second-term rents were being calculated. He gave the example of a lease which in the first term had an unimproved value of £1,100 but was now only £141, with the rent consequently reducing from £55 to £7 10s per annum.\textsuperscript{162} The 1951 Commission’s report instanced three Ōhotu blocks where use of a residue method of valuing in 1945 led to a 30 per cent reduction in land value compared with a valuation of 21 years previously.\textsuperscript{163}

In 1937, Langstone, Acting Minister of Native Affairs, commented that there were similar plummeting values in townships and Crown lease lands. He knew ‘of instances all over New Zealand where Township lands were sold for big figures and where today they are not worth a tin of fish’. There was one particular case on Māori land that he knew well: his son’s lease of eight acres at Ōhākune (it is unclear whether it was vested land). The situation for the owners was dire at the end of the lease: the value was £275, but the unimproved value ‘had gone altogether’. According to Langstone, ‘we would all be in Kingdom come’ before the rents could pay compensation for the improvements. Because he thought the situation unfair to the owners, he agreed on his son’s behalf to a rent of three shillings per acre, which ‘in payment for the right of possession for 21 years was reasonable, but not as a rent on the unimproved value. These are facts the intelligent man, natives and pakehas alike must face up to.’\textsuperscript{164} However, those charged with setting rents for leases of vested land generally stuck with the benchmark of 5 per cent of the unimproved land value, undaunted by Langstone’s view that it was no longer sensible to set the rent as a percentage of the unimproved land value.

The combined effect of lower land values and consequently lower rents was not, and arguably could not have been, anticipated in 1900, when everyone believed that 5 per cent of unimproved land value was a reasonable yardstick for setting rent, because land values would go up over time.

\textbf{(4) Rent reductions during the Depression}

During the Great Depression of the 1930s, the Government introduced rent relief for lessees who were experiencing hardship. Owners’ income reduced as a result, and claimants queried whether the rent relief was terminated as soon as economic conditions improved. They said owners should have been compensated in the 1950s for the rent they forwent because of rent relief for lessees.\textsuperscript{165}

\textbf{(a) How the relief system worked:} In 1932, the National Expenditure Adjustment Act provided for reductions in rents and rates of interest to match certain reductions in salaries and wages. The standard rate of reduction was 20 per cent. A mortgagee or landlord could also apply for relief if they felt that an application for reduction or relief was unnecessary either because the current rent was fair; because concessions had already been given voluntarily or under other legislation; or because reductions would cause the mortgagee or landlord ‘undue hardship’.\textsuperscript{166}

The Depression deepened, and four years later the Mortgagors and Lessees Rehabilitation Act 1936 provided for farmers or lessees to apply for an adjustment of liabilities to enable them to stay on the farm or property; to be able to use it productively; and to live in a reasonable standard.\textsuperscript{167} The adjustment to liabilities was based on the productive value of the land, that is, the net annual income that could be derived from the land.\textsuperscript{168}

\textbf{(b) The land board’s application of relief rules:} Historian Marian Horan concluded that the Aotea District Māori Land Board was cautious about granting relief: ‘Lessees who applied for such reductions under various acts during the 1930s had to prove financial hardship and also obtain similar temporary relief from lending institutions with which they held mortgages.’\textsuperscript{169} According to the 1951 Commission’s report, such measures may have reduced the rents by some £800 a year from the 1930s, although details are scanty.\textsuperscript{170}
(c) Hardship for owners: Although by this time rents were low and much divided between owners, for some they remained an important source of income. Rent relief and consequent reductions in income from rent had the potential to cause those owners significant hardship. At a meeting of the Aotea District Māori Land Board to consider a proposal from lessees to make leases perpetually renewable, Hoeroa Marumaru observed that ‘[m]any of the owners depended on their rents to keep them. The reduction of rents in many cases has rendered them destitute.’171 Rental reductions would also have militated against the establishment of a sinking fund for compensation payments.

(d) Relief continued long after the Depression: The evidence does not make clear when the relief measures ended. Horan was unable to identify a date when legislation providing for relief was repealed or replaced, and stated that ‘it seems unlikely that such measures would have been used after the end of the depression and the beginning of World War Two.’172 However, it seems from the report of the 1951 commission that they were still in place then. It implied that they had continued far too long, and recommended that they should cease.173

18.4.4 Compensation for improvements investigated
In late 1933, certain cases of compensation for improvements to vested lands on the East Coast came to the attention of Minister of Native Affairs Āpirana Ngata. Suspecting that they might be symptomatic of a wider problem, he sought information. The Under-Secretary of the Native Department directed all Māori land registrars to send in data on leases falling due for renewal, whether involving vested land or not. Some months later, in June 1934, another circular solicited the views of Māori land boards and the Native Trustee on how best to deal with the issue of compensation.174

All respondents agreed that the compensation provisions were a serious handicap to Māori resuming their lands, and Judge Browne added that his practice was not to allow such terms when confirming leases of non-vested lands. None of the land boards that responded had accumulated any funds for paying compensation.175

(1) Possible solutions debated
Various solutions to the compensation problem were debated in the responses, including receivership, further leases, legislation for relief, selling some of the land, the belated establishment of sinking funds, and loans. All had disadvantages of one sort or another. The Tairāwhiti District Māori Land Board thought that allowing ongoing usage of the land to offset the compensation due would see owners being ‘deprived of possession without rent for periods varying from thirty to fifty years, by which time the improvements will have become practically exhausted.’176 The Native Trustee disliked the use of a receiver for similar reasons: the lessees would allow the improvements to deteriorate, and the owners would get back land in poor condition. His counter-proposal drew on his experience with the West Coast Settlement Reserves leases: rent should be based on the capital value, and half of it should be set aside as a sinking fund. If that did not yield enough to pay the compensation, the Crown could advance the difference. In the Native Trustee’s opinion, ‘the Crown should assist to clean up the situation which has now arisen through the lack of careful thought given by its officers to the future possibilities of an award of full compensation.’177

The Tairāwhiti registrar suggested that legislation to relieve the owners’ situation would be justified. Legislation to reduce rents for lessees during the Depression was a precedent for such legislation, he thought. Owners could similarly be shown to be suffering hardship as a result of the rules that entitled lessees to compensation.178

The president of the Aotea land council was pessimistic about the usefulness of a receiver, sinking funds, or extending the leases: better, perhaps, to sell some of the land and use the money to pay compensation – although he realised this idea would probably not be popular with the beneficial owners. However, it seemed to him that ‘a few sections free from encumbrance of any kind would be much more to their advantage than double the number so
loaded with charging orders that the owners would for an indefinite period derive no revenue or benefit from them at all.\footnote{179}

The under-secretary forwarded these opinions to the Minister of Native Affairs, together with his own view that the problems were particularly acute in the Aotea and Tairāwhiti districts, where the ratio of improvements to unimproved land value was particularly high. He recommended the establishment of a sinking fund.\footnote{180}

Following further correspondence, in 1937, the president of the Waikato–Maniapoto land council, Judge MacCormick, set out his views. One of the difficulties was in knowing how much money should be set aside:

> The proportion of the rent which should be set aside under Section 327 \[of the Native Land Act 1931\] cannot be ascertained at the inception of a lease because there is then no knowledge of what improvements may be effected and consequently what compensation may be claimed.\footnote{181}

Indeed, as he said, ‘there may be large improvements though only a small rental’.\footnote{182} He thought that owners would greatly resent losing a portion of their already small rents, and were almost certainly unable to pay off the whole of the improvements by the end of the leases.\footnote{183} He pointed out that in 1929, as chairman of a commission investigating leases of Māori land in the King Country, he had already sought suggestions from anyone interested in the problem, as it was ‘a burning question even then’. However, he ‘did not obtain any which the Commission considered practicable’.\footnote{184}

(2) Searching for a solution

By the middle of 1935, the Crown was in discussion with the Government Life Insurance Department about establishing a sinking fund.\footnote{185} However, when the resulting proposal was circulated to the Māori land boards, the Aotea board rejected it as ‘impracticable at this late stage’. The annual premium on a sum of £400,000 (the estimated value of the improvements necessary to compensate) would amount to well over £11,000 a year. The board’s annual income from rents at the time was less than £4,000.\footnote{186}

The problem seemed intractable. In 1936, the Government asked the land boards to examine existing leases ‘with a view to finding some means of creating a fund for the payment of compensation for improvements’ – that is, a sinking fund.\footnote{187} Similar correspondence continued into the 1940s. All parties concurred that the land should be returned to Māori, but really only the Government had the means to implement a way over or round the stumbling block of compensating for improvements.

In 1940, MacCormick, now Chief Judge of the Māori Land Court, wrote: ‘The theory of compensation is a perfectly sound one but in practice it will not work out.’\footnote{188} In early 1942, an official in the Native Minister’s office wrote that ‘careful consideration’ had been given to the idea of the Government or Māori land boards providing financial assistance to pay the compensation. However, ‘the vast amount of money required’ meant that no decision eventuated – and the advent of the Second World War meant that assistance was now ‘virtually impossible in a general way’.\footnote{189}

A few weeks later though, in March 1942, the native under-secretary was still searching for a solution. He wrote to the Native Minister and also to all the land boards, suggesting a general inspection of all lands, followed by the immediate setting up of sinking funds for land identified as suitable for Māori occupation. The Crown would advance the balance, or alternatively the lessee could be given a new lease for a term that would extinguish the value of the improvements. Where the value was impossibly high, ‘some scaling down would probably be necessary’, or some of the land might be sold with the proceeds going into the sinking fund. If the land was not suitable for Māori occupation, the lessee could be given a perpetual right of renewal, with owners retaining the right to give notice and resume the lands on payment of compensation.\footnote{190}

The member of Parliament for Waimarino, Frank Langstone, now the Acting Native Minister as well as the
Minister of Lands, responded that he could see only three alternatives: to renew leases and set up a sinking fund; to allow the Māori land boards or Board of Native Affairs to advance the money and resume the land for Māori occupation; or ‘to let things slide, as they do at present.’

The views of Māori land board presidents differed. Judge Harvey of the Waiariki board believed there could be ‘no worse suggestion’ than a national scheme, as this would only play into the hands of lessees. He agreed that there should be sinking funds, but recommended that the Government eschewed ‘legislative interference with these contracts’, and leave land boards to settle the issue. He gave the example of lessees who, realising that compensation was impossible, exchanged their right of compensation for another lease of 15 years rent free. The Aotea board president had another opinion entirely: of the various options for leasing, a receiver would take the least time to pay off the debts.

(3) What did owners want?
In 1935, when Aotea lessees were agitating for perpetually renewable leases, Whanganui Māori sent a deputation to the native Minister opposing the lessees’ requests. The paper they presented requested that ‘the sanctity of contracts’ be preserved, and set out the reasons why there was no sinking fund: in the first term, rents were used to pay off debts; in the second, the low unimproved value, together with rent relief for lessees, meant ‘that the accumulation of a fund to meet the compensation charges was absolutely impossible.’

(4) Perpetually renewable leases rejected again
After a meeting the following year between lessees and a small number of ‘leading owners’, three owners wrote to the Native Minister to tell him that much of the land was unsuitable for Māori occupation, and they now agreed that lessees should have a perpetual right of renewal. Owners, though, should retain the ability, at the end of each term, to resume the land on payment of compensation. The Minister asked the Aotea District Māori Land Board to organise a meeting of owners to consider the proposal. Owners held their own meetings at Kaiwhaiki and Matahiwi before meeting the lessees at Wanganui on 7 October 1936. Most owners spoke strongly against the proposals for perpetual leases, as containing nothing to their advantage. Furthermore, it was a national question, and they did not want to create a precedent. Any decisions could be made at the end of the leases. The meeting resolved that, for the time being, the ‘terms and conditions of the existing leases be strictly adhered to.’

The land board president supported the owners’ stance: he agreed perpetually renewable leases would be ‘grossly unfair to the beneficial owners of the Blocks in question.’ In 1937, he reported that the owners were prepared to abide by the leases, and expected the lessees to do the same. However, they did not object to the appointment of a receiver who would lease out the lands, with any rent going to paying improvements, as this would at least mean that the land would eventually be returned debt-free. The president seemed to think this was the only solution.

(5) Owners favour an overall solution
The first Ōhotu leases expired in June 1945, and owners rejected a proposal from the lessees to buy the land. They did not want a piecemeal approach to the vested lands issues. Rather, they had decided to wait until other leases expired so that the whole situation could be resolved. In their petition to the Native Minister in 1948, they complained that ‘in granting the lessees compensation in its present form, the administration failed to observe the fundamental principle of the Trust “That is the preservation of our lands for the benefit of generations to come” and replaced it with a system which is tantamount to confiscation.’ At a meeting two days later with the Minister, one speaker stated that if money had been set aside from the beginning it would have been enough to cover the claims. The Minister replied that ‘that was obviously what was intended but it appeared to have been nobody’s business’, although he could say nothing further without thorough examination of the matter.

18.4.5 The 1951 Commission
The Government’s eventual response to the seemingly intractable issue of compensation for improvements...
provisions on vested Māori land was to set up a royal commission to investigate, and then to pass legislation. Was this, at last, an effective solution to the problem?

In 1948, vested land owners in Whanganui formed a committee and petitioned the Native Minister for a royal commission to look into a number of issues, including: the owners’ legal rights; the administration of the vested land; the method of valuation; and compensation for improvements. After another petition in July and a meeting with owners in December 1948, the Government agreed. In the meantime, it extended the leases from year to year under the Maori Purposes Acts of 1948, 1950, 1952, and 1953, which allowed lessees to continue in occupation.

(1) **Members and terms of reference**
The commission was appointed on 14 November 1949 and reported in June 1951. Its chairman was Sir Michael Myers, former chief justice, replaced on his death in April 1950 by Douglas J Dalglish, deputy judge of the Court of Arbitration. The other two members were H M Christie, a Wellington businessman, and Richard Ormsby, a farmer from Te Kūiti and descendant of John Ormsby of Ngāti Maniapoto. They examined vested land throughout the North Island, but most of it was in the Whanganui area. The commission’s terms of reference were restricted to the question of improvements: how these should be defined and valued; how they should be paid off; and whether the law or the leases needed changing in any way.

(2) **Hearings in Wanganui**
The Aotea District Māori Land Board, the owners, and the lessees were all represented at the hearings concerning Whanganui vested lands in May 1950, and all made submissions.

At the commission’s hearings in Wanganui, Hoeroa Marumaru, speaking for the owners, said that they wanted to resume the land, perhaps under what he called a ‘trust commission’ such as the Morikaunui Incorporation. The owners’ lawyer opposed any extension of the leases, and said owners were willing to pay ‘reasonable compensation’, with a tribunal determining how much.

(3) **The commission’s views and recommendations**
The commission reported on 15 June 1951. Its report suggested that owners and lessees should negotiate a solution. However, it also made 20 recommendations, with a number of options for compensation.

It observed that the land was originally vested, and legislation enacted, ‘on the basis that the lands should ultimately be returned to the Māori beneficial owners.’ But, by the time leases were first renewed in the 1920s and 1930s, improvements on Whanganui vested lands were valued at approximately £459,803, while the owners’ interest was only £88,842 – less than a fifth of the capital value. Unsurprisingly, the commission concluded that, given the high valuation of improvements and no funds set aside to pay compensation, in many cases it was unlikely that Māori would regain their lands at the expiration of the leases.

Before presenting its views, the commission remarked that owners and lessees could always negotiate their own solution outside of its recommendations, as some had already done, and that the land boards ‘should endeavour in all cases to seek a settlement agreeable to the parties’. It identified two main options for a solution that would restore the land to Māori. The first was continuing with the current regime of appointing a receiver to manage the land after the leases expired. Commissioners did not favour this: they thought it very likely to result in the land being returned with the improvements neglected, which would be against both owners’ and the national interest. They preferred what they saw as the second option: enabling some land to be resumed immediately, if necessary by lowering compensation requirements, with the balance of the land to be resumed over time by raising the value of unimproved land and increasing rentals. They recommended inspection of all the land to identify what land would be best for Māori occupation. Where owners could not afford the full amount of compensation, they recommended that lessees be required to accept two-thirds compensation, either at the end of their current leases, or if they chose, at the end of a further 15-year lease with a rental of 5 per cent of the unimproved land value. If this compensation could not then be paid, or owners did not
wish to resume the land, the lessee should be offered further leases renewable every 21 years at 4.5 per cent of the unimproved land value. Owners would, however, have the right to resume the land at the end of any term on payment of 100 per cent of compensation.\textsuperscript{207}

The commission opined that the residual method of valuation had been ‘found not to work satisfactorily’, and that valuing land and improvements under the principles of the Valuation of Land Act 1925 would ‘place the values on a more correct basis’. Bush-clearing, it thought, should cease to be valued as an improvement after 50 years. It recommended referral of disputes over valuation to the Land Valuation Court.\textsuperscript{208}

On the crucial matter of finance to pay the compensation, the commission reviewed the current provision in legislation for Māori land boards and the Māori trustee to lend money, and stated that ‘in our view there is ample legislation in existence to enable finance to be arranged and the land to be developed in suitable cases’. It strongly encouraged both land boards and the Government to consider how Māori might best be encouraged to occupy and farm some of the lands themselves. It also envisaged that much of the land would continue to be leased out and urged that sinking funds be set up to enable payment of compensation in the future.\textsuperscript{209}

18.4.6 What agreement did owners and lessees come to?

(1) The Government’s 1952 proposals

The Government then circulated draft proposals to lessees, owners, and Crown officials for comment. Like the commission, the Government rejected receivership, because it too harboured fears about the land going back to its owners in poor condition, with the value of improvements eroded by neglect and owners obliged to bear the cost of borrowing large sums to get the land back into full production.

The Government’s proposals did not, however, follow the commission’s recommendation to allow some of the land to be leased on 21-year cycles that would continually renew until the compensation was paid in full. The Government’s policy was that Māori should get back their land. It proposed a maximum of two further leases of 21 years. It also opted for a compromise on compensation for improvements, under which owners would pay 75 per cent of the value of improvements. The Trustee would be able to resume the land at the end of the original leases, at the end of the first new lease, and at any time, with appropriate notice, during the second term of any new lease, on payment of compensation. If, at the end of any new lease, the money accumulated in a sinking fund was insufficient to pay off compensation, the Māori Trustee would advance the balance.\textsuperscript{210}

In some respects, the Government’s proposed legislation was more favourable to owners than the commission’s recommendations: no perpetually renewable leases; a right to resume the land at any time during the second additional lease term (on payment of compensation); and a loan from the Māori Trustee for the balance of compensation at the end of any new lease. But the compensation percentage would be higher if owners wanted to resume their land immediately, and it was not clear that the Māori Trustee would be able to assist beneficial owners to resume land at that stage. His assistance seemed to be confined to the second and subsequent additional lease terms.\textsuperscript{211}

(2) Negotiations in 1952 and 1953

As the 1951 Commission recommended, the parties – Māori owners, lessees, the Aotea District Māori Land Board (which was superceded by the Māori Trustee in 1952), and Government officials – participated in negotiations held in Wanganui in 1952 and 1953. A committee of seven owners and lessees negotiated two main issues: how much compensation the lessees would receive if the land were immediately resumed and what would be the terms of any further rentals. The owners accepted that they could not resume all the land immediately. They did not have the money themselves, and Māori Affairs’ officials were conservative about the possibility of providing monetary assistance – which was not to the surprise of Hoero Marumaru, who said in 1952, ‘I never did have the idea that we are going to get enough money from someone to pay the whole lot off.’\textsuperscript{212}

For much of 1952 and 1953, the owners’ position was that they would agree to two-thirds compensation, as
the 1951 Commission recommended, or continue with a receivership regime.\textsuperscript{213} After nearly one and a half years of negotiations, Brooker, an official in the Māori Affairs Department, chaired a meeting in October 1953 and told the parties:

If this final attempt fails cabinet will be asked to consider the alternatives of legislating in the exact terms of the Commission’s recommendation or leaving the parties to their present legal rights.\textsuperscript{214}

Agreement, though, remained elusive.\textsuperscript{215}

At a further meeting in November 1953, the owners agreed to the lessees’ demand for 100 per cent compensation upon the expiration of the current leases, but two-thirds compensation for any resumptions during or at the end of further leases, and with substantially increased rents.\textsuperscript{216} In effect, this reversed the commission’s recommendations of two-thirds value for immediate resumption and 100 per cent for future resumptions. According to historians Bassett and Kay, the owners may have consented to the 100 per cent compensation in anticipation that the Māori Trustee would provide financial assistance.\textsuperscript{217}

\textbf{(3) The 1954 legislation}

Whatever happened at meetings in other districts (we heard no evidence about them), the agreement reached at Wanganui does seem to have been largely carried through into the Maori Vested Lands Administration Act 1954. The draft bill was circulated to affected parties for comment, an accompanying note referring to the return of vested land to Māori owners as the ‘golden thread in virtually all the legislation’ prior to 1954.\textsuperscript{218} However, instead of all leases ending in 1957 as envisaged in those previous Acts, the new legislation would allow leases to continue, albeit with rights of resumption.

Under the 1954 Act, the Māori Trustee was empowered both to resume land on payment of compensation, and arrange new leases. These leases were for 21-year terms, were perpetually renewable, and contained new conditions for compensation for improvements: 100 per cent for immediate resumption, and two-thirds for subsequent resumptions. The Māori Trustee could also agree another amount with lessees. Rents were to be increased, there would be more frequent valuations, sinking funds would be created. The Māori Trustee could also sell the lands with the consent in writing of a majority in value of the owners, or a resolution of assembled owners. He could also return any land to the beneficial owners (see the sidebar on page 936 for the provisions of the Act).\textsuperscript{219}

\textbf{(4) Was the 1954 Act good for Māori owners or lessees?}

The new Act was not particularly generous to owners, but made provision for increased rents and resumption of land over time. There is some evidence that owners agreed to its terms on the understanding that they would be able to resume a certain amount of land immediately. Some years later, in 1961, RJ Blane, a Māori Trustee official, who had attended the negotiations in the 1950s, wrote that an important element in Māori agreement was that:

some land should be resumed, with the idea of creating a fund which would eventually enable the vested land to be restored to the use and occupation of the Maori owners as was originally contemplated. It was agreed by the Maori Trustee that he would make the money available.\textsuperscript{220}

‘Making the money available’ in fact meant lending the amount needed, which was then recorded as a charge against the land.\textsuperscript{221}

As to the lessees, the new legislation meant they got a guarantee of 100 per cent compensation if land was resumed immediately at the end of the current term. Alternatively, they got the opportunity to continue their lease for at least a further 15 years if the owners were not in a position to take the land back immediately. However, in the latter scenario they would need to pay at least double their existing rent, with the possibility of it increasing further after a revaluation at the end of 10 years, and they would receive only two-thirds the value of their improvements at the end of the lease.\textsuperscript{222}

The Act therefore achieved something of a compromise. But it did nothing to overcome the essential flaw of the compensation-for-improvements regime, which was
that there was never a check on the extent of the improvements, nor inquiry into whether they really increased the value of the property. The owners had to pay for them anyway.

18.4.7 Conclusions on the 1906–54 period

The Stout–Ngata commission emphasised the need for the Crown to make future provision for Māori occupation of their land. It responded by making leases on vested land terminate no later than 1957. There was no clear path, though, for the Māori land boards to fulfil the goal of helping Māori to occupy their land. In fact, under the land board, a significant amount of Whanganui vested land was ‘lost’ through sales and public works takings. Beneficial owners were not consulted, and they did not consent. Moreover, for almost all of the period, Māori were not represented on land boards. Others were making decisions about their land.

(1) The vexed problem of compensation for improvements

Then there was the question of compensation for improvements, which was a vexed one. Initially it was the Aotea land council or board that decided to issue leases with compensation provisions. But then the Crown drew up regulation 78A, which required inclusion in leases of vested lands with renewals, a clause to compensate lessees for all improvements. The 1909 Act went so far as to create for lessees a right of compensation. We infer that insufficient consideration was given to the practical and legal implications of law that:

The Main Provisions of the Maori Vested Lands Administration Act 1954

The main provisions of the Maori Vested Lands Administration Act 1954 were as follows:

- Compensation for improvements: The Māori Trustee and lessees could agree on compensation outside the Act’s terms. Otherwise, 100 per cent of the value of compensation was to be paid immediately on expiration of the lease. During further lease terms, owners could resume the lands on payment of two thirds the value of compensation (sections 8, 9).

- Further leases: If compensation was not paid at the end of the original leases, a new lease of 21 years was to be offered that would have perpetual rights of renewal, subject to the owners’ rights of resumption on payment of compensation. This right of resumption applied at the end of the first new 21 year lease, and for each successive lease at 15 years into the lease, or at the end of the lease (sections 15, 21).

- Sinking funds and loans: Funds to pay compensation after further leases were to come from sinking funds and, potentially, loans from the Māori Trustee. The Māori Trustee was required to invest 50 per cent of the rents (after deductions for expenses) as a sinking fund. The trustee was also enabled, although not required, to advance the balance of any compensation if the sinking fund was insufficient (sections 55, 56).

- Rents: The minimum rental for the first new lease was to be at least double the previous rental charged at the beginning of the previous lease (sections 22, 24).

- Valuations: The Valuer-General was to conduct special valuations at the expiry of the leases, according to the definitions (taken from the Valuation of Land Act 1951) set out in the Act (sections 11–14).

- Sales: The Māori Trustee was empowered to sell any vested lands with the consent in writing of a majority in value of owners, or a resolution of assembled owners (section 61).

- Revesting: The Māori Trustee or the owners could apply to the Māori Land Court to have any vested land returned to entitled beneficial owners, although it would remain subject to any leases and other charges (section 70).
made ‘all substantial improvements of a permanent character’ compensable;
provided that the lease would specify how the compensation would be calculated;
made the compensation payable a charge on the land and not a debt recoverable from the land board, although it was the land board that drafted the leases;
did not require the improvements to be appropriate as to their nature and cost; and
did not limit lessees’ expenditure on improvements;
did not specify that, in order to be compensable, the improvements enhanced only the land in question, and not other land that the lessee owned or leased.

All this gave the lessee free rein. Taken alongside falling land values – which was an element that probably could not have been foreseen when the 1909 Act was passed – it proved to be a recipe for disaster.

Government did not insist on sinking funds
The disaster was compounded by the fact that, although the 1909 Act directed the land board to set aside and invest funds to pay compensation in the future, no such sinking fund was created, and the Crown did not insist upon it. This affected the ability of Whanganui Māori to resume their land at the end of the first, or even second, term of lease, and also the Crown’s own statutory requirement that all leases end by 1957.

Māori themselves expressed a desire to create a sinking fund in 1912 (and previously) but this did not happen, and from the 1920s onwards evidence mounted that there would not be enough money to pay compensation at the end of the leases. The Government’s response at this time was to investigate and make suggestions, but leave decisions to the various land boards. The Aotea board made the Government aware that problems were particularly acute in the Whanganui district, but nothing was actually done to implement a sinking fund or other solution.

That said, the matter was complex. The rise in the value of improvements meant that any sinking fund would not in fact have completely covered the debt. However, together with the owners’ remaining interest in the unimproved lands, it is probable that it would have provided enough security on which to borrow additional funds to cover a significant amount of the balance.

As Māori reminded the Crown on several occasions in this period, the Whanganui vested lands had been handed over for safekeeping and the Crown had accepted a duty to keep them safe. However, the Crown was increasingly aware that the provisions around compensation for improvements meant that it was becoming untrue to say that Māori really owned their land, when the reversion was valued at so much less than the improvements.

Royal commission had no ‘magic bullet’
Finally, in the 1950s, the Crown appointed a royal commission, but by this time it was hard to undo the damage that had been done through earlier inaction. Unsurprisingly, the commission did not have a ‘magic bullet’, only a set of ‘least worst’ options.

Māori and lessees negotiated as the 1951 Commission recommended. They eventually reached a compromise agreement with encouragement from the Crown, which legislated the agreement in 1954. Its overall effect was to allow leases to continue beyond 1957, but to provide lessees with a financial incentive not to renew. It also required sinking funds to be established, and allowed some compensation to be provided through the Māori Trustee (although recorded as a charge on the land), to enable owners to resume some of the land immediately.

The Crown responded slowly and poorly
The Crown has argued that the financial management of the leases was an administrative matter that was properly the preserve of the land boards, and the Crown would not have been popular if it had imposed solutions such as sinking funds. We also acknowledge that the Depression and two world wars did nothing to improve the country’s economic situation, and affected the Government’s ability to provide direct financial assistance. However, there was clearly a significant problem affecting Māori and their vested lands right across the North Island, and in our view the Crown’s response was feeble.

By the 1930s, it was obvious there was little the Aotea board could do to manage their way out of the problem,
and having made the mistake of not putting aside money from the beginning – if indeed there were ever sufficient funds – the options were few. Doing nothing, however, was not the right approach, and this is what the land board did, and the Crown allowed it to do, for decades. It was the Crown's legislation that generated lessees' absolute right to improvements, however injudicious, and it was honour bound to sort out the problem it created. It was after all a very serious issue, threatening as it did the ability for Māori owners to resume their land in an improved state – the raison d'être of the vested lands scheme.

By the 1950s, the compensation-for-improvements problem had been allowed to drag on for far too long, and the Crown needed to face the fact that, if the leases were to end, it would have to make a meaningful contribution to lessees' compensation. The 1954 legislation did involve the Crown (via the Māori Trustee) in assisting in a few situations, but the Crown's approach was cheeseparing in a period of relative affluence. Owners of vested land, now separated from it for many decades, needed the Crown's help to get it back as they were always promised would happen.

**Rent relief for lessees**

Another area where the Crown could have taken swifter action was on the question of rent relief for lessees on vested land. The failure to establish a sinking fund was sometimes justified on the basis that owners would not want a reduction in already small rents. However, the 1951 commission found that rent relief measures for lessees amounting to £800 a year had continued after the war. We calculate that the total rent relief from 1945 to 1951 would have been about £4,800, a significant sum.

18.5 Amalgamation, Incorporation, 1955–2009

The Māori Trustee administered the vested lands for 18 years, from 1952 to 1970. By 1960, the Trustee had renewed 208 leases; advanced money to resume seven leases and farm the land directly; returned seven leases to the owners; and sold five leases. The last does not seem to have evoked much comment at the time and we have no details. In 1966, the Trustee oversaw the amalgamation of the many different land blocks into one title, in preparation for returning it to owners in an incorporation or trust.

The owners would have preferred a statutory trust to administer and manage their vested and reserved lands, but this was not to be: the Government transferred the land to an incorporation, the Ātihau–Whanganui Incorporation, in 1970. The incorporation began a programme of resuming the leases and directly managing the land, but by 2003 about 55,000 acres was still under lease. Crown grants from 2006 to 2008 of approximately $26,500,000 were used to resume most of the remaining leases.

The issues in this section concern the choice of an incorporation as the structure to return the lands to Whanganui Māori, and the continuing financial burden of compensation provisions. We ask:

- How long did it take to resume the lands, what did it cost, and what duty did the Crown have to provide financial assistance to resume the lands?
- Why was an incorporation established for the Whanganui vested lands, and were there better alternatives?

18.5.1 The cost of resuming the land

In negotiations in 1952 and 1953, the owners had made clear their goal of resuming at least some of the land immediately, although the area mentioned varied. Hoeorea Marumaru spoke of resuming two farms initially, while WR Bennett hoped for 10,000 acres in 1952, and 20,000 (including 4,000–5,000 acres of bush) in 1953. In March 1953, the owners’ lawyer spoke at a meeting with the Government and lessees’ representatives, saying that owners would be able to resume fewer than 5,000 acres immediately. The difficulty was to know how much finance would be needed – and available – for resumption. In these meetings, the Government’s representatives were consistently conservative about how much finance the
Map 18.2: Land owned by Māori incorporations in the inquiry district
Māori Trustee could provide, which would be no more than 60 per cent of the value of a security.\textsuperscript{227}

\textbf{(1) The 1954 Act in action}

The policy as set out in the Maori Vested Lands Administration Act 1954 was to resume the land gradually as the leases fell due for renewal – which was inevitably expensive, as it involved paying out lessees for all their improvements.

A Māori Affairs district officer, Brooker, asked the Trustee for action on the issue of resumption in 1955, writing, ‘it has been suggested that a sum of £100,000 would be available to provide for payment of compensation for improvements.’\textsuperscript{228} The Trustee applied to the Board of Māori Affairs for approval to advance money from the special purposes fund, stating that the intention was to farm the land and hand it over to owners as an incorporation once debts had been reduced. The profits from the farm would then ‘be held to finance the resumption of other vested lands in the future.’\textsuperscript{229}

\textbf{(2) Ōhorea Station}

The Board of Māori Affairs approved the application, and the Māori Trustee commenced the process of resuming two estates in Ōhotu, under section 9 of the 1954 Act. There were six leases, amounting to 3,946 acres, and they occupied the centre of Ōhotu 1c2, bordering the Mangawhero River. Negotiations over the valuations for three leases were settled by the Land Valuation Court in 1959.\textsuperscript{230} The other leases were settled the same year. Compensation for improvements amounted to £57,595.\textsuperscript{231} Significant expenditure was also needed for stock and equipment in order to start farming. In total, the Māori Trustee provided £136,000 in loans by February 1960.\textsuperscript{232} The land was called Ōhorea Station, and over the next few years the Māori Trustee’s office administered it directly, sold cutting rights to the timber, and used the profits to reduce the debts and to buy two small sections of land previously returned to owners as Māori freehold, Ōhotu 12A2B and part 1B, to improve access.\textsuperscript{233}

RJ Blane of the Māori Trustee’s office wrote in 1961 that the idea of resuming Ōhorea Station was ‘to give effect to the original plan that the land should go back to the use and occupation of the representatives of the owners as soon as that can be brought about.’\textsuperscript{234} Clearly, this would not be a quick process, especially as it was expected to be largely self-financing. In 1964, Rangi Mete Kingi told owners that compensation for improvements on other blocks would cost nearly one million pounds.\textsuperscript{235}

\textbf{(3) Other resumptions}

Further resumptions were not attempted until 1975, when the Ātihau–Whanganui Incorporation began planning to resume three leases comprising 8,000 acres. As farm values rose in the 1970s, so did the amount required for compensation for improvements. Valuation remained contentious, with the question of how to determine ‘unimproved land values’ ultimately going to court. This culminated in a Court of Appeal decision in 1985, and final payments for compensation to the three lessees in 1986. In 2003, the incorporation stated that it had resumed 34,058 acres at a cost of £8.46 million, and there were 55,000 acres still to resume.\textsuperscript{236} This process largely came to an end with the Crown grants to Ātihau–Whanganui Incorporation from 2006 to 2008.\textsuperscript{237}

In summary, the Māori Trustee began the implementation of the policy legislated into the 1954 Act tentatively, funding the resumption of Ōhorea Station. Plans to resume more leased land after that went at a snail’s pace, though, because, as well as compensation, even larger amounts had to be borrowed to stock and equip farms. The scale of the finance needed restricted the Trustee’s, and later the Ātihau–Whanganui Incorporation’s, ability to resume land.

\textbf{18.5.2 The decision to amalgamate}

The next step in the administration of the vested lands was a decision to amalgamate most of the leased areas into one title. In 1962, the Māori Trustee began investigating the possibility of amalgamation under section 435 of the Maori Affairs Act 1953. His aim was greater administrative efficiency. Under an amalgamation, there would be only one list of owners. This would reduce the number of owners by more than half, because many had interests in more
than one block. This would save administrative costs – for example, when notices needed to be sent out. The sinking funds would be merged into one, and all owners would thereby share the benefits of Ōhorea Station. The deputy registrar of the Aotea Māori Land Court also promoted amalgamation as a return to communal ownership of the land and a way to prevent land sales.

(1) The Whanganui Vested Lands Advisory Committee
A committee of owners got involved. This committee was formed initially to advise the Trustee on the management of Ohorea station. In 1964, it became the Whanganui Vested Lands Advisory Committee, with representatives for all the land blocks: Robert Tapa (chairman), Whakaari Te Rangitākuku (Rangi) Mete Kingi, Douglas Wright, Rēweti Pēhi, Tīti Tihu, Reimana Bailey, Hikaia Amohia, Hera Wells, Hori Kingi Hipango, and Rewha Taura. The committee discussed various aspects of the plan to amalgamate: they wanted timber on the separate blocks to become the property of all owners, and uneconomic interests to be put into a trust, perhaps in combination with the neighbouring Morikaunui Incorporation trust. Two meetings of owners were held in 1964, attended by 400 and 200 owners respectively. Both were in favour of amalgamation. It was decided in 1966 to call the amalgamated block Ātihau Whanganui Vested Land.

(2) Legislation to amalgamate Whanganui vested lands
Legislation was passed to enable the amalgamation. Part II of the Maori Purposes Act 1966 listed the blocks to be...
amalgamated, and the process to be followed. The blocks were: Morikau 2; Ōhotu 1c2, 2, 3, and 8; Ōtiranui 2 and 3; Paetawa A, B, and C; Raetihi 3b2b, 4b, and 3a; Rētāruke 1, 2, and 4c; Tauakirā 2F, 2H, 2J, 2K, 2L, 2M6, 2V, 2X, 2Y, 2Z, 2AA, 2BB, 2CC, 2DD, 2EE, 2FF, and 2GG; and Waharangi 1, 2, 3, and 5.

One of the original vested blocks, Waharangi 4, was left out of the amalgamation as owners decided to include it in the Pipiriki Incorporation. Two of the blocks – part Waharangi 3 and part Raetihi 4b – had been returned to owners previously. The Paetawa c block was originally reserved for Maori occupation under the vested land scheme; the 1966 Act removed the alienation restrictions on this block in order for it to be amalgamated with the other blocks.²⁴³

(3) Application to amalgamate

With the legislation in place, an application for amalgamation was made to the Māori Land Court, which heard the application in February 1967.²⁴⁴

Over 100 Māori attended. Rangi Mete Kingi explained that in the owners’ view the amalgamation was the modern expression of the wishes of Hinengākau that the hapū of the district should be more closely united. He continued:

It is not my idea but an idea that was transmitted through several generations of thinking people of my tribe. It is my job along with other members of my clan to put these ideas into operation.²⁴⁵

Rangi Mete Kingi said that his generation drew inspiration from Te Keepa’s words to Carroll in 1897 (‘To you Sir James we give the remnants of our people and of our lands for safekeeping’), and he saw the amalgamation as a step towards the land coming back under their control.²⁴⁶ Hori Kingi Hipango, Haare Taiwhati, and Tītī Tihu were there to tautoko (support) the words of Mete Kingi. Lawyer M S Byres, representing the applicants and the Māori Trustee, set out the history of the lands and all the information required for amalgamation. He paid tribute to the late Robert Tapa’s desire to share the benefits of Īhorea station with all the owners: ‘to him amalgamation on a give and take basis was to be the foundation of great things for his people in the future’.²⁴⁷ Before making the order, the judge required boundaries to be clarified and lists of owners to be completed. This done, he issued the court’s order in June, to take effect on 1 July 1967. As agreed, the block was called the Ātihau Whanganui Vested Land. The order affected only the equitable ownership of the block; legal title was still vested in the Māori Trustee.²⁴⁸

18.5.3 Incorporation or trust?

Claimants generally agreed that amalgamation was the wish of their tūpuna, but did not accept that amalgamation should have led to incorporation.²⁴⁹ Here we consider why owners at the time favoured a statutory trust, and why the Crown said no.

(1) Owners seek a different kind of trust

Just as the vested lands were being amalgamated, the Maori Affairs Amendment Bill was under debate. This new Bill contained provisions about incorporations that concerned the Whanganui vested land owners. On 6 November 1967, before the Bill passed, the Whanganui vested lands committee confirmed to the Department of Māori Affairs that they wanted to resume the vested lands and favoured setting up a trust to do this. They did not want their land vested in a Māori trust board created under the Maori Trust Boards Act 1955, which would give beneficiaries no particular rights to the property and income of the board. Instead, they wanted a different kind of trust created under special legislation.

The owners’ solicitor informed the Department of Māori Affairs that owners had discussed the options and considered that a trust was a more appropriate structure than an incorporation. Incorporation might be suitable for a straightforward farming operation, but owners thought the size and complexity of the vested lands, which included land under lease, in farms, and also in forestry, made a trust board the better option. Legislation could define the ‘powers and authorities’ of a trust, and ‘this
The ‘Vested Lands’ in Whanganui was considered an advantage ‘with such a large area and so many owners. Moreover, said the solicitor’s letter, ‘it is felt very strongly that the tribal characteristic of the vested lands block could far better be retained through the creation of the Trust Board than through . . . an incorporation which after all is designed to operate more as a purely commercial enterprise’.

Owners were particularly concerned about certain clauses in the 1967 Bill to do with selling land to lessees, and Whanganui Māori expressed their opposition to this provision. As the owners’ solicitor explained in 1968, the vested lands ‘had been kept intact as tribal lands’ and ‘they should continue to remain so for the future.’ There was also concern that an incorporation, as compared with a statutory trust, would be more likely to make decisions without reference to the owners. The transformation of interests in land into shares, as the 1967 Bill required for setting up incorporations, was also objectionable. The owners’ solicitors later wrote to the Minister of Māori Affairs that owners did not object to the status of the land being changed from Māori land to general land, as long as ‘the interests of the owners in the land itself [were] retained.’

(2) The Maori Affairs Amendment Act 1967

The Maori Affairs Amendment Act passed on 21 November 1967. Despite widespread Māori protest, the Act gave the Māori Trustee authority to buy individual shares in vested Māori land and sell them to lessees, and he also automatically acquired small or ‘uneconomic’ interests worth less than $50, which he could onsell to lessees as areas of freehold land. Owners could sell their shares in incorporated land at any time. More positively, the Act enabled incorporations to manage their shareholdings so as to prevent small interests from passing out of their ownership. A meeting of shareholders could set minimum share units, which could be up to a value of $50, and then deem that the incorporation had automatically acquired all shares below that value. The Act also enabled a meeting of shareholders to resolve to restrict individuals from selling or transferring shares to any but existing shareholders, the incorporation, the Māori Trustee, or relations.

(3) The Crown opposes a statutory trust

In March 1968, the Minister of Māori Affairs, Ralph Hanan, explained why he did not favour the owners’ proposal for a trust. In his view, this seemed to involve ‘merely exchanging one special statutory system for another’. Hanan was opposed to ‘the statutory creation of special trusts’ and ‘inflating the statute books’ with private Acts – especially if the special trusts might become ‘perpetual bodies.’ He suggested that the alternatives were incorporation, ‘the creation of a trust by Part XXIII meetings of owners procedure’, or a trust created by the Māori Land Court under section 438 of the Maori Affairs Act 1953. The Minister appears to have had in mind as regards the second and third options the ability for assembled owners to pass resolutions to authorise the Māori Trustee to alienate land or to act as their agent. The owners’ land interests could by these means have been transferred to a section 438 Trust. These were generic trusts which the Māori Land Court established for the purposes of vesting Māori land ‘for [the] benefit of Maoris or the descendants of Maoris or for any specified class or group of Maoris or their descendants.’

Hanan’s own preference was for incorporations. Size was no bar to efficiency, he believed, citing the success of the large East Coast incorporations. Moreover, he thought that the incorporation system of annual meetings, where differing views could be debated, did more to promote democratic decision-making than the suggested postal ballots of a trust.

The solicitor for the Whanganui Vested Lands Advisory Committee simply commented: ‘the Government has a marked objection to creating legislation for a single individual purpose. It creates a precedent and it might well give rise to pressure from another group.’

However, the Minister did not immediately reject the owners’ trust proposal. In July 1968, Rangi Mete Kingi and the owners’ lawyer were able to report to the vested lands committee that the trust board idea ‘is not a write-off yet’.
The Minister had called for further information from the committee and 'might have a change of attitude'. By this time, however, some on the committee were themselves beginning to favour an incorporation. Lengthy discussion of the potential merits of trust boards and incorporations ensued. In the end, it was agreed to put the trust board case to the Minister one more time. If he gave his approval in principle, the committee would put both options to the owners, and let them decide.

(4) Seeking support for an incorporation
The Minister again opposed the proposal and from this point onwards, discussions with the Department of Māori Affairs revolved around setting up an incorporation.

The advisory committee now sought the support of owners for an incorporation. In July 1969, some 700 owners attended a meeting at Wanganui where the resolution to incorporate was 'passed unanimously', after 'a considerable amount of discussion from the floor on various points'. In September, the Māori Land Court heard the application. The judge strongly suggested owners should consider a section 438 trust (which would enable the land to remain in Māori title), but Mete Kingi, speaking for the vested lands committee, rejected such a trust, and the Māori Trustee also thought it would be unsuitable.

In November 1969, the court made orders vesting the land in an incorporation of owners. In June 1970, the Māori Land Court confirmed a shareholder resolution to restrict any future sales of shares to a 'closed shop' of the incorporation, the Whanganui Trust, other shareholders, or family members. The shareholders also voted in favour of paying unclaimed dividends, and later a certain percentage of profits, to the Whanganui Trust for social and cultural purposes. The incorporation took over full administration from the Māori Trustee on 1 July 1970.

What the owners did not like about their resumption of the vested lands taking the form of an incorporation was that, although it might have addressed economic concerns, it had no cultural base. The Minister rejected the owners' proposal for a purpose-built trust because he (and the Government) opposed special, single-purpose Acts. He was also unconvincing that a trust would be any more efficient as a management structure than an incorporation. As to the owners' cultural concerns, the Minister thought an incorporation would be more democratic than a trust, and questioned whether the majority of owners really wanted to desist from selling land. However, the Minister did not address the owners' antipathy to becoming shareholders in a corporation, rather than owners of Māori land.

18.5.3(4)

18.5.4 Ātihau–Whanganui Incorporation administers the land
The Ātihau–Whanganui Incorporation has had some success in resuming leased land, and in providing money for social and educational purposes through the Whanganui Trust. As Esther Tinirau told the Tribunal, Māori incorporations are not run purely on business lines: 'the kin-based nature of Māori incorporations also brings with it additional expectations to reflect cultural imperatives within their business'.

On the other hand, many owners have felt distanced from their land, as detractors predicted would happen, and said that the incorporation structure does not fulfil tribal aspirations. As Ms Tinirau also pointed out, 'the lands held by the Incorporations are not held tribally nor do the shareholders comprise all tribal members'. She commented:

the desire that the lands return to tribal jurisdiction was seemingly achieved in the establishment of the two Incorporations [Morikaunui and Ātihau–Whanganui], but perhaps this is now illusory given the legal and constitutional restraints on the Incorporations.

The fact that owners were transformed into shareholders has been one element of a sense of disconnection. This provision of the 1967 Act was reversed in Te Ture Whenua Māori Act 1993, section 260, under which shares in an incorporation were once more deemed to be undivided interests in Māori land. The evidence of witnesses to the Tribunal, however, was that owners still perceived...
945 themselves as shareholders, because decision-making power in the incorporation does not reflect Whanganui Māori tikanga, but the number of shares a person owns.

Claimants also lamented the fact that the incorporation did not aim to allow Māori to reoccupy the land vested in it. Tūrama Hāwira told us:

> It is also very apparent that there is no intention to settle the owners or give recognition to the two clans who have maintained their ahi ka for over one hundred years at

Tuhiariki. . . . The native Minister who forced this entity upon us, instead of allowing for a Trust entity has much to answer for.269

18.5.5 Conclusions on amalgamation and incorporation

The Minister did not address the owners’ concerns about incorporations as they wanted him to – that is, by passing into law a purpose-built trust-based model to receive their vested lands. Such a model might have enabled them to gain the economic benefits that an incorporation offers, but also to maintain more of the tribal and tikanga presence that they were seeking. However, the 1953 Act did contain the option of a section 438 trust, which the Minister and the Māori Land Court judge invited owners to consider as an alternative to incorporation. It would have allowed them to retain the land in Māori title, and would have allowed owner trustees to manage the land responsibly and with appropriate elements of tikanga. However, the Whanganui Vested Lands Advisory Committee did not favour that option, and nor did the Māori Trustee. Their objection to the section 438 model as ‘unsuitable’ might have had a solid basis, but we do not know what it was.

The court therefore transferred the remaining vested lands into an incorporation, which has proved to have many of the shortcomings that its detractors predicted. In particular, it has led to a feeling in some shareholders of remoteness from their land; that they have little influence over its management; and that the incorporation is inattentive to their needs.

The legacy of the compensation for improvements provisions has also cast a long shadow, resulting in very extended leases and a heavy financial burden. A few leases expired in 1945 and a few more in the period to 1957. With the exception of Ōhorea Station in 1960, however, resumptions have taken a remarkably long time – well beyond the expectations of the original owners. Between 1975 and 2004, the incorporation managed to resume some 68,493 acres, but at the cost of millions of dollars.

The need for the incorporation to set aside much of its income every year for the resumption programme meant
that payments for the benefit of shareholders were much reduced. Liability was reduced by the 1954 Act in percentage terms, and the Māori Trustee did make significant loans, but as remedies for past failings these measures were inadequate to the size of the task. It is clear that the Crown did not see itself as responsible for the situation to the extent that it would need to provide more than ordinary measures to return the land to Māori. The result was, as we have seen, an extraordinarily large debt burden for the new incorporation.

It is not clear how differently a trust could have served the interests of the owners. Perhaps a trust could have gone further to encourage Māori reoccupation. It seems likely though that, like the incorporation, it would have had to focus on managing the financial burdens of paying compensation for improvements and making the farms a paying proposition. Whether the incorporation will in time go further down the track of getting Māori owners back to the land is unclear. Raymond Rāpana told the Tribunal that the issues with the incorporation model are such that ‘[i]t might well be time for us as a people and the Crown to work out new models of land ownership and management’.270

We now turn to explore that history of Māori occupation of the vested lands.

18.6 Māori Occupation of Vested Land

Included in land vested in the Aotea District Māori Land Council were places where long-established Māori communities lived, mostly situated along the Mangawhero and Whanganui River banks, with one main settlement around Matahiwi. Initially, to live on vested land Māori could have land set aside as a papakāinga section, or tender for a farm section on a general lease. A third option was introduced under the Native Land Act 1909: formal leases specifically for Māori.

Owners did not continue to occupy most of the papakāinga into the 21st century. For instance, the Ōhotu papakāinga were set aside for approximately 178 owners, but today almost none of their descendants live on the land. As we explain below, a few papakāinga were returned to owners as Māori freehold land, and in one case a Māori reservation was created. However, most ended up as part of the land that was leased out.271

At first, Māori took up some of the sections available for general lease – for example, by 1906 they had taken up seven leases in Ōhotu. By 1920, however, all of the sections that Māori leased appear to have been transferred to Pākehā.272

In this section, we go back to the beginning of the scheme and look at why the presence of tangata whenua on the vested lands declined. As we have indicated, it is a real issue for claimants that Māori no longer live on vested lands that went into the Ātihau–Whanganui Incorporation: it is one of the biggest and most successful farming enterprises in the country, yet lacks a thriving Māori community. Most would acknowledge urbanisation as a major factor in Māori moving away from these as from other places formerly occupied by Māori, but claimants say that Crown policies undermined their presence on this land.

We ask: Did the Crown do enough to ensure that the Māori owners of the vested lands could continue to use and occupy them?

18.6.1 How and why were the papakāinga reserves created?

In 1900, Seddon and Carroll described the papakāinga provisions of their Maori Lands Administration Bill as safeguards against landlessness. After the land was vested, Seddon told Parliament, the land councils would ‘lay off portions of this land and declare those portions to be papakainga: it will issue certificates to the owners, and for the time being the owner of the land is provided for’.273

As we saw earlier in the chapter, section 29 of the Maori Lands Administration Act 1900 enabled the land council, at the request of a majority of the owners, to have ‘full power and authority . . . to reserve and render inalienable’ vested land that was required for owners’ ‘occupation and support’, and also their urupā, eel weirs, fishing grounds, and reserves for birds and timber. In compliance with the Act, the trust deeds that owners signed to vest their lands contained similar words.274

The legislation did not require the council to set aside
a particular amount of land, nor to follow owners’ wishes in the location of papakāinga. Seddon, however, assured Parliament in 1900 that council members, who were partly elected and partly nominated, ‘will be in a position better to locate the land in these papakaingas, than would any Commissioners under our present law’.275

(1) Land council in charge of papakāinga location, size

The Crown’s role in settling the papakāinga in Whanganui vested land was relatively minor.276 In 1903 and 1904, the Aotea District Māori Land Council and owners conferred at some length about which areas would be reserved, where, and for whom. At a meeting at Karatia in mid-December 1904, owners discussed reserves with the Native Minister. The land council’s surveyor, Carkeek, also talked with resident owners about their reserves while he was surveying the Ōhotu and Paetawa blocks for lease, and he marked them out on the plans. Land council members also visited the owners to discuss the arrangements. We have identified 4,164 acres of vested land that was set aside as papakāinga. This was not quite the total acreage, as we do not know the size of some papakāinga – for example those on Waharangi 1 to 5. On the other hand, a larger areas seems to have been planned than was eventually set aside: Horan’s evidence is that in 1905 the Aotea land council intended to reserve another 1,400 acres of section 2, block VII, Taukirā survey district (adjacent to the Pukehināu papakāinga area on section 3) for Māori occupation, but by 1906 it had leased the land to the farmer George Bartrum. There are no records to explain why this happened.277

In and around the two township sites of Matahiwi and Ōhotu, there were small sections of between one and 15 acres – enough for subsistence living. Other larger sections seem to have been intended as farms which a whānau might develop as a commercial enterprise without borrowing money. A few were specifically to protect urupā. These included two acres on the southern side of Hikunīkau Stream on the Paetawa block; part of section 2, block XV, Mākōtuku survey district; and the urupā named ‘Maiororua’ in Matahiwi township.278 However, the council did not agree to set aside an urupā of two acres on the Paetawa block said to be on the northern side of the Whakamātau Stream.279 Apart from those on Ōhotu 1, little is known about reserved sections. In table 18.2 is a list of the areas identified from the evidence presented to us, with the name, size, and location, where known.

(2) Delay in setting up papakāinga

Deciding areas of papakāinga was subject to delay. In 1904, the council decided that Māori occupation on Ōhotu would be finalised after leasing the block, ‘when the annual value’ of owners’ interests ‘can be ascertained for the purpose of deciding areas of papakainga’. In Taumarunui Native Township, the Māori land council there allocated native allotments to owners according to occupation, which later led to confusion about how much rent was due to each owner. Possibly, the Aotea Māori land council was trying to avoid a repetition of this situation with the papakāinga on the vested lands. However, leasing on the vested lands did not get properly underway for another year.

Confusion about papakāinga led in at least one case to a family having to relocate. Judge Butler agreed that Pēhimana Te Tua could retain the area containing his residence and cultivations on sections 3 and 4, block I, Ngāmātea survey district (the site of the new Ōhotu settlement), but the council mistakenly leased these sections out. Council member Nikitini brought the matter up in a council meeting, and in 1905 it was arranged that Te Tua would move to a neighbouring section, on the western side of the settlement, with another acre ‘where their kainga is’, inside the township. This appears to have resolved the issue.280

In 1905, there were further discussions between owners and the Aotea land council and, at the latter’s request, owners appointed a committee of three (Te Whatahoro Jury, Hāmi Te Kē, and Maihi Ranginui) to confirm who would be listed as owners in the Ōhotu papakāinga.281 Owners did not quibble with the method of allocating papakāinga, but did object to the delays. In 1907, Te Whatahoro requested that papakāinga be finalised and said that Māori were dissatisfied, while Aotea land board minutes the same year recorded that owners were ‘anxious
to have their areas defined and partitioned.\textsuperscript{282} Meetings about papakāinga continued, and partitions were surveyed and allocations finally made on Ōhotu in 1907 and 1908. The board finally began issuing occupation licences in 1911.\textsuperscript{283}

\subsection*{18.6.2 The system of occupation licences}

\textbf{(1) Licences rather than leases}

The idea was that Māori occupation of areas set aside as papakāinga was protected, because alienation of land in these sections was prohibited: papakāinga could not be sold, leased, sublet, or mortgaged. The land council was meant to issue papakāinga certificates to each owner allotted a papakāinga section, containing a declaration that the owner would be ‘seized or possessed’ of the land described, which, ‘being suitable for his occupation and support, has been declared a papakainga’, and was ‘hereby declared absolutely inalienable.’\textsuperscript{284} Because owners had only a right of possession in the land rather than full ownership, and because alienation was banned, owners could not obtain a mortgage. This meant that they could not get into difficulty with mortgage repayments, but it also stymied development.

A system of ‘occupation licences’ regulated the rights of those living on the papakāinga. These licences gave the named occupiers rights to remain on the land for a certain number of years. We talked in chapter 17 about how the first official regulations for occupation licences were issued in February 1903, to deal with allotments reserved for Māori in the native townships. Dr Horan’s evidence to

\begin{table}
\centering
\begin{tabular}{|l|l|l|l|}
\hline
\textbf{Block} & \textbf{Papakāinga} & \textbf{Area (acres)} & \textbf{Location} \\
\hline
Ōhotu 1 & Parts of Matahiwi township & 225 & Part section 2, block xi, Tauakirā survey district \\
 & Pukehinau & 1,500 & Section 3, block vii, Tauakirā survey district \\
 & Ruapirau & 586 & Section 3, block xi, Tauakirā survey district \\
 & Reserve for Pēhimana Te Tua and whānau & 60* & Parts of township reserve, block 1, Ngāmātea survey district \\
 & & 1† & \\
 & Reserve for Kataraina Te Ahitoro & 20‡ & Parts of township reserve, block 1, Ngāmātea survey district \\
 & & 1§ & \\
 & Te Paenga & 126 & Southern portion of section 2, block v, Ngāmātea survey district \\
 & Īruakūkuru & 314.5 & Section 1, block xv, Mākōtuku survey district \\
 & Ōhorea & 143 & Section 3, block xv, Mākōtuku survey district \\
 & Tuhiariki & 300 & Section 5, block xv, Mākōtuku survey district \\
 & Rātuhiituhi & 300 & Section 6, block xv, Mākōtuku survey district \\
 & Paetawa & Reserve for Te Ngō whānau and others & 249 & Section 7, block xi Rārete survey district \\
 & & 2§ & \\
 & Waharangi & Parts of Waharangi blocks & Unknown & \\
 & Waharangi 4 & 577 & Section 7, block xi Rārete survey district \\
\hline
\end{tabular}
\end{table}

\* On the western side of Ōhotu township \hspace{1em} \† On the site of kāinga in the township
\‡ On the eastern side of Pēhimana’s land \hspace{1em} § In the township area

\textsuperscript{284} urupā

\textbf{Table 18.2: Papakāinga and urupā set aside for Māori on the vested lands}
the Tribunal was that, using these regulations, the Aotea land council then created a system of occupation licences for the papakāinga areas of other vested land. In July 1904, when discussing the creation of a papakāinga on Paetawa, council member Fisher suggested that ‘occupation licences could be given to persons desirous of occupying the reserve’.285

(2) Licence to occupy for no longer than 36 years
The land board issued 32 licences between 1911 and 1914. Each listed a number of licensees, and were generally for a total of 36 years.286 A small rent was charged on at least some of the licences, with provision for revaluation after 15 years and for the rent then to move to 5 per cent of the unimproved value. There was no compensation for improvements, nor provision for further renewals.287 The licences did not guarantee the occupiers or their descendants rights of occupation beyond 36 years.

In the late 1920s, the Aotea land board inspected some of the Ōhotu papakāinga. Of the 25 sections and part sections inspected, two were completely unoccupied, five were inaccessible due to a steep ravine, and two were partly sublet to Europeans. By this time, most of the original licensees had died, and some sections were now occupied informally by Māori who were not the original licence holders.

In fact, the land board had delayed so long in issuing licences that by 1911 there was an alternative, leases for Māori under part XVI of the Native Land Act 1909, which we explore below.

18.6.3 The move to part XVI leases
We noted above that in 1920 the Aotea land board’s registrar inspected some of the papakāinga sections. He reported that some occupiers now wanted leases. Leases should be offered, he recommended, to those still in
occupation, and the unoccupied sections and those portions that were sublet should be offered for public tender.\textsuperscript{288}

Section 293 of the Native Land Act 1909 gave district Māori land boards authority to issue leases to Māori on papakāinga on the same terms as for lands leased under part \textit{xvi} of the same Act. Part \textit{xvi} dealt with land for Māori occupation, and specified that it was intended for lease to owners, or failing that to other Māori. Importantly, the Māori land boards could determine some of the terms of the leases.\textsuperscript{289}

The president of the Aotea land board agreed that leases should be offered, requesting a valuation of the land in question. Part \textit{xvi} leases were to be offered to Māori, with rents based on unimproved value. Any leases for public tender were to be offered on the capital value.\textsuperscript{290}

In September 1928, Rihari Pakatua, who lived on lot 8 (79 acres) on the Pukehīnau papakāinga, requested that compensation for improvements be included when the new leases were issued. The Aotea land board then communicated its intentions to the Native Department. Having now made the necessary revaluations, it intended to cancel all the current occupation licences and offer Part \textit{xvi} leases ‘to any of the Native licensees who are willing to accept’. The leases were to be for 21 years, with rents at 5 per cent of the unimproved value and compensation for improvements at the end of the lease. Renewals were possible under the 1909 legislation, but the total term could not exceed 50 years. Before any leases were offered, the land board proposed to consult licensees who had left their sections. The board does not appear to have told the Minister that it was also considering offering some of the land for general lease.\textsuperscript{291}

Most resident owners appear to have accepted the new Part \textit{xvi} leases. A lease list from 1939 named approximately 26 Māori leaseholders (some holding more than one lease) of former papakāinga land.\textsuperscript{292} The leases provided for compensation for improvements, and in some cases renewals up to 1957, the year all leases on vested lands terminated.\textsuperscript{293} The leases were a move away from the idea of maintaining absolutely inalienable papakāinga, but we do not know to what extent the owners discussed this as a group. Clearly, some owners wanted leases, which better protected their improvements and provided opportunity to borrow money for development. It is not clear whether owners were able to decline to move from licences to leases.

There were also four formal leases to Māori in the Matahiwi township. Records from 1911 show that rent for leased sections was being received from both Māori and Pākehā lessees. On the other hand, lease lists from 1920 indicate that no rent was being charged on Matahiwi areas originally designated for owner-occupation, suggesting that the land board had offered different terms for leases in the township from the farm section leases, on which rent was 5 per cent of the unimproved value.\textsuperscript{294}

\textbf{18.6.4 More Māori leave the land}

In 1939, there were still 26 Māori families living on the vested land. However, the pace of decline seems to have accelerated from this point. Reasons for leaving were doubtless varied, but they had the same result: the papakāinga was absorbed into the leased vested land.

In Waharangi 4, for example, occupation licences expired on 577 acres in 1933, and after that the land was unoccupied. In 1942, the board proposed to offer it for public lease. An inspection suggested why owners had abandoned it: the section was a difficult shape; it was divided by a road, which necessitated significant fencing; and it was not well situated for the sun.\textsuperscript{295} Other factors that may have influenced families to move away were the small size of the farms; military service; and the trend from the mid-twentieth century onwards of moving to towns to take up their greater educational and employment opportunities.\textsuperscript{296} People occupied some areas, particularly around Matahiwi, until the 1950s and 1960s.

\textbf{(1) Unoccupied papakāinga leased out}

As Māori left their land, the question for the Aotea land board was what to do with it. The answer was almost invariably to lease it out. Sometimes this was with the agreement of hapū representatives, but in other cases it was not. Mr Mainwaring, an official in the Māori Affairs Department, recalled that on one occasion he had found in the register of vested land:
a piece of land that was vested but for many years was reserved for occupation by owners. Subsequently the owners left the area and the Maori Trustee then sought out some of the elders and it was decided to lease that particular area.²⁹⁷

Once it was leased, the original owners could not return to the land. At a meeting in 1952 to discuss the draft legislation for compensation and further leases of vested land, a Mrs Thompson spoke about returning to the whānau papakāinga. She said that her elders had not been keen to lease out the land but the Aotea land board had gone ahead anyway. She added, ‘We want our land back so that we can use it as a means of livelihood for those of our family who can go back.’ The registrar gave a long explanation of how Ōhotu belonged to all the owners, and the value of individuals’ land interests, then concluded, “There is no “Ahika” under the leases. “Ahika” disappeared when the owners collected their rents. You cannot have “Ahika” and rent collection.”²³⁸ Mrs Thompson talked about the land being leased to a Russell McLean, which suggests she might have been referring to the Ōruakūkuru papakāinga (see sidebar over page).

(2) One unoccupied papakāinga not leased
We know of only one unoccupied papakāinga that went unleased. In 1913, the Paetawa block was partitioned into Paetawa A (3,107 acres), B (125 acres), C (124 acres), and an urupā of 1 acre in ‘part north’; B and C were for owners’ use.²⁹⁹ The history of the Paetawa papakāinga thereafter is unknown, and we saw no evidence of occupation licences being issued. In 1962, however, the vested land was being readied for amalgamation into one title. Officials commented that Paetawa C was reserved for owners’ use, and legislation would be necessary to cancel this restriction if the land was to be part of the amalgamated title. We do not know whether owners were involved in the decision, but the block was amalgamated under the Maori Purposes Act 1966.³⁰⁰

(3) Evidence about papakāinga near Matahiwi
We heard about another whānau that struggled to maintain its connection with papakāinga land. Kurai Toura’s grandmother Kōpare Te Huna occupied one of the Pukehinau papakāinga close to Matahiwi, including sections in the township, but later leased some of the land to a European farmer, Bartrum. In time, the farmer’s son took over the lease, and may have leased more of the land. In the 1960s, he employed one of the whānau, who was still living in the family home onsite, as a shepherd.³⁰¹ In the 1960s, a Māori Affairs official, ‘Rangi Taketake’ (very likely Rangi Mete Kingi), told the whānau that because they had leased their land, it would not come back to them. It would be absorbed into the Ātihaunui–Whanganui Incorporation (in which they are shareholders).³⁰² After the incorporation took over, the house was neglected and is now derelict. Kurai Toura and the family have spent much time and effort trying to get the land back, but so far to no avail. There may be a possibility of the Incorporation’s returning the land, but at the time of hearing the whānau had not been able to navigate the tangle of bureaucracy involving the Māori Land Court, the Ātihaunui–Whanganui Incorporation, and the Morikau Station. As Mrs Toura said, ‘It is a very hard road to follow if you know nothing of how the procedures work. . . . There was a stage when I felt like a ping-pong ball.’³⁰³
**Ōruakūkuru and the Tairei Whānau**

The Tairei whānau gave evidence about Ōruakūkuru, one of the Ōhotu papakāinga on the banks of the Mangawhero River. What happened here was an example of the vested land system not working to protect Māori occupation of vested land.

Located on section 1, block xv, Mākōtuku survey district, Ōruakūkuru (304½ acres) contained a whare tupuna named Te Ao Te Rangi and two family urupā. Tairei Te Awauru (sometimes called Mei or Mareata Tairei) and eight others held the occupation licence for 36 years from November 1911, at £11 8s per year. Te Awauru was married to Mataera Pikirangi (1857–1939), known to the family as Tipaata. Her great-granddaughter, Ngaire Tairei Williams, gave evidence to the Tribunal about the family’s life of Ōruakūkuru.¹

In 1928, the registrar of the Aotea District Māori Land Board reported that five of the original nine licensees were deceased. The occupier had no stock on the land, had sublet part of it for grazing, and part to a Mr Vile for a sawmill at £30 a year. The registrar recommended offering the land for public tender. The president of the Aotea land board instructed that Haare Tairei, Tairei Te Awauru’s son, be informed that he had breached the licence by subletting, and that the board proposed to put the land up for lease. Haare was to come to the board offices and arrange to exclude the western side of the land, where a family home had been built and where Haare was living, from any lease.²

By late 1928, the eastern part of the lot (163 acres) was leased to a Pākehā farmer, Russell McLean.³ It seems that the land where the marae was located was not leased: a plan of the site from 1929 shows a separate small parcel of half an acre containing Te Ao Te Rangi and another building. Nevertheless, it seems that the lessee later used the whare tupuna as a haybarn and it burnt down. Haare Tairei continued to live on the western side. Later, the family moved to Raetihi, Ngaire Williams told us, in preparation for sending her and her cousin Graham Sun to secondary school, although we do not know exactly when this happened.
Other members of the family occupied the unleased portion of the land, perhaps informally, until the early 1950s.4

In 1958, the land was vacant. Haare Tairei died that year. Sometime afterwards, the family was informed that the land was now under the control of the Māori Trustee. Mrs Tairei did not have the money to pay a lawyer to represent her in opposing this action. In 1967, the Trustee leased out the land, and the lessee later demolished the house. Mr Sun told us of the shock of learning about these events when he returned from military service overseas. Representatives of the whānau told us that they did not agree to their land going into the Ātihau-Whanganui Incorporation. The whānau now want protection for and access to the marae site and urupā, and they want to rebuild Te Ao Te Rangi, reoccupy the papakāinga, and rebuild the homestead.5
A particular problem for them was to understand what it meant to be shareholders in an incorporation rather than landowners. Mrs Toura believed that the Crown has a responsibility to make the system 'more understandable to everyone.'

### 18.6.5 From part XVI leases to post-1954 leases

The 1951 Commission reported that some witnesses spoke enthusiastically about the success of the Morikau station, north of Rānana (see chapter 20). However, the commission strongly encouraged the Government to prioritise settling Māori on the land. It cautioned that, in emulating the success of Morikau station, 'the tendency would be to farm the land in large blocks or stations in the hope of ensuring the greatest possible income to the beneficial owners', and consequently fewer Māori would live there.

Nevertheless, section 72 of the Maori Vested Lands Administration Act 1954 released all land from the provisions of part XVI leases. From then onwards, general leases were offered. The evidence does not reveal how many Māori were still living on the land in 1954, but certainly few whānau remained by the time of incorporation. One of them was the Te Wiki–Hāwira whānau, who occupied one of the original papakāinga and later also leased other land (see the sidebar).

### 18.6.6 Revesting and reservation

A few of the papakāinga were returned to owners as Māori freehold land, and one became a reservation. This was made possible by the Reform Government's Native Land Amendment Act 1912, which enabled land that had been vested but not subsequently leased to be returned to owners. As we saw in chapter 14, the Reform Government brought the vested lands scheme to a halt, and saw no need for land that Māori were occupying to remain as part of the scheme. Subsequent legislation had similar provisions. Unless owners acted to turn it into a Māori reservation, the land returned to them as Māori freehold land could be privately leased or sold.

In 1921, Rēneti Te Kaponga and Ngāone Rēneti requested the return of their papakāinga (lot 2 on the Pukehinau reserve), which ‘we occupied long before this block passed under the control of the Board’, ‘so that we can have this as a permanent home.’ Rēneti was still a lessee in 1939, so we infer that the board denied the request.

Some sections were returned: Tauakirā 2M subdivisions (943 acres) in 1915; Ōhotu 1A (62 acres), and 1B (115 acres) in 1920 (these were the Te Tua whānau sections); and also in 1920 part Waharangi 3 (2 acres); part Waharangi 4 (977 acres); and Raetihi 3B2A (232 acres).

In 1919, a part of Matahiwi township (lots 5 and 8, 25 acres 2 roods 35 perches) was partitioned. It was called Ōhotu 1C1, and had 36 owners (the rest of the land became Ōhotu 1C2). On 13 February 1936, Ōhotu 1C1 was returned to the 36 owners, and was gazetted as a Māori reservation in December the same year. The reservation includes Matahiwi marae and an urupā. Claimants complained that although the board agreed to return the land in 1920, it was not until 1936 that the Māori Land Court issued orders creating the reservation. However, we do not know why it took so long, nor whether the Crown was in any way responsible. The rest of the land in the town remained vested in the Aotea District Māori Land Board and was later transferred to the Incorporation. The claimants also told us about other grievances that relate to Matahiwi (see sidebar).

More land was returned to owners in the 1950s. Seven sections were returned between 1954 and 1960. One of these was Raetihi 4B (15 acres), which was returned to 154 owners in 1960, although this was soon revested in the Māori Trustee to become part of the Ātihau–Whanganui amalgamated title. Earlier, in 1951, Rangihikitia Petaira enquired about the return of land containing an urupā on Ōhotu 1C near the Ruapirau Stream. He was advised that an application could be made under the Maori Purposes Act 1937, section 5, to have the urupā declared a 'Māori Reservation'. It is unclear if further action was taken.

### 18.6.7 Were Māori assisted to take up general leases?

One of the biggest issues with the papakāinga system of occupation was that it did not enable Māori to borrow to develop the land. Māori who aspired to become farmers on a larger scale, or to borrow to build houses in the
The ‘Vested Lands’ in Whanganui

Tuhiariki is one of the original Ōhotu papakāinga alongside the Mangawhero River. Located on section 5, block xv, Mākōtuku survey district, it has long been the home of the Te Wiki whānau.

By 1920, Tuhiariki was divided into lot 1, of 129 acres, and lot 2, of 171 acres. Ngāniho Nōpera and others lived on lot 1 under an occupation licence for 26 years from November 1911, paying £4 16s 9d a year. Whāterangi Kiria and others (including Eruini and Te Maire Te Wiki) lived on lot 2, also under an occupation licence for 26 years from 19 November 1911, at £6 8s 3d a year. In the early 1930s, the land was partitioned into approximately nine lots and the licences were replaced with leases. In 1939, Köpeke Te Wiki was named on a lessee list as leasing lots 1, 3, and 4 (146 acres); Mine Te Wiki (daughter of Eruini Te Wiki) and Rangi Hāwira leased lot 9 (73 acres); and Mine Te Wiki alone leased lot 5 (68 acres).

Tūrama Hāwira told the Tribunal about the lives of his grandparents Rangi Hāwira and Mine Te Wiki, who cleared the bush and created the farm, had 22 children, and survived the Depression. Mr Hāwira described the close connection of the whānau to the land; the ancient walking tracks; the many wāhi tapu in the area; and the customary food they gathered, including a special species of tuna in the Ararawa Stream that ‘provides the aspect’ of mana kai for the whānau.

In the 1960s, Thomas Hāwira, one of Mine’s children, attended the owners’ meetings about amalgamation, seconding the proposal to amalgamate and speaking strongly in favour of it. On the other hand, in the late 1960s, Mine Te Wiki opposed the formation of the Ātihau–Whanganui Incorporation as ‘there was no guarantee that our rights to remain on the land would be maintained’. Rangi Mete Kingi, on behalf of the Māori Trustee, negotiated with Mine, who finally acquiesced when Mete Kingi promised that, ‘as long as a descendant of hers remained on the land, her lease would continue to be renewed’. Tom Hāwira took over the farm in the 1970s. Also an Anglican minister, he successfully farmed 700 acres of vested land for the next 35 years. The incorporation, however, refused to allow him to construct a whānau marae on the land. The whānau eventually bought a different site for the marae on land that had been a public works taking from the Ōruakūkuru papakāinga.

In 2008, a rental increase of some 400 per cent on one of the leased blocks, combined with recession and drought, led to the family surrendering most of the land. The land they still occupy covers 83 acres, which includes the original homestead area. However, they sought ‘written assurance that [their] future on the land is secured, as promised by Rangi Metekingi’, and the response did not reassure them.

For the Hāwira whānau, the incorporation regime has led to a feeling of insecurity and disempowerment, and Mr Hāwira feared that his generation would be the last to live on the lands of his tūpuna.
In 1904, some Māori owners proposed that, in order for them to be able to lease sections, either certain sections should be held back from public tender so that they could lease them without competition; or the land council could offset any rent coming to them as owners against the application fees and advance rents for the sections they wanted to lease. Carroll had earlier discussed the latter option with owners, saying it could ‘be easily done’. However, the land council would not go along with either of the owners’ proposals. The council took the view that its obligations to the owners as a whole meant that it had to seek the best price for the sections, which could only be obtained through proper public tender. This meant it should not hold sections back from the tender process. Neither did it want to offset rent, because the amount that owners could derive as rents was unknown until the land was leased.314

By early 1905, there were a number of applications from Māori for sections, which the land council discussed at its April meeting. Owners and Māori land council members Nikitini and Hipango referred to an agreement that Carroll made with Māori to the effect that Māori applicants for sections could have their first year’s rent remitted. The council, after discussion in committee, refused to do this, and required owners to submit their applications with the usual payments. There was no further discussion of the matter.315

However, the council did then hold back the 11 sections in question from public competition for one year until April 1906, to allow Māori time to complete their applications and lease at the upset rentals. The Wanganui Chronicle of...
accordance with its guarantees in article 2. Any delegation should in any event have been on terms that required the delegate to comply with article 2.

Jenny Tamakehu drew to our attention the contrast between how long it took to compulsorily acquire Māori land for the worker’s dwelling and how long it took to have an adjacent marae designated a Māori Reservation. There was a bare six weeks between the land court hearing on the worker’s dwelling block and the Gazette notice of its taking, whereas it took 16 years to confirm Matahiwi Marae as a Māori Reservation.7

Ms Tamakehu told us that, even after the land was designated as a Māori Reservation, in 2009 the rates on the land were $613.20, and arrears of more than $26,000 had built up. Rates were based on a land value of $65,000 and a capital value of $300,000.8 Ms Tamakehu asked how there could be such a valuation on land that could never be sold, and she described the rating system as ‘just another tax on our people. It is not fair, [it is] unreasonable and ridiculous’.9 Ms Tamakehu’s evidence was that a trustee had taken steps to seek a rates remission, but the outcome was unknown at the time of our hearings.

Apparently, this land exceeds the size of Māori Reservations that are automatically exempted from rates. Ms Tamakehu told us that the Reservation sometimes also generates a small amount of income by way of koha (donation) to pay for electricity and the upkeep of the marae. We doubt, though, that such income would disqualify it from having a rates exemption.10

Because so little of the papakāinga sections of the vested lands remain for tangata whenua, and rates are a significant burden where communal land like this is concerned, we recommend that the Crown take steps to assist the owners to clear the rates arrears and to find a longterm solution to its rates obligations. The current situation is obviously affecting their ability as tangata whenua to use, occupy, and enjoy their Māori Reservation and marae.

16 May that year gave a list of lessees for the Ōhotu block, which included 8,511 acres on general lease to Māori.116 However, by August 1906, seven of the lease applications had still not been completed. The Aotea land board deemed the applications to have lapsed and resolved to advertise the sections to the general public.317 In 1907, Eruera Te Kahu inquired about taking up several of these sections for him and his children, with Te Kahu to pay the rent, but the land board leased the sections to settlers.318

(3) Tiemi Te Wiki seeks the right to farm land
One of those keen to develop a larger farm was Tiemi Te Wiki (brother of Eruini and Te Maire Te Wiki, who farmed the Tuhiariki papakāinga). As we noted above, in 1902, Te Wiki had originally wanted to keep much of the land aside from vesting in order for Māori to develop it. His case illustrates how the system was not geared towards encouraging the Māori beneficial owners to farm the land.

In May and again in July 1903, Tiemi Te Wiki wrote to Carroll that he had cleared about 40 acres and had a house on section 3, block xiv, Mākōtuku survey district, which he wanted set aside as a papakāinga. He also wanted to lease the remaining land in the section, about 1,270 acres. Carroll sent his letter to the Aotea land council. But the council had recently advertised the land for lease, with the lessee to pay compensation for Te Wiki’s improvements. The president of the land council believed Te Wiki should put in a tender for the land.319

Although it did not receive any immediate offers for the section, the land council still did not consent to reserving part of it as a papakāinga. In the meantime, Te Wiki cleared more land. Johnson, the new Aotea land council president, rejected advice from Crown official Sheridan that Te Wiki be allowed to occupy a part of the block, on the grounds that it would take away the best site for a homestead. The land council arranged a revaluation of Te Wiki’s improvements and readvertised the block.320 It is not clear if Te Wiki put in a tender, but section 3 was
leased out in 1905. Te Wiki applied in the same year to lease another section, on block VII, Tauakirā survey district, situated next to the Matahiwi township. However, the whole of block VII (1,500 acres) was subsequently reserved as a papakāinga for a number of other owners. Te Wiki did continue to farm in the area, but the evidence presented to us did not reveal exactly where. On his death in 1918, the *Wanganui Chronicle* published this obituary:

In his earlier days Tiemi te Wiki was well known to Europeans and Maoris alike as a hard-working and progressive farmer, his efforts centring in the district round Kakatahi and Parapara. He faced difficulties in the way of practically no roads, and after blazing a trail, felled and grassed large areas, which added greatly to their value. He continued his efforts until advancing years made it impossible to continue at his task further, and after shifting to Wanganui he undertook work in the way of Native agency. . . . The deceased was one of the well-known chiefs of the Parapara and Kakatahi district.

18.6.8 Why Māori did not continue with general leases

The Māori owners who originally held farm sections on general lease did not continue with these leases for very long. Although the reasons for this are not clear in most cases, it seems likely that the financial burden of leasing was a major cause.

Tana Te Koeti made the earliest application for a lease. His tender for section 11, block XV, Mākōtuku survey district, was accepted in December 1903. The land council cancelled the lease in January 1906 for non-payment of rent.

At least two lessees, Te Whatahoro Jury and his wife Mata Te Rautahi, immediately took out mortgages on their leases of sections 1 and 4 in the Tauakirā survey district. They were unable to meet the repayments, and the mortgagees subsequently demanded the sale of the leases. In 1908 and 1909, the Aotea land board refused to allow the Māori lessees to transfer the leases, saying that the sections were ‘specially set apart for Māori occupation for permanent kainga.’ This is the first mention in the Aotea board’s records that it viewed this land leased by Māori on general lease in the same light as the papakāinga sections. Jury took a case to the Supreme Court, *Jury v the United Farmers Co-operative*, complaining that the mortgage he held was invalid as he had not understood its terms. The court found for United Farmers, and the leases were subsequently transferred. Horan found no evidence of any further attempts by the land board to prevent the transfer of leases out of Māori hands. By 1920, all the original general leases to Māori of farm sections had been transferred to Europeans.

18.6.9 Some leases continue in Māori ownership

Māori also held formal leases in Matahiwi township. We do not know the subsequent history of each individual lease but as we have noted, there was a Māori community in Matahiwi until the 1960s.

Claimants also drew our attention to one instance where a farm lease was taken up later in the history of the vested land. In 1940, Pōkairangi Ranginui leased 1,300 acres, section 1, block XI, Tauakirā survey district. The Ranginui whānau were well-established in the area, and Pōkairangi held lot 22 (180 acres) on the Pukehinau papakāinga land from the beginning of the vested lands scheme. Whānau also occupied land in Matahiwi township. Section 1 was vacant after the first lessee failed to repay his mortgage and the lease terminated, and then a second lessee also abandoned the land. Although Ranginui inquired about leasing the land, it was advertised for general lease. Ranginui successfully tendered for it. He later transferred the lease to his son Tūroa. A new lease term ran until 1999.

This was one rare example of Māori succeeding on leased vested land. Claimant evidence suggested that a descendant might still lease the land from Ātihau Incorporation. However, while other whānau members are shareholders in the incorporation, they feel disenfranchised, and are aggrieved that the vested land system did not protect their occupation of the land.

18.6.10 Conclusions on Māori occupation of vested land

It is hard to be categorical about the extent to which the Crown was responsible for the ultimate disappearance
of whānau Māori from vested lands. There was a miscel-
lany of factors that contributed to the decline in Māori occupation, some of them to do with generally poor pol-
icy and administration, but as the twentieth century pro-
gressed there was the unstoppable local and global trend of urbanisation. Thus, although it is clear that there were deficiencies in the Crown’s approach to securing the position of Māori as occupiers of their land, ultimately the lure of towns would probably have meant that few would continue to live in isolated rural locations. In the twen-
tieth century, urban drift was a seemingly unstoppable phenomenon all over the world. In the New Zealand situation, it is impossible to know in any particular situations whether ‘push’ or ‘pull’ factors were dominant.

(1) Owners involved in set-up of papakāinga
When the papakāinga were established, the Aotea District Māori Land Council did work closely with owners and, apart from how long it took, owners seem to have been generally satisfied. Later reports revealed that not all sections were well suited to occupation, with problems like poor sun, but owners might have chosen them for other reasons.

(2) Legal status and tenure problematical
However, the legal status of the papakāinga was ill-
defined. They were not created by order in council from the Governor but by the declarations of the district Māori land councils, and their existence was recorded only in papakāinga certificates and the records of the council. Tenure was also problematical. Occupation licences were not permanent: the 36-year limit left open the question of whether descendants would be able to occupy the land. Neither could occupiers borrow money on the land, and their improvements were not protected. This was intended to protect owners’ occupation against mortgagee sales, but it also stymied development.

(3) Issue of permanent occupation rights left unaddressed
Then, under the legislation of 1907 and 1909, the Crown replaced the idea of inalienable papakāinga with declaring limited areas as native reservations, and leasing areas of farmland exclusively to Māori on favourable terms. However, the potential of this legislation was not fully realised on the vested land. The Aotea land board carried on issuing occupation licences. While most of the licences were later converted to leases, the terms offered seem to have been fairly standard, rather than specifically designed to encourage Māori owners to remain on the land. By 1939, there were a number of part XVI leases to Māori, but the 1954 Act discontinued the provision. Only one formal reservation appears to have been created (Matahiwi marae), leaving the issue of permanent rights to occupation largely unaddressed.

(4) The special character of papakāinga land lost
Once leased out, the authorities no longer recognised the land originally set aside for Māori occupation as having any special status as papakāinga; it became an ordinary part of the vested lands and was later amalgamated into the Ātihau–Whanganui Incorporation with very little dis-
cussion about its fate.

From 1912, the Crown enabled the return of unleased vested land to named Māori owners, as freehold land. While none of the wider community of owners seem to have objected, this did not recognise any Māori interest in retaining the land collectively. Moreover, it left the land vulnerable to sale.

(5) Finally
We cannot escape the conclusion that the Crown did not sufficiently consider how Māori communities would remain viable on the vested land in the longer term. This would have required greater attention to encouraging the development of Māori farming on the vested land from the beginning – as Tiemi Te Wiki, for instance, strongly advocated – and stronger community title provisions and protections. However, the focus of the Crown, and sub-
sequently the Aotea Māori Land Council and Board, was on developing the land and generating income for owners through leasing it out to settlers.

Although programmes could have been devised that
would have made better provision for Māori farmers to succeed on the ancestral land they vested in land councils, we doubt whether government policy could ever have stood in the way of urbanisation so as to keep Māori communities viable in isolated rural locations. However, if the land had retained its ‘papakāinga’ designation, it would have been available for Māori to return to today, when transport has improved, and the Māori renaissance has inspired in some a desire to rediscover and rekindle their Māori roots and tikanga.

18.7 Findings

The Crown initiated the vested lands scheme with good intentions. It was to be a way of providing land for settlers to use and raising the country’s agricultural production, while also keeping Māori land in Māori ownership – with the definite prospect of its coming back to them in a developed state so they could farm it themselves in the future. In the interim, the scheme would generate income for Māori owners.

Māori landowners in Whanganui vested more land than elsewhere, so that many Whanganui Māori stood to be affected by the success or failure of the scheme.

There were a number of ways in which the scheme could have been better thought out and executed, but in our view its Achilles heel was how it compensated lessees for improvements. As a result, the Crown’s commitment to the land coming back to Māori was in jeopardy almost immediately.

When it proved difficult to lease the land, the Crown favoured offering perpetual leases so that they would be more attractive to lessees. The Government was highly invested in its vested lands scheme succeeding, and Carroll tried hard to influence the land council to go down the perpetual leases track. He pulled back once Māori opposition was clear, but the land council seems to have been pressured into an ill-thought-out alternative: compensating lessees for all improvements. No cap on expenditure and no requirement for ‘improvements’ to be vetted for their appropriateness to the land in question were obvious flaws. At the same time came the fall in unimproved land values, on which rents were based. It is true that this fall stemmed in part from outside factors such as the Depression, which could not have been foreseen. However, the Crown could have done more to devise fairer methods of valuation. This disastrous combination saw the liability for improvements balloon, and rents from which to pay for it dwindle. Even if the Crown had insisted on sinking funds from the start (as Māori suggested on multiple occasions), the chances of Māori receiving their land back debt-free and developed within even two lease terms were slim. Nevertheless, the Crown demonstrated a woeful lack of leadership in managing the issue, as the Native Minister more or less admitted in 1941, when he said that one alternative he was considering was to ‘let things slide, as they do at present’. Letting things slide is not an option for a Crown obliged by its Treaty obligations to actively protect Māori interests and to practise good government.

In this chapter:

> We make no finding of Treaty breach in relation to the initial vesting of the Whanganui lands. Aspects of the process could have been better, but its introduction was not rushed, and owners had time to debate and negotiate.

> In relation to Tauakirā, the vesting was in order to protect the land from sale for debts and seems to have been with the owners’ agreement. We make no finding of Treaty breach except in relation to Tauakirā 2M. This vesting was against owners’ wishes, and it took far too long for the Crown to return the land. It was a weakness of the regime that vested land could not be returned until the amendment Act of 1912 made it possible.

> When the vested lands were leased initially, the Crown breached its duty of active protection by prioritising its desire for haste over assisting with roading, when provision of basic roading and access was recognised as a necessary ingredient for the scheme’s success.

> Provision for papakāinga in the 1900 Act and subsequent legislation was inadequate: they were not defined legally in a way that made them inviolate; and there
was no scheme for occupation that was practical and durable. This breached te tino rangatiratanga of tangata whenua, and the principle of active protection. Although urbanisation would inevitably have resulted in depopulation of the vested lands whatever policy the Crown had implemented, if there had been permanent designation of the land as papakāinga, there would have been means for tangata whenua to revive those places today, when better transport and cultural regeneration have made returning to rural tribal roots practicable and desirable.

The Crown breached its obligation to act towards its Treaty partner with the utmost good faith when, in this early period, it pressured owners to accept perpetually renewable leases, when most had specifically rejected them in their deeds of vesting, and the Crown had assured them that they would resume possession and ownership of the land.

When roading and surveying finally did get under way, the Crown acted responsibly by setting loan repayment terms that were reasonable.

The Crown did not impose rules to manage (1) for what improvements, and for what level of expenditure on improvements, owners were obliged to compensate lessees; or (2) the implementation from the start of a sinking fund to cover the cost. As the value of improvements soared, the problem escalated and threatened the ability of Whanganui Māori to hold on to their land. Not until the 1950s did the Crown do anything practical to address the deteriorating situation. These failures were a breach of its duty of active protection.

We make no finding of Treaty breach in regard to timber reserves on the vested land. Legislation provided for reserves to be made and the Crown did not discourage the Aotea Māori land council or board from doing so. Nor do we hold the Crown responsible for the failure to derive significant income from milled timber on leased land.

The Crown breached the principles of partnership and active protection when, after it brought in Māori land boards with greatly reduced Māori representation, it did not assume greater responsibility for monitoring outcomes for Māori on their vested lands to ensure that they were as good for them as they practically could be.

The Crown’s purchase of vested lands in Tauakirā breached the duty to act in the utmost good faith, and the principle of active protection. Owners signed deeds of vesting for these lands on the understanding that they were to be retained.

The Crown cannot be held responsible, however, for the land board’s mistake in issuing a perpetually renewable lease for Ōtiranui. The subsequent failure of the Crown to investigate potential remedies, while disappointing, was not such as to breach the Treaty.

We disagree with the Crown that it had no obligation to provide finance to meet the compensation-for-improvements liability. We have found the Crown responsible for the inadequacy of policy, legislation, and administration that led to the improvements debacle. The Crown should have remedied the situation in the 1950s and 1960s by providing sufficient finance – at the very least through loans on very favourable terms. It did contribute funding, but not enough, and not soon enough, to meet its obligations when the problem was substantially of its own making.

It is not clear that there were compelling economic arguments against incorporation. However, after much careful consideration of their needs, Whanganui Māori requested a statutory land trust to manage their vested lands, as being both operationally efficient and culturally appropriate. The Crown refused even to countenance the idea and instead legislated for incorporations. While the Crown’s actions in this regard insufficiently reflected its duty to heed the preferences of its Treaty partner, it is not clear that its failure in this regard was necessarily prejudicial to Whanganui Māori. That is because another element in the incorporation of the vested lands was the owners’ rejection of the section 438 trust option, even after the Māori Land Court judge urged them to consider it. Because incorporation was not the only option available to owners of the vested lands, and they – or at least, their leaders – chose it in
preference to a section 438 trust which might have been a better answer to their cultural preferences, we find no Treaty breach on the part of the Crown.

To sum up, at the heart of the Whanganui vested lands issue lies the ability of Whanganui Māori to retain and derive benefit from their land. The Crown’s poor performance as regards compensation for improvements resulted in very extended leases and a huge financial burden. Because Whanganui Māori embraced the scheme and vested a lot of land, its failure to meet expectations affected many. Although the 1954 Act reduced liability for compensation in percentage terms, and the Māori Trustee assisted with loans, Māori have not derived much financial benefit. A considerable proportion of the Ātihau–Whanganui Incorporation’s income each year was perforce set aside to finance resumption, and shareholders’ dividends suffered accordingly. The Crown finally made grants to the Ātihau–Whanganui Incorporation between 2006 and 2008 – more than a century after the inception of the vested lands scheme. The long delay in responding to the financial problems that the vested lands scheme generated meant that the grants could only address some of the prejudice that the lands’ owners experienced over multiple generations. While we are not in a position to put a figure on the financial burden, the evidence we received was that by 2003 the incorporation had spent $8.46 million to resume land. The opportunity cost would doubtless be greater.

But of course the prejudice was not limited to financial loss. The way the vested lands scheme unravelled meant that the whānau of the original owners have had little access to their whenua for a very long time. The challenge for the incorporation of achieving its financial goals, but also meeting shareholders’ cultural needs and aspirations as regards their ancestral land, is considerable. We reiterate Ms Tinirau’s comment that ‘the lands held by the Incorporations are not held tribally nor do the shareholders comprise all tribal members’ – and yet, many see this land as a tribal and cultural asset. We endorse Mr Rāpana’s suggestion that it might now be time for Whanganui Māori and the Crown to sit down together, re-examine models of land ownership and management, and see if it is possible to come up with something novel to enable a landholding entity to succeed in all the ways tangata whenua desire.

18.8 Recommendations
We recommend that the Crown takes into account in settlement negotiations with Whanganui Māori the Treaty breaches in, and the serious consequences that flowed from, the vested land debacle.

We recommend that, if the claimant community of Whanganui supports such a move, the Crown contributes resources to the development of alternative models to incorporation as a repository for Whanganui Māori land interests. Although the incorporation model has succeeded in keeping Māori land in a corpus, and has become financially successful, its structure means that it does not necessarily meet the raft of spiritual and emotional needs that some have in relation to their whenua. It may be that aspirations for papakāinga could be more easily accommodated in a different kind of structure.

We can make no recommendations concerning papakāinga land now owned by the Ātihau–Whanganui Incorporation, because under our legislation that is privately owned land.

Notes
1. These figures do not include the land vested compulsorily under the Maori Land Settlement Act Amendment Act 1906. We deal with that land in chapter 19. It is in fact difficult to determine exactly how much land was vested as the evidence gave figures ranging from some 107,500 to 115,500 acres. Horan’s evidence, relying on the figures from an AJHR 1911 report, gives the larger acreage. However, once surveyed, the amount of land was probably less than 115,000 acres: see doc A101 (Horan), pp 21–22, 37; Douglas J Dalglish, H M Christie, and Richard Ormsby, ‘Report of Royal Commission Appointed to Inquire into and Report upon Matters and Questions Relating to Certain Leases of Maori Lands Vested in Maori Land Board’, AJHR, 1951, G-5, p 20; Aotea Māori Land Court, ownership schedules, ‘Ātihau–Whanganui Vested Land – Combined Schedule of Areas, Department of Lands and Survey’ 1 May 1967.
2. Figures derived from document A101 (Horan), pp 96–97, 104–105
4. Submission 3.3.53, pp 4, 42, 47, 50–51
5. Submission 3.3.53, pp 53–61; doc G14 (Williams), pp 17–20, 24; doc G17 (Sun), pp 4, 5
6. Claim 1.2.18(b), pp 7–9; submission 3.3.53, p 98
7. Submission 3.3.53, pp 4–5, 29–30, 35–36, 38, 92, 94–95
8. Submission 3.3.53, pp 92, 97, 103; submission 3.3.61, pp 8, 31
9. Claim 1.2.18(b), p 10
10. Submission 3.3.117, pp 8–9
11. Ibid, pp 9, 46, 81
13. Ibid, pp 46–48
14. Ibid, pp 11–12, 39, 43
15. Ibid, pp 28–29, 39
17. Document 101(a) (Horan supporting documents), p 11
18. Document A51 (Walzl), p 54. The Māori population at the time for Whanganui and Waitōtara Counties was about 2,200 people.
22. Tiemi Te Wiki, letter to the editor, 10 June 1902, Te Puke ki Hikurangi, 15 June 1902, vol 4, no 23, p 3; Ārama Tinirau, letter to editor, not dated, Te Puke ki Hikurangi, 15 October 1902, vol 5, no 2, p 4
23. Document A51(f) (Walzl supporting documents), pp 2295; doc A51 (Walzl), pp 9, 250. Ōhoto 1 vesting was calculated by subtracting the amount known to have been vested from other Ōhoto blocks (17,111 acres) by October 1903, from the total amount of the Ōhoto blocks vested to that date (63,644 acres).
24. Document A51 (Walzl), p 98; doc A51(e) (Walzl supporting documents), pp 1744–1745
25. Document A101 (Horan), pp 57, 89
26. ‘Maori Land Councils: Ōhoto Block’, Maori Record, August 1905, pp 1–2
27. Document A37 (Berghan), pp 348, 476, 539, 549, 1025; doc A51 (Walzl), p 64
28. Document A51 (Walzl), p 64
29. Document A101 (Horan), pp 16–19
30. Ibid, p 18
31. Transcript 4.1.15, p 19
34. Document A101(Horan), pp 28–9; A51 (Walzl), pp 100–102
35. Document A101 (Horan), p 22
36. ‘Minutes of Evidence Taken in Connection with Petitions Relating to the Proposed Native Lands Settlement and Administration Bill’, AJHR, 1899, 1–3A, p 25
38. Document A101 (Horan), p 54, n 201
39. Ibid, p 68; doc A51(f) (Walzl supporting documents), p 2191
41. Ibid, p 18
42. Document A51(f) (Walzl supporting documents), p 1852
43. Document A101 (Horan), p 47
44. Document A51(f) (Walzl supporting documents), p 2295
45. Document A101 (Horan), pp 47, 87–92
46. ‘Regulations under the Maori Lands Administration Act, 1900’, 26 December 1900, New Zealand Gazette, 1901, no 1, pp 1–12; Amending Regulations under “the Maori Lands Administration Act, 1900’”, 20 April 1903, New Zealand Gazette, 1903, no 30, p 1017; Amending Regulations under “the Maori Lands Administration Act, 1900’”, 24 August 1903, New Zealand Gazette, 1903, no 67, pp 1867–1868
47. ‘Regulations under “The Maori Lands Administration Act, 1900”, 26 December 1900, New Zealand Gazette, 1901, no 1, pp 1–12
48. Document A51(f) (Walzl supporting documents), pp 2252, 2254
49. Document A101 (Horan), pp 47–48, 54; doc A51 (Walzl), pp 70–72
50. Document A51 (Walzl), pp 70–72
51. ‘Regulations under “The Maori Lands Administration Act, 1900”, 26 December 1900, New Zealand Gazette, 1901, no 1, p 5
52. Document A51(f) (Walzl supporting documents), pp 2294–2295
54. Document A101(r) (Horan supporting documents), p 22
55. Document A51(f) (Walzl supporting documents), pp 2277–2297
56. Document A51(e) (Walzl supporting documents), pp 1723–1724
57. Document A51(f) (Walzl supporting documents), pp 2246–2247
58. Ibid, p 2239
59. Ibid, p 2286
60. Document A101(r) (Horan supporting documents), pp 23, 26
61. Document A101 (Horan), p 51
62. Document A51(f) (Walzl supporting documents), pp 2279, 2298
63. Document A101 (Horan), pp 57–58
64. Document A51(f) (Walzl supporting documents), p 2183
65. Document A101(r) (Horan supporting documents), pp 26–27
66. Ibid, pp 33–34
67. Ibid, p 29
68. Ibid, pp 31–32
69. Document A51(f) (Walzl supporting documents), p 2184; doc A101(r) (Horan supporting documents), pp 33–34
70. Document A101(r) (Horan supporting documents), pp 33–34; doc A51(f) (Walzl supporting documents), pp 2180–2186
72. Document A51(f) (Walzl supporting documents), pp 2213, 2215
73. Ibid, pp 2180, 2208
74. Document A51 (Walzl), p 91; doc A101 (Horan), p 63
75. Document A51 (Walzl), p 91; doc A101 (Horan), pp 64–65
76. Document A51 (Walzl), p 92; doc A51(f) (Walzl supporting documents), p 2180
77. Document A101(r) (Horan supporting documents), pp 35–36
78. Ibid, p 37
79. Document A101 (Horan), pp 70–71
80. See doc A101(c) (Horan supporting documents), p 323, where Fisher wrongly told the Native Affairs Committee in 1911 that the block was leased on a perpetual right of renewal, except that at the end of the second term (48 years from date of original lease) the Native owners have the option of paying up the value of the improvements in the whole block; then it would be reconveyed to them: therefore the lessee will get the whole of his improvements, failing the payment at that period, the right of renewal exists in perpetuity.'
81. Document A101 (Horan), pp 64, 67
83. Document A51(e) (Walzl supporting documents), p 1745
84. Transcript 4.1.15, p 22
85. 'Report and Evidence of the Joint Committee upon the West Coast Settlement Reserves,' 4 September 1890, AJHR, 1890, 1–12, pp 55–61, 101–103
86. Document A101 (Horan), pp 52–53; doc A101(r) (Horan supporting documents), pp 35–36
87. 'Report and Evidence of the Joint Committee upon the West Coast Settlement Reserves,' 4 September 1890, AJHR, 1890, 1–12, pp i–iii
88. Document A101 (Horan), p 53
89. The Ohotu Block. Important Meeting of Natives at Karatia,' Wanganui Herald, 17 December 1904, p 6; see also doc A101 (Horan), p 90; doc A51(f) (Walzl supporting documents), p 2189. Rangi Pōkiha later recalled that 'Hikurangi pah was quite an important village. Many land questions were dealt [with] and discussed there particularly the leasing out of the Ohotu Block': see doc A129(a) (Young supporting documents), sec 4, M6.
90. 'The Ohotu Block. Important Meeting of Natives at Karatia,' Wanganui Herald, 17 December 1904, p 6. This is undoubtedly the meeting referred to in a letter of 1912 as having been at 'Kahutara' two years after the lands were vested: see doc A51(f) (Walzl supporting documents), p 2068.
92. Document A51(e) (Walzl supporting documents), p 1745
93. Document A101(l) (Horan supporting documents), p 44
94. 'Report of the Native Affairs Committee: Minutes of Evidence,' 13 September 1905, AJHR, 1905, 1–38, p 6
95. Submission 3.3.53, pp 40–50
96. 'Regulations under the Maori Lands Administration Act, 1900,' 26 December 1900, New Zealand Gazette, 1901, no 1, p 6
97. Document A101 (Horan), pp 76–77
98. Ibid
100. Ibid, p 78
101. Ibid
102. Ibid, pp 79–80
103. Document A51(f) (Walzl supporting documents), p 2363
104. Ibid, pp 2363–2364
105. Ibid, pp 2393–2394
106. Document A101(k) (Horan supporting documents), p 52
107. Ibid
108. Document A51(f) (Walzl supporting documents), pp 2363–2364
110. Document A101 (Horan), pp 81–82
111. Submission 3.3.53, p 49
112. Document A101(k) (Horan supporting documents), p 52; doc A101(l) (Horan supporting documents), p 133
113. Document A101 (Horan), p 47
114. Document A101 (Horan), pp 73–76
115. Document A39 (Boulton), pp 112–115
116. Ibid
117. Document A101 (Horan), pp 92–93; doc N24(a) (Tamakehu supporting documents), unpaginated
118. Sir Robert Stout and Āpirana Ngata, 'Interim Report on Native Lands in the Whanganui District,' AJHR, 1907, G-1A, p 12; doc A51 (Walzl), p 252; doc A62(a) (Bassett and Kay supporting documents), p 11. We have excluded Rākautaua 2B and Wharetoto, which are not in the inquiry district, from these figures.
119. Document A51 (Walzl), pp 264–281
120. Ibid, p 266
121. Native Land Amendment Act 1913, s 109 (12)
122. Document A51(a) (Walzl supporting documents), pp 52–53
123. Document A166 (Loveridge), pp 127–128
124. Document A51 (Walzl), p 214
125. Ibid, pp 284–285
126. Ibid, pp 361, 365
127. Document A101 (Horan), pp 37–38; for acreage, see doc A101(r) (Horan supporting documents), pp 3a, 6, 7.
128. Document A101 (Horan), pp 22, 34
129. Document A66 (Mitchell and Innes), pp 183–184; doc A37 (Berghan), pp 846–847; doc A62 (Bassett and Kay), p 118; see also doc A66(f) (Mitchell and Innes supporting documents), p 6, where CT 8A/5 are Rētāruke lands.
130. Document A54 (Innes), pp 146–148; doc 54(v) (Innes), pp 2–3; doc A62 (Bassett and Kay), pp 10, 61
131. Document A101 (Horan), pp 21, 75; doc A62 (Bassett and Kay), p 61
132. Document A62 (Bassett and Kay), pp 61, 118; doc A51 (Walzl), p 410
133. Native Land Settlement Act 1907, ss 28–29
134. Native Land Act 1909, ss 262–263
135. Native Land Act 1909, s 263(4). This regime was carried forward into subsequent legislation, although the length of time a receiver could lease the land was extended to 21 years in 1927.
136. 'Regulations under the Maori Lands Administration Act, 1900,' 26 December 1900, New Zealand Gazette, 1901, no 1, p 5
138. Native Land Act 1909, s 263(4)
139. Ibid, s 265(1)
140. Document A51 (Walzl), p 274
141. Dalglish, Christie, and Ormsby, 'Report of Royal Commission' 1951, p 23
142. Document A51 (Walzl), pp 280–283
144. Maori Land Claims Adjustment and Laws Amendment Act 1907, s 30(1)  ; Native Land Act 1909, s 263(5)  ; Native Land Act 1931, s 327(5)
145. Document A101(s) (Horan supporting documents), p 297
146. Ibid, p 325
147. Stout and Ngata 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 12  ; doc A51 (Walzl), p 252  ; Dalglish, Christie, and Ormsby, 'Report of Royal Commission' AJHR, 1951, G-5, p 20. We have excluded Rākautaua 2B and Wharetoto, which are not in the inquiry district, from these figures.
148. Document A101(c) (Horan supporting documents), p 62  ; doc A51 (Walzl), p 373
149. Document A51 (Walzl), p 376
150. Document A51(a) (Walzl supporting documents), p 74
151. 'Regulations under the Maori Lands Administration Act, 1900', 26 December 1900, *New Zealand Gazette*, 1901, no 1, p 5  ; doc A51 (Walzl), p 376
152. 'Regulations Relating to Maori Land Boards under the Native Land Act, 1909', 13 June 1910, *New Zealand Gazette*, 1910, no 58, p 1730
156. *Cox v Public Trustee* [1918] NZLR 95 at 99
158. Document A101(d) (Horan supporting documents), pp 96–99
159. Document A62(a) (Bassett and Kay supporting documents) pp 17–20
160. Document A101(s) (Horan supporting documents), p 289
161. Ibid, p 290
162. Document A51(a) (Walzl supporting documents), p 188
163. Document A62(a) (Bassett and Kay supporting documents), pp 17–20
164. Document A51(a) (Walzl supporting documents), p 157
165. Claim 1.2.18(b), pp 7–8; claim 1.5.5, pp 390–391
166. National Expenditure Adjustment Act 1932, ss 27, 32(1), 38(1)
167. Mortgagors and Lessees Rehabilitation Act 1936, s 2
168. Ibid, s 39(3)
169. Document A101 (Horan), p 12
171. Document A51(a) (Walzl supporting documents), p 193; see also doc A61 (Rose), p 439.
172. Document A101 (Horan), p 13
174. Document A101(s) (Horan supporting documents), pp 329, 431, 432
175. Ibid, pp 297–298 (Aotea), 311 (Ikaroa), 313–314 (Tairāwhiti), 325–326 (Waikato)
176. Ibid, p 313
177. Ibid, pp 289–292
178. Ibid, p 313
179. Ibid, p 298
180. Ibid, p 290
181. Ibid, p 193
182. Ibid
183. Ibid
184. Ibid
185. Ibid, p 257
186. Ibid, p 252
187. Document A51(a) (Walzl supporting documents), pp 177, 180
188. Document A101(s) (Horan supporting documents), p 187
189. Ibid, p 118
190. Ibid, pp 127–128
191. Ibid, p 128
192. Ibid, p 103
193. Ibid, p 102
194. Document A51(a) (Walzl supporting documents), p 227
195. Ibid, p 210
196. Ibid, p 194
197. Document A51 (Walzl), p 391
198. Document A51(a) (Walzl supporting documents), pp 175–176; doc A51 (Walzl), p 534; doc A62 (Bassett and Kay), p 21
199. Document A51 (Walzl), p 406
200. Ibid, p 408
203. Document A62(a) (Bassett and Kay supporting documents), pp 20, 30
204. Dalglish, Christie, and Ormsby, 'Report of Royal Commission', AJHR, 1951, G-5, p 52
205. Document A51 (Walzl), p 377
207. Ibid, pp 82–84

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211. Document A62(a) (Bassett and Kay supporting documents), p 193
212. Ibid, p 244
213. Document A62 (Bassett and Kay), p 45; doc A62(a) (Bassett and Kay supporting documents), p 247
214. Document A62(a) (Bassett and Kay supporting documents), pp 252, 267
216. Document A62 (Bassett and Kay), pp 47–49
217. Ibid, p 49
218. Ibid, pp 45, 50
219. Ibid, pp 57–60
220. Ibid, pp 49, 59
221. Maori Vested Lands Administration Act 1954, s 56(3)
223. Native Land Act 1909, s 263
224. Document A62 (Bassett and Kay), pp 67–69
225. Ibid, pp 169–170
227. Document A62(a) (Bassett and Kay supporting documents), pp 238, 245
228. Ibid, p 624
229. Ibid, p 352
231. Ibid
232. Ibid, pp 78–79, 89–90
233. Ibid, pp 91–93
234. Ibid, p 90
235. Ibid, p 112
236. Ibid, p 170
237. Memorandum 3.2.305; memo 3.2.377
238. Document A62 (Bassett and Kay), pp 103–112
239. Ibid, p 108
243. Ibid, pp 118–119
244. Ibid
245. Document A62(a) (Bassett and Kay supporting documents), p 495
246. Ibid
247. Ibid, p 484
249. Submission 3.3.61, pp 6–8
250. Document A62(a) (Bassett and Kay supporting documents), pp 130–133
251. Document A62 (Bassett and Kay), p 129
252. Document A62(a) (Bassett and Kay supporting documents), pp 141–142
253. Ibid, p 165
255. Ibid, pp 127–130
256. Maori Affairs Amendment Act 1967, ss 33–35
257. Ibid, ss 40–41
258. Document A62 (Bassett and Kay), p 135; doc A62(a) (Bassett and Kay supporting documents), pp 136–137
259. Document A62(a) (Bassett and Kay supporting documents), p 136
260. Maori Affairs Act 1953, s 315
261. Ibid, s 438(1)
262. Document A62(a) (Bassett and Kay supporting documents), p 136
263. Ibid, p 143
264. Ibid, pp 140, 143
266. Document A62 (Bassett and Kay), pp 137–140, 145–146; doc A62(a) (Bassett and Kay supporting documents), pp 57–58
267. Document A168 (Tinirau), p 75
268. Document 1.8 (Tinirau), p 28
269. Document 1.11 (Hāwira), pp 27–28
270. Document F2 (Rāpana), p 8
271. Figure on numbers of owners collated from doc A101 (Horan), pp 91–92.
274. Document A101 (Horan), p 18
275. Richard Seddon, 12 October 1900, NZPD, vol 115, p 168
276. Document A101 (Horan), pp 87–89
277. Ibid, pp 90, 104–105. Horan’s evidence is that in 1905 the Aotea land council intended to set aside another 1,400 acres, section 2, block VII, Tauakirā survey district (adjacent to section 3) for Māori occupation, but by 1906 had leased the land to the farmer George Bartram. There are no records to explain why this happened.
278. Document A101(r) (Horan supporting documents), pp 26, 31; doc A101 (Horan), p 92
279. Document A101(r) (Horan supporting documents), p 26
280. Document A101 (Horan), p 90; doc A101(r) (Horan supporting documents), p 45
281. Document A101 (Horan), p 90
282. Ibid, p 94
283. Ibid
284. ‘Regulations under “The Maori Lands Administration Act, 1900”’, 26 December 1900, New Zealand Gazette, 1901, no 1, p 7
286. Document A101 (Horan), pp 87, 94, 95
287. Ibid, pp 75, 95; doc N24(a) (Tamakehu supporting documents), p 196; doc A51(a) (Walzl supporting documents), pp 59, 61
THE ‘VESTED LANDS’ IN WHANGANUI

288. Document N24(a) (Tamakehu supporting documents), pp 31–33
289. Native Land Act 1909, ss 293, 301–305. Part xvi lands were those that Stout and Ngata had recommended be reserved for Māori occupation (formerly dealt with under part xi of the Native Land Settlement Act 1907).
290. Document N24(a) (Tamakehu supporting documents), pp 34–35
291. Document A51(a) (Walzl supporting documents), pp 59–61. For the idea of offering some sections on general lease, see doc N24(a) (Tamakehu supporting documents), p 33. For renewal provisions, see Native Land Act 1909, s 303.
292. Document A101(e) (Horan supporting documents), pp 99–117
293. Ibid. In one case for renewal provisions the renewal term appeared to allow the lease to be renewed up to 1967, but this is likely to have been a typographical error: see p 110.
295. Document A101(b) (Horan supporting documents), pp 20–21
296. For instance, see document g14 (Williams) pp 16, 17; doc g17 (Sun), p 3.
297. Document A62(a) (Bassett and Kay supporting documents), p 536
298. Ibid, pp 228–229
299. Document A101 (Horan), p 97; doc A37 (Berghan), p 549; doc A62 (Bassett and Kay), p 116
300. Document A62(a) (Bassett and Kay supporting documents), pp 487, 508, 637; doc A62 (Bassett and Kay), p 106
301. Document B11 (Toura), pp 10–12. In 1939, Rangiiora, Iwirere and Hēnare Te Huna are listed as occupying lots 12, 13 and 21 (63 acres), DP 10245, part section 3, block VII Tauakirā survey district: see doc A101(e) (Horan supporting documents), p 113.
302. Document B11 (Toura), pp 11–12
303. Ibid, pp 10–17
304. Ibid, pp 18–19
305. Under section 18, the Governor could declare land to be taken out of part xv of the 1909 Act (governing vested lands), as long as it was not subject to any charge. On the application of either the Minister, the land board, or any of the owners, the Native Land Court could then determine the owners and make an order revesting the land in them. Section 18 was repealed the following year by section 96(8) of the Native Land Amendment Act 1913. This put the initiative for revesting back with the owners. If the number of owners was 10 or fewer, then a majority of owners who had at least three-quarters of the shares could request revesting in writing. If the number was more than 10 then a resolution of assembled owners could vote to have the land revested. However, section 10 of the Native Land Amendment and Native Land Claims Adjustment Act 1922 (as an alternative to the procedure in the 1913 Act) restored the power of the Governor to make an application to the Native Land Court for a revesting order. The court was also empowered to partition the land in order to revest it without the consent of the land board. The Native Land Act 1931, carried through the provisions of the 1922 Act.
306. See Native Land Amendment Act 1913, s 96; Native Land Amendment and Native Land Claims Adjustment Act 1922, s 10; and Native Land Act 1931, s 353.

307. Document A101(c) (Horan supporting documents), pp 118, 166
308. Document A101(e) (Horan supporting documents), p 111
309. Document A101 (Horan), pp 29–30, 38–39. Owners had never agreed to having Tauakirā 2M vested and after some years of protests owners succeeded in having it revested: see doc A62 (Bassett and Kay), p 115, for Waharangi, although no dates were given for when the revesting took place. Raetihi was subsequently further partitioned and significant areas taken for public works but the rest remains as Māori land: doc A54 (Innes), pp 150–154.
310. Document N24(a) (Tamakehu supporting documents), pp 3–5
312. Document A54(r) (Innes), attachment e; doc A62 (Bassett and Kay), pp 70, 105, 115
313. Document A101(g) (Horan supporting documents), pp 48–55
314. Document A101 (Horan), p 105; doc A51 (Walzl), pp 94–95
315. Document A101 (Horan), p 107
316. The list of lessees included three with identifiably Māori names, while the other sections were leased to unnamed ‘native lessees’: see ‘The Ōhotu Block: An Oasis in the Desert, A Hopeful Experience’, Whanganui Chronicle, 16 May 1906, p 7.
319. Document A51 (Walzl), pp 73–74
320. Ibid, pp 95–96
321. ‘Local and General’, Whanganui Chronicle, 5 September 1918, p 4; doc A101 (Horan), pp 73, 106, 107
322. Document A101 (Horan), p 108
323. Ibid, p 110
324. Ibid, pp 110–111
325. Document A101(c) (Horan supporting documents), pp 165–170. The 1920 schedule of subidivisions of the Ōhotu blocks shows many Māori occupying the papakāinga land, but none with general leases.
326. Document A101 (Horan), pp 92–93; doc A101(c) (Horan supporting documents), p 168
328. Ibid, pp 72–73
329. Document A101(s) (Horan supporting documents), p 128

Te Whatahoro Jury, Renowned Scholar
1902, p 4; Loveridge, *Maori Land Councils and Maori Land Boards*, p 33

**Ōruakūkuru and the Tairei Whānau**
1. Document G14 (Williams), pp 4, 6–8, 22, 24; doc N24(a) (Tamakehu supporting documents), p 286
2. Document N24(a) (Tamakehu supporting documents), pp 31, 34
4. Document G14(b) (Williams supporting documents), pp [3]–[4]; doc G14 (Williams), pp 6–8, 11, 14, 16
5. Document G14 (Williams), pp 16–18, 20, 26; doc G17 (Sun), pp 4–5

**Tuhiariki and the Te Wiki–Hāwira Whānau**
1. Document A101(c) (Horan supporting documents), p 170; doc A101 (Horan), pp 91–92
3. Document L11 (Hāwira), pp 23–24
4. Document A62(a) (Bassett and Kay supporting documents), pp 567, 587
6. Ibid, pp 25–27; transcript 4.1.13, p 77
7. Document L11 (Hāwira), pp 24, 26–27, 30

**A Public Works Taking from Matahiwi**
1. ‘Land Taken for the Purposes of Workers’ Dwellings’, *New Zealand Gazette*, 5 May 1927, p 1365
2. Document B7 (Rzoska), p 35; doc N12(a) (Tamakehu), p 19
3. ‘Land Taken for the Purposes of Workers’ Dwellings’, *New Zealand Gazette*, 5 May 1927, p 1365
4. Document B7 (Rzoska), p 35
5. Ibid
6. Ibid
7. Document N12 (Tamakehu), p 4
8. Document N12(a) (Tamakehu supporting documents), p 92
10. Document N12(b) (Tamakehu), p 5

**Table sources**

**Table 18.1**: Document A101 (Horan), pp 21–22, 35–36; doc A51 (Walzl), p 51. The table does not include land compulsorily vested. Also, nor does it include land that was vested via a meeting of owners under the 1909 Act, specifically for sale. This was the case with Ōhotu 4B3 (2,971 acres) and Rētāruke 3 (100 acres), both vested and sold in 1912. The owners of Rangipō-Waiū 1B (4,474 acres) also vested their land for sale in August 1913 but due to an error the Order in Council vesting the land allowed leasing only. It was never leased, being very poor land and was finally taken for defence purposes: doc A101 (Horan), pp 22, 34–35; doc A56 (Bayley), p 211.

**Table 18.2**: Document A101 (Horan), pp 97, 108–109
19.1 Introduction
In previous chapters, we saw that at the end of the nineteenth century some politicians and officials came at last to realise that Māori land was not an infinite resource, and that Māori needed assistance to develop multiply owned blocks held in complicated titles. However, our investigation of native townships and vested land found that developing land by leasing it to settlers for townships and farms did not bring many benefits for Māori.

In this chapter, we investigate Māori efforts to farm the land themselves, and what happened when the Crown tried to assist. We focus mainly on the first half of the twentieth century, when the Government was involved in generating new ideas to promote Māori farming, and providing support to implement them.

To put Māori land development and farming in context, we also look at Māori participation in other economic activities like wage labour, and outline the changes in the economy of the district over the same period.

19.1.1 The Crown’s obligations
We approach the issue of Māori land and farming on the basis that the Crown consistently promoted farming as the best – at times and in places the only – use of Māori land. For much of the nineteenth and twentieth centuries, the prevailing premise was that farming was the only way for Māori to ‘make good’. The Crown and many Māori sought to develop Māori land as farms, notwithstanding the obstacles. Even Māori who did not agree that farming was the only proper use of land were forced into development by Crown policies that insisted that it was. The corollary of this should have been a practical programme to assist Māori to maximise the chances of their succeeding in this endeavour. The Crown’s duty to help find and implement solutions also arose from the fact that it designed the system of Māori land tenure for its own purposes (sale), and as a result created titles which, for Māori landowners seeking to use and develop their land, were simply not fit for purpose.

Of course, farming was not the only possible use for Māori land. Its unthinking promotion in Whanganui was especially unwise, given the unsuitability of much of the land. And Māori landowners were pressured to go down this track, where other choices might have been equally or even more valid.
19.1.2 A new era?
The focus of our chapter begins in the early twentieth century, when it seemed that the Crown might at last offer substantial support for Māori farming. The Crown was influenced by a new generation of Māori leaders that was coming to the fore: men like James Carroll and Āpirana Ngata, who were effective in both the Māori and European worlds. Premier Richard Seddon supported Carroll and Ngata’s development ideas around dividing remaining Māori land into large sections for commercial farming; papakāinga blocks for communal use, subsistence living, and some farming; and other areas set aside for urupā, with swamps and bush areas kept for traditional hunting and firewood collection. Land that Māori could not use in the near future would be leased to the general public, but would eventually come back to Māori (see section 14.4 for early discussions along these lines).¹

There were many challenging issues to work through. The Government favoured the smaller farm that could support one family, but was forced to recognise that by this time it was not viable to subdivide many of the remaining large Māori land blocks into separate units for their multiple owners. So what, then? Would it be possible to create some family-sized farms as freehold blocks, or would they need to remain in a larger block and be leased to particular owners?² What about alternative methods, such as putting the large blocks into incorporations run by a committee of owners, with a manager and owners as farm workers? This was tried on some East Coast Māori land.³ And how could Māori be afforded access to mortgages and more education in agriculture? In this chapter, we look at how these questions were answered, and how it unfolded on the ground in Whanganui.

19.1.3 How this chapter is organised
We begin by summarising what the parties said on this topic. Then we give an overview of economic development and Māori farming in Whanganui. We detail some of the main challenges to Māori succeeding at farming in this district, before going on to investigate the Crown’s role in farm finance, education, and – its main contribution – land development schemes. In the early twentieth century and in the 1930s, the Crown set up the Morikau and Rānana land development schemes concentrated around Rānana and Hiruhārama (Jerusalem); and the Aramoho and Kopuaruru schemes, in the south of the district. We look closely at these, and then also set out the evidence about the allocation of farms to returned servicemen, and assistance to Whanganui Māori farmers, after the Second World War. We end with our findings.

19.2 What the Claimants Said
In general, claimants were of the view that the Crown had a Treaty duty to assist Māori to develop their land, and to provide measures to overcome development problems, particularly those created by prior Treaty breaches. However, the claimants said, the Crown failed to provide adequate levels of assistance, and discriminated against Māori in the provision of finance.⁴

Loans from the Government Advances to Settlers fund, introduced in the late nineteenth century, largely excluded Māori farmers. The claimants submitted that this was unreasonable, and that the Crown should have remedied the situation, but did not.⁵ They also noted that there was limited evidence to suggest that Whanganui Māori received financial assistance from the State or private organisations, and no evidence that they had access to Public Trustee mortgages.⁶ Nor, they submitted, did the Crown provide sufficient training in farming, despite requests and recommendations from Whanganui Māori and the Stout–Ngata commission.⁷

The claimants also submitted that compulsory vesting of Māori land, including some of the land in the Morikau farm scheme, took place over the objections of some of the landowners, and breached the Treaty.⁸ Subsequently, the Crown failed to consult properly with the landowners over the establishment, design, and objectives of its development schemes; did not keep them properly informed; and did not ensure their adequate involvement in management. The claimants agreed that the Crown was not obliged to assure the economic success of the development schemes.⁹ However, they alleged that the Morikau farm was badly managed and unduly burdened by debt.
for many years; that insufficient assistance was given to the papakāinga farms; and that even though finances improved in the 1930s, owners derived no rentals, employment, or training from the station.\(^\text{10}\)

Similarly, although the Rānana scheme was particularly challenging due to existing debts and noxious weeds, the Crown made these problems worse, for instance by allowing debts to get out of control.\(^\text{11}\) Some of these problems were left over from the Morikau farm scheme, of which much of the Rānana land was briefly part, and it was a Treaty breach for the Crown to return the land in such poor condition.\(^\text{12}\) Farm supervisors were not up to the task of dealing with complex problems, being either part-time, inexperienced in dealing with ragwort or unable to engage with Rānana farmers.\(^\text{13}\) The claimants submitted that the supervision that the Crown provided on the scheme was inadequate, neither aiding financial success nor maintaining good relationships with owners.\(^\text{14}\) Poor communication meant that ‘Māori were neither encouraged nor assisted to manage and develop their lands in accordance with their rights under Article Three of the Treaty of Waitangi’.\(^\text{15}\) Other schemes at Aramoho and Kōpuaruru were also of little benefit.\(^\text{16}\)

The claimants also submitted that the system for allocating farms to returned servicemen, at Mākaranui and elsewhere, was discriminatory.\(^\text{17}\) They stated that, although some Māori ex-servicemen could participate in general land ballots, their numbers were small, and few succeeded because of unfair barriers.\(^\text{18}\)

### 19.3 What the Crown Said

The Crown contended that it took reasonable steps to assist Māori farming development.\(^\text{19}\) It suggested that many Whanganui Māori might not have wanted to farm, and strongly preferred leasing. It agreed that a lack of farming knowledge and finance were barriers, but there was no evidence that Māori access to agricultural education was hindered by discrimination.\(^\text{20}\) The Crown also agreed that Māori found it harder than settlers to access finance, but stated that it had to balance access to loans with the need to protect Māori land from alienation. In relation to the Government Advances to Settlers fund, it was necessary and reasonable to have strict criteria for lending. The scope of the Advances fund should not be overstated; State financial assistance was very limited for both Māori and settlers. The Crown passed legislation that included trust and incorporation provisions, which enabled Māori to access finance; the farm development schemes also involved significant direct State assistance in the twentieth century.\(^\text{21}\)

The Crown disagreed that development schemes breached the Treaty: compulsory vesting of land in Whanganui was Treaty-compliant, and did not prejudice Māori.\(^\text{22}\) There was significant consultation with Māori about the schemes, adequate Māori involvement in their management, and the authorities were responsive to Māori concerns.\(^\text{23}\) Any farming development will experience difficulties, and in the end Morikau was a successful station from which owners benefited.\(^\text{24}\) Nor should the Rānana scheme be seen as a failure: it kept Māori land in Māori ownership, and supplied significant unemployment relief in the 1930s.\(^\text{25}\) The high debt levels and the lack of profits on Rānana and other schemes were due to factors like the nature of the land, which were outside the Crown's control.\(^\text{26}\)

On the settlement of returned servicemen at Mākaranui, the Crown submitted that official policy ‘expressly required equal treatment’ of Māori and non-Māori servicemen after the Second World War.\(^\text{27}\) Māori could participate in the general ballot for soldier settlement farms, or choose to be offered small farms that were derived from Māori title.\(^\text{28}\) The reason why fewer Māori returned servicemen were settled on soldier settlement farms might have been because Māori made fewer applications, held existing interests in rural land, or preferred to be settled in their traditional areas on farms that were derived from Māori title. This could have limited their chances of obtaining land under a general ballot system.\(^\text{29}\)

### 19.4 Whanganui Māori Economic Development

Here, we broadly outline how the Māori economy of this district evolved from the mid-nineteenth century
onwards. We focus on farming, but also chart Māori involvement in other economic pursuits.

Land was the main asset of Whanganui Māori, but it was not profitable enough to support all its owners, let alone the whole Māori population. Māori participation in the wider economy was therefore key to their survival – arguably increasingly so as the land’s limited agricultural potential was fully appreciated, and there was steadily less of it in Māori ownership. By the middle of the twentieth century it was probably apparent to most that avenues other than farming would need to be explored if Māori were to become better off.

19.4.1 The nineteenth century
(1) The customary economy
In 1840, the Whanganui inquiry district was home to anywhere from 3,000 to 5,600 people, concentrated along the Whanganui River.30 According to historian Cathy Marr’s evidence, from the eighteenth century ‘the Whanganui River was one of the most intensively settled areas of the lower North Island’.31 ‘The part of the river from about Operiki to Parinui – what might be called its middle reaches – was most heavily populated, followed by the area around the river mouth.’32

Pre-contact, Whanganui Māori were largely self-sufficient, although they engaged in trade with other groups for locally unavailable resources.33 The economy was one based on seasonal migration for fishing, cultivation of crops such as kūmara, and other purposes.34 In particular, large groups from inland settlements would visit the coastline each summer to catch and dry huge quantities of fish for the coming year.35 This system meant that hapū and whānau required access to a range of locations, some of which were used only at particular times of the year, in order to maintain their mode and standard of living.

(2) Response to the new economy
The arrival of European traders and settlers linked the Māori people of this district to a new economy, based on large-scale trade, and connected to the wider international economic system. By the 1830s, pigs and potatoes were already plentiful enough to be sold to visitors, along with flax, and in the following decade extensive plantations of wheat, maize, and potatoes were reported.36 We outlined in chapter 9 how trade accelerated after settlement began in 1841, and indeed the new township of Petre was only viable because Māori were willing and able to sell its residents food, wood, labour, and transport on the river.37

Tangata whenua did not share equally in the economic benefits that flowed from the arrival of settlers: a large minority on the Whanganui River had no regular contact with the newcomers, and groups in most other parts of the district probably had few opportunities to trade.38 Those hapū whose rohe was close to Wanganui prospered in the first decade of settlement, when the Pākehā there depended on them ‘for everything’.39

(a) Initial economic expansion: Overall, Māori economic capability in the district expanded, due to their uptake of new technologies. Missionaries strongly encouraged Māori to grow wheat, seeing it as a sign of civilisation.40 During the 1850s, the Crown helped fund at least four mills along the Whanganui River, and later provided some money for them to be repaired.41 This investment soon paid off, as the price of wheat rose dramatically during the Victorian gold rush. At the height of the boom, in 1855, wheat was selling for 18.3 shillings a bushel, more than double its price the previous year.

(b) Setbacks: However, within a few years there were setbacks. Very quickly after it reached its peak, the wheat price crashed to just one-third and continued to decline for the rest of the century.42 To make matters worse, the prices of maize and potatoes also fell.43 Not surprisingly, the crash confused and distressed Whanganui Māori, but they continued to plant wheat, probably expecting that the price would recover.44

The wars of the 1860s caused further difficulties. Kingitanga-allied hapū were subject to settler boycotts, and Māori from both sides appear to have neglected cultivation and commerce.45 As we saw in chapter 8, Whanganui Māori were involved in several battles during the wars of the 1860s. Pipiriki was occupied by Crown troops, besieged by Kingitanga-allied forces, and
then temporarily abandoned.\textsuperscript{46} Both Kingitanga and Government-allied hapū must have suffered economically as war took men away from cultivations and hunting grounds. The dip in Māori agriculture might have allowed settlers to expand into the gaps in the market. For example, settlers partially took over the flax industry at this time.\textsuperscript{47} As settlers became established on the land acquired in the Whanganui purchase of 1848, they had less need for Māori produce, and began to compete with Māori farmers.\textsuperscript{48}

The Whanganui Māori population also began to decrease, mainly as a result of infectious diseases. It seems to have remained at around the 3,500 mark from the 1840s through to the 1860s, before dramatically declining to about 1,330 in 1881.\textsuperscript{49} Meanwhile, the Whanganui settler population rapidly expanded, almost doubling in size between 1861 and 1867.\textsuperscript{50} By about 1863, there were probably more settlers than Māori in the inquiry district.

(c) Economic recovery: There were signs of economic recovery in the 1870s, with Pipiriki Māori producing a surplus of wheat and potatoes, and large quantities of fruit being grown and sold by Māori in the area around the middle reaches of the river.\textsuperscript{51} In 1870, Resident Magistrate
Richard Woon was authorised to match Māori spending on ‘ploughs or other agricultural implements’ pound for pound up to £30. In the early 1870s, the Crown distributed a pamphlet on tobacco growing, and in 1871 the Native Department provided a £30 prize for a ploughing competition at Wanganui. The competition became an annual event at Aramoho. In 1874, a newspaper reported on the ploughing match that Māori had entered seven or eight teams, and ‘taking their average their work was better than the Colonials, with one exception’. The Government also distributed mulberry trees, seed potatoes, and grape vines at various times, although direct economic aid for agriculture seems to have grown less common as power shifted from governors to elected representatives.

Some Māori communities worked on constructing roads to give better access to their land. For instance, during 1874 and 1875, Māori at Rānana and Hiruhārama on the Whanganui River constructed a bridle track to connect their settlements, and extended it towards the Government roads being built in the interior of the North Island. These included the road from Rānana to Murimotu, which the Government paid Māori to work on in the 1870s.

In the 1870s, Māori and settler alike began to switch...
from wheat to sheep farming. In 1877, Ōkaukau Rākau, of Heretaunga (Hawke’s Bay) gave 2,000 sheep to a leading Whanganui chief (either Mete Kingi Te Rangi Paetahi or Te Keepa Te Rangihiwinui). In 1879, Māori brought some 32 wool bales weighing 8,479 pounds down the Whanganui River for sale in town. By 1884, Rēneti Tapa, rangatira at Parakino, was running 1,500 sheep alongside cattle and horses on land sown with English grasses.

It appears that some Māori were wary of the Government finding out too much about their farming activities. A newspaper report of September 1885 gave a rare insight into Māori farming in Whanganui, and Government assistance with disease control and management at the time (see the newspaper article ‘Inspector Blundell and the Māori Sheep’ above). The report suggests an economy still communally organised by hapū, with significant investment in sheep for wool, and investigation of the possibilities of farming for meat.

19.4.2 The period from the 1880s to the 1930s
In the period from the 1880s to the 1930s, Māori focused on trying to develop their remaining land into modern farms, with only very modest success. The Māori population of the district started to recover in the 1890s (see section 21.3.3(i)). Estimates indicate that by 1901 the Whanganui Māori population was about 1,700, but the non-Māori population was nearly 15,000. In Whanganui as elsewhere, the Māori economy remained primarily rural. Typically, whānau constructed a livelihood out of subsistence agriculture supplemented by seasonal or temporary wage work, continued involvement in traditional fishing and hunting, and limited commercial farming.

Increasing numbers of Māori began working for wages. Leasing the land out, as we have seen in previous chapters, brought in a little money, but this seems to have amounted to a significant income for owners only if there was millable timber.
(1) **Transformation of the colonial economy**  
From the 1880s on, there were increasing possibilities for expanding beyond wool production to farming sheep for meat production. This transformation was brought about by the introduction of refrigerated shipping, which opened up the lucrative overseas meat and dairy produce market. As the Central North Island Tribunal said,

this period has also been identified as a time of major economic development opportunities. This was especially the case for those landowners with limited capital and land. They were now able to take advantage of sources of affordable and accessible mortgage finance, as well as advances in scientific and technical knowledge, to develop and transform their lands so that they could produce large quantities of export-quality produce. A new class of independent farmers was created based on these new forms of economically-viable, modern farm production.

Historian Nicholas Bayley’s report for this inquiry also detailed the dramatic expansion of Wanganui at this time into a busy port town with, for a few decades at least, a booming economy. The farms of Taranaki transported their produce to and from Wanganui; many businesses servicing the farming sector were based in the town. We described in chapters 16 and 17 how in the late nineteenth century the entrepreneur Alexander Hatrick successfully promoted Wanganui as a tourism destination, and his riverboat service transported tourists up and down the Whanganui River. By 1893, the population of the town was 5,100.

(2) **Gradual growth in farming**  
Census returns and official records on Māori land allow us to assess the resources they owned and the extent to which their land was developed for agriculture. The quantity of stock and cultivated acres owned by Whanganui and Waitōtara Māori increased in the last 10 years of the nineteenth century: in 1891 they had only 94 acres under grass, and by 1901 this had increased to 7,311. Livestock numbers also rose, although nowhere near as dramatically, and overall Māori farming was expanding at a lesser rate than settler farming. In 1886, Māori in the two counties owned 13.3 animals per person; but by 1901 the number of stock animals per person had dropped slightly to 12. By contrast, livestock ownership for non-Māori rose from 64 per person in 1886 to 80.2 per person in 1901, even though the non-Māori population had grown at a faster rate than the Māori population.

In 1901, Māori made up 18.4 per cent of the Whanganui and Waitōtara county population (the latter was also within our inquiry district), but owned only 3.3 per cent of all livestock, 2.4 per cent of acres under grass, and 2.7 per cent of all acres under cultivation. Whanganui Māori commanded fewer agricultural resources than their non-Māori neighbours, and settler farming had expanded faster.

Farming continued to develop in the early twentieth century. By 1907–08, when the Stout–Ngata commission visited the area to investigate Māori land use, farming was still relatively new in the north, west, and central areas of the district, and land was still mainly held in large blocks. In the east and south, next to the main trunk railway and in the Mangawhero, Whangaehu, and Turakina Valleys, the land was extensively subdivided, and farming more established.

Government statistics from the late nineteenth century to 1911 recorded gradual increases in the numbers of animals owned by Māori, and land in grass and crops. For instance, from 1906 to 1911, Whanganui Māori land in grass increased from 18,585 to 27,850 acres. In 1911, Māori also owned 2,630 cattle, 539 dairy cows, and 3,376 pigs.

The comparative statistics also improved somewhat by 1911, after which ethnically differentiated statistics on agriculture were not kept. In that year, Māori made up 10.2 per cent of the population of Whanganui, Waimarino, Waitōtara, Kaitieke, and Whangamōmona counties, and owned 5 per cent of the livestock, which was mostly sheep, and 5.4 per cent of the acreage under grass (an improvement on the 1901 statistics). Both Māori and non-Māori had seen increases in their sheep numbers since 1901: the Māori flock was 3.8 times bigger in 1911 than in 1901, but the non-Māori flock was 4.7 times bigger. The non-Māori flock now comprised over a million animals, compared
to just under 48,000 for Māori. Whanganui Māori did own 16.9 per cent of crop land in the five counties listed above – more than their share of the population – but also 96.3 per cent of land classified as ‘in tussock or other unimproved’.

(3) Subsistence agriculture
In some areas, Māori stock and crops could not increase much because they owned plots that were big enough only for families’ subsistence. This was particularly the case by the early twentieth century around Pūtiki and along the Whanganui River, which together were home to a significant proportion of the Māori population.

Erana Anson told us that early in the century, many of her relatives living at Pūtiki owned their own homes and land that comprised an acre or two each – enough to grow vegetables for sale and consumption, and in one case, run two cows. This kind of lifestyle persisted into the late 1920s on the Whanganui River too. If Māori in settlements there still owned interests in larger blocks, they usually leased them out.

Farming on this very small scale, which produced enough really only for subsistence, was more common among Māori than their non-Māori neighbours. The products that Whanganui Māori produced in disproportionate amounts were pigs and potatoes, which had been the bedrock of their diet and economy since the 1840s. In 1901, Māori owned 35.3 per cent of the pigs and 33.8 per cent of the acres used for growing potatoes in the inquiry district. By 1911, Māori owned 42.7 per cent of the pigs, and 68.1 per cent of the acres growing potatoes. Probably, the increase was principally to feed a growing population – and neither pigs nor potatoes demanded particularly good or developed land.

In addition to the pigs and potatoes, Whanganui Māori grew other crops, kept other kinds of stock, and continued to fish, hunt, and gather. However the extent to which the potato was the staple food in the Whanganui Māori diet is indicated by the effects of potato blight in 1905 and 1906. In late 1905 a Wanganui Herald article reported that upriver Māori were ‘practically on the verge of starvation’, and required donations of food after the failure of their potato crop. In Waimarino early the next year, the census sub-enumerator reported that

The whole of the Māori potato-crops in this district were destroyed by blight, and some of the Natives are absolutely without potatoes. Bread is at present the principle food-stuff of these people, but it will not be long ere their means in this direction will be exhausted. Then, how will these people subsist? You are aware that this article is the life of the Maori. Deprive them of it, and where are they?

Potato crop failure affected Māori communities in many parts of our inquiry district. Efforts were made to broaden the range of crops, but in the 1930s some communities were still heavily dependent on pork and potatoes. This dependence was the result not only of insufficient and low quality agricultural land, but also because communities had reduced access to traditional food sources. The long and arduous hunting and gathering trips that characterised traditional life styles were anyway a thing of the past for most, whether by necessity or preference. To make matters worse, potatoes probably exhausted the soil in places where communities needed a big potato crop to feed themselves, and there was insufficient suitable gardening land for proper crop rotation.

(4) An increase in dairying
On the coast near Kai Iwi, Māori were reported to be ‘going in for dairying’ in 1902, and dairying was one area where Māori participation continued to increase. In 1910–11, Māori were reported to own 539 dairy cattle in three counties: Whanganui, Waitōtara, and Waimarino. Movement into dairy production gathered pace in the 1920s, as exemplified by the experience of 14 families at Parinui on the upper reaches of the Whanganui River. The families owned 1,300 acres of good land, with 400 to 500 acres remaining in communal ownership. They had four small dairy herds in the early 1920s, but under the leadership of Hekenui Whakarake increased their stock to 300 cows by 1928.

However, it soon became obvious that dairy farms were
not a solution for everybody: many did not have enough suitable land. Māori also continued to struggle to get finance, and dairying brought its own challenges. Stock losses could bring significant hardship. In 1927, Father James Riordan reported to Māui Pōmare that seven farmers at Hiruhārama had lost 20 out of 82 cows, almost 25 per cent of their dairy herds. One farmer, Puarata Menehira, lost six cows to disease from his herd of 12, while his neighbour Neri Poutini lost four out of 12. Father Riordan wrote:

This is a serious matter for them as they find it impossible to make ends meet without the cows. Their herds are necessarily small as they have had no finances to assist them. They have trusted to hard work and luck to gradually augment their herds as time went on.

(5) Marginal land prone to ‘reversion’
There were also problems with the land itself. Initial enthusiasm for farming gave way to a growing awareness that Whanganui farmland was marginal. High rainfall and erosion caused the deterioration of much of the hill country, and farms were abandoned. Mangapūrua, a settlement of 50 farms established for returned servicemen after the First World War, was emblematic of the difficulties of farming in the district: the last farmer walked off the land in 1942. Land also began ‘reverting.’ This was the much-discussed problem of land becoming overtaken by weeds quickly after bush clearing. It was reported in 1920 that noxious weeds and scrub had already taken over sections in Taumatamāhoe, in the north-west of the district. Owners of one of the sections had run out of funds and could not raise enough capital to continue.

(6) Commodity prices, the Depression, and Wanganui
To make matters worse, the 1920s was a period of fluctuating commodity prices. The wartime purchase agreements of the First World War ended in 1921 and 1922, causing Britain to flood the market with accumulated primary commodities just as European and South American countries increased their production. Some of New Zealand’s largest trading partners, most notably Britain, experienced an increase in unemployment. With more competition but fewer buyers, New Zealand farmers saw the price of their exports plummet. Prices improved from 1922, but fell again between 1926 and 1933.

As might be expected, the Depression also affected farming very negatively during the 1930s. In just three years, the value of New Zealand’s exports fell by 40 per cent. The impact on prices for primary produce was severe: wool prices fell by 60 per cent between 1929 and 1932, and dairy prices continued falling until 1934.

Conditions for all farmers were grim, and Wanganui also declined not just because of the Depression, but also due to increased competition from other ports, and from the railway, which was carrying increasing freight. Dairy exports from Wanganui reached a peak in 1929, when 21,000 tons of butter and cheese were exported, and then declined steeply until only 6,000 tons left the port in 1939. Nor was the reduction in economic opportunities in the town offset by development elsewhere in the district: Bayley observed that ‘economic advancement was hard and slow’ everywhere in the region for this whole period.

(7) Māori farmers fall on hard times
The impact of the Depression on Whanganui Māori farmers was such that by 1933 it was reported that some were abandoning their farms. For those whose land was anyway difficult, like those around the Whanganui River, the consequences of the economic shock were worst. After a promising start in the 1920s, the Māori dairy farms at Parinui had collapsed by 1932.

Further to the east, Karioi farmers also converted from sheep to dairy in the 1920s, so that by 1930 about 20 owners were dairy farming, many others were interested, and they had formed the Karioi Maori Dairy Farmers Association. Māori dairy farms were quite small, especially considering that the land was generally poor. In 1930, eight Māori dairy farms at Karioi ranged from 91 to 1,200 acres, with a median of 227. They owned from eight to 50 dairy cows, with a median of 20, although two farms also had several hundred sheep.

But things did not go well, and in 1930, a number
asked the Government to bring them into a land development scheme: they were in 'a deplorable state' after 'being exploited by some of the Dairying Companies.' A subsequent Government report suggested that some of the stock they had bought from the dairy company was inferior, and their herds needed culling by 20 per cent. The Government investigated the possibility of a development scheme, but ultimately declined. The area was unsuitable for dairying; the harsh climate and porous soil required considerable capital investment in shelterbelts and fertilizer, and the expected returns did not justify the expense.

The outcome of these kinds of reversals was often more land alienation. Some of the Rangiwaea blocks at Karioi were subsequently sold, while some were leased out.

(8) Alternatives to farming
There were other business ventures besides farming, but often, it seems, early Māori ventures later lost out to settlers with more capital and better connections to European markets. For instance, Māori provided the transport up the Whanganui River in the early years of the colony. However, Hatrick's riverboats took over. A guidebook from the late nineteenth century stated that Taumarunui Māori could provide waka transport to Pipiriki, but advised against this option, as 'an exorbitant rate' was charged. Māori were employed by Hatrick in his hotel at Pipiriki, and on his boats.

Working for wages seems to have become more important around the turn of the century. Many Māori were employed on the construction of the main trunk railway. According to an early local history of Whanganui, in about 1900, the lower Manganui-a-Te-Ao River Valley became depopulated when its inhabitants left to work on the railway.

Other work was on farms, often organised on a contract basis. There are reports from the 1890s of Māori being employed as shearers, and hapū, including women and children, forming shearing gangs. The participation of children in paid work would have damaged their educational prospects, but was probably an economic necessity. In the early twentieth century, brothers Toma and Rangi Hāwira had a transport business, first carting wool by packhorse from Karioi all the way through to Napier, and later owning a dray and wagon. They also took up contracts for fencing, ploughing, and other farm work in the Karioi area.

Some Whanganui Māori got good jobs in town. In 1906, the census sub-enumerator for Pūtiki reported that 'a fair proportion' of young men in the kāinga had office jobs in town, 'some in prominent positions.' But this was not typical. The same official recorded that large numbers of Maoris have been forced to wander from one district to another in search of employment, whereby they may obtain means of providing themselves with food for the winter months, a necessity caused by the disastrous effects of the potato-blight and other uncontrollable evils that have attended their cultivations.

With some exceptions, the work done by Whanganui Māori at this time was casual or seasonal, usually low paid. During the First World War, enough Whanganui Māori joined the military to contribute to a general labour shortage in the district. In the 1920s, market gardeners provided seasonal and some permanent employment for significant numbers of Whanganui Māori.

(9) Māori and timber
Another aspect of land development was timber milling. The bush had to be cleared for farming and some of the timber was commercially valuable, so timber milling became economically significant in the district for a time.

Before the introduction of railways and with few formed roads, it was often not viable to haul logs out over hilly terrain by ox and horse. Indigenous forest was usually burnt off to make way for farm land. The completion of the main trunk line in 1908 and the Raetihi branch line in 1917 ushered in a short 'boom period' for the timber industry. During the 1910s and into the 1920s, timber milling was the dominant industry in the Taumarunui area, employing most of the local workforce, including many Māori. The timber industry was also a major employer of Māori in the Taringamotu Valley on the
northern boundary of our inquiry district. Between 1920 and 1924, the peak of the boom, there were 50 mills within an eight-mile radius of Retahi and Ohakune, and during the 1910s and 1920s about 370 million feet of timber was transported from Ohakune alone. Milling declined from 1925, and by 1945 there were only six mills in the entire Waimarino County.

However, few if any timber mills in our inquiry district were Māori-owned. Nor was the value of the timber necessarily taken into account in the purchase price for land. When the Waimarino block was purchased in the late nineteenth century, for example, the value of the timber on it was either significantly underestimated, or ignored completely. In some later purchases, however, more was paid for timber than for the land it stood on. Timber milling leases were recognised in the 1890s as a way to raise money without land loss. By 1907, 7,326 acres of the Ōhura South block were under timber leases.
In some cases rents for timber leases were quite high by contemporary standards. Historian Tim Shoebridge reported that, after 1907, it became standard practice for applicants for leases to stipulate whether the land in question had any timber on it, and what agreement had been come to in relation to it. However, in some cases there was no timber clause, and in these situations the landowners were not entitled to the proceeds from milling the timber on their land.

As we saw in chapter 18, Māori did not gain much benefit from timber on land that was vested in the Aotea land board. In some instances, clauses were included entitling owners to half the royalties of any milled timber. Where there was no convenient way to get the timber out, leaseholders burnt it, and in those cases there were no royalties. Leaving the timber in place until roads were built was not an option, since lease agreements required the leaseholders to clear and improve their blocks.

Overall, some Whanganui Māori landowners did make financial gains from the timber industry, but for many others it was simply another type of waged work.

19.4.3 The 1940s and post-war economies

For Māori in this period, the economics of farming in Whanganui and an ever-expanding population meant they would not be able sustain themselves on their remaining land. In 1936, there were 3,254 Māori in the Whanganui area, and by 2006 there were 13,164, which equated to 25 per cent of the population. By contrast, the non-Māori population grew much more slowly and then gradually declined from about the 1970s. By 2006, the non-Māori population was 42,018, lower than in 1936 (see section 21.5.4(1)(b)).

(1) A slow decline in Whanganui

In the immediate post-war era, farming appeared to make gains in the Whanganui district, with improved technologies, aerial topdressing, and spraying bringing back into production much of the land that had reverted to scrub and weeds. However, the growth in farm productivity in Whanganui was slow compared with the rest of New Zealand. From the 1970s onwards, farming costs increased rapidly, and large-scale Government support for farming decreased. Despite attempts to diversify, Bayley concluded, it was very apparent that large areas of Whanganui would always be difficult to ‘farm viably’. The town and port of Wanganui were also continuing their slow decline, losing ground to larger centres.

(2) Māori farmers leave the land

By this time there was, in some areas, an established way of life for many Māori combining small-scale farming with seasonal work off the farm. Closely related family members owned and worked neighbouring farms. Often the farms were small, fewer than 100 acres each, but families maintained a high degree of informal cooperation, sharing equipment and farm duties. Families developed strategies to maintain the farms’ commercial viability, such as transferring their land interests to one owner. However, post-war mechanisation and increasing farm sizes required more capital, and getting loan finance on multiply owned land remained a major issue. If some owners wished to sell and others could not afford to buy, the family farming effort could unravel. Some farmers who survived the Depression began to give up farming in the late 1940s, and a good many families quit the land in this era.

For example, it seems likely that the difficulties of accessing finance contributed to the sale of the Waimarino 6 farms. We discuss in the next chapter the experience of the Tānoa and Te Uhi families, who farmed quite successfully into the 1940s and 1950s but eventually gave up. Claimant evidence suggested that the three farms they operated were not particularly profitable, functioning more as community enterprises. But, when it became necessary to increase the size and sophistication of the operation in line with the times, the owners needed to borrow to invest in mechanisation, electricity, road access, and more land. As Māori land in the area came up for sale, it was neighbouring or incoming non-Māori farmers who had the money to buy it, not other Māori owners. It became increasingly difficult to keep their too-small farms in the family. (See chapter 20 for the history of the Waimarino 6 block.)
(3) Some owners keen to farm the land

There was some potential increase in the land available for Māori use. Urbanisation reduced the rural Māori population in this period, but when long-term leases to non-Māori farmers expired from the 1950s onwards, Māori owners were often determined to farm the land themselves. Trusts were set up to manage the land collectively, but blocks were not infrequently sold or leased again, usually to non-Māori. This was the period of mass migration from rural areas to the towns and cities, and by the 1970s many rural kāinga were almost deserted.

(a) Kaiwhaiki: Kenneth Clarke and other witnesses described to us the ongoing challenge for the beneficial owners of 1,500 acres at Kaiwhaiki. The land was leased out for many decades. When the leases ended in the 1960s, some of the land was leased to two of the owners until a trust was set up to manage the land directly. Mr Clarke told us:

Families taking it upon themselves to lease part of the Kaiwhaiki Block have faced an uphill battle, both literally and figuratively. This land is not as profitable as land within the Whanganui Purchase boundary as it is steep, rugged country with only 10–15% of it flat.

Stock levels at Kaiwhaiki were two to three sheep per acre, whereas farms within the Whanganui purchase boundary could run 6 to 10 per acre. Today, the owners have some of the land at Kaiwhaiki in forestry, while the viable farmland is once more leased.

(b) Mangaporou Ahu Whenua Trust: Created in 1979 from 15 blocks (3,672 hectares) on the west bank of the Whanganui River opposite Hiruhārama, the Mangaporou Ahu Whenua Trust is on a different scale. The trust includes land reserved from sale in the Pukehika and Kauaeroa blocks. Māori farmed some of the land up to the 1950s, but by 1979 none of the owners were farming there. We have no detailed evidence of how this came about, but lack of access to loans was given as one of the reasons.

(4) Other employment

By the 1940s, certain economic activities that had been large employers of Māori were declining, for instance, the indigenous timber milling was largely finished (although to some extent was being replaced with exotic forestry), and there were fewer public works. Increasing mechanisation of farming also meant less demand for workers. Lack of work was the reason claimants most commonly cited for urbanisation. For example, Tawhitopou Pātea said:

Our families left Otoko when there was no longer any work, and they never came back. This was when the Ministry of Works camps closed down. Farm work also started disappearing.

Pokaitara Martin Tānoa said that the railway maintenance base moved from Piriaka in the early 1950s, and the dairy factory closed. With less and less work there, people started moving away:

There was nothing for the young people like my brothers and I in Piriaka. To work, you had to go to Manunui or Taumarunui, and even then there wasn't much choice about the work we did. You just had to take what you were given, and it was often dangerous work. In 1957, I left Piriaka to work in Wellington. Once I got to Wellington, I just didn't want to go back to Piriaka . . . My brothers all moved away from Piriaka as well, because there were no opportunities for them there.

Although Johnny Tuka was able to spend the majority of his working life in the river area, he told us that almost all the boys he grew up with at Koriniti had to leave for the towns in search of work.

In some rural areas there was still a reasonable amount of paid work in the post-war years. In Waitōtara, Kai Iwi, and other south-western parts of the district, for instance, there was full employment, and Māori found work in transport, council labouring, farming, the railways, the lime works, and nearby dairy factories and freezing works. These jobs were mostly low paid, however; in 1958 it was reported that about 80 per cent of Māori in the

983
Māori shearer, Parikino, 1960s. Māori began working in shearing gangs, often organised by particular whānau, in Whanganui in the 1890s.
Whanganui area were paid only the basic wage. Seasonal and casual work was also common. While the work left much to be desired, at least it was there; but this did not last. Graham Dempsey’s 1966 masters thesis explained that most jobs in the mid river area were agricultural:

but with increasing mechanisation such as aerial topdressing and spraying, and, with the need for larger properties due to increasing costs, and more complicated technology, larger capital outlay and rising living standards, the need for manual labour is decreasing.

Mr Rzoska confirmed that:

There are many fewer jobs upriver now than there were because farmers don’t employ people the way they did a generation or two ago. Everyone used to do the work, but now machinery does a lot of it. It used to take a gang of several Public Works men a whole day to dig a culvert, but now with machinery it is dug and laid and refilled within an hour or two by just one or two men.

We heard that local councils increasingly relied on contractors instead of employing local people, while farmers tended to carry out their own labour.

Work was more readily available in the Whanganui towns – Ōhākune, Taumarunui, Waiōuru, and Raetihi – than in rural areas, but even in the 1950s employment there was uncertain. Some Māori in Raetihi were reliant on seasonal jobs such as shearing and market gardening, while other households lived off pensions or sickness and family benefits. Māori in Ōhākune were adversely affected by the decline of the milling industry and by a factory closure. Of 42 men surveyed by the Māori Welfare Officer there in the mid-1950s, only 11 had permanent employment. Low incomes were fairly common. That said, the 1950s were still the high point of Māori employment in the towns; after this work became even harder to find. In the Raetihi area, it was the decline of the railway and market garden work that led many local people to move on in search of employment elsewhere.

By contrast, jobs were plentiful in Wanganui city, at least initially. Frances Huwyler told us that clothing factories ‘attracted a lot of women from the pa [Kaiwhaiki] and they flocked to the city enticed by the lure of financial freedom as well as learning a valuable skill’. There was very little Māori unemployment in the city in the 1950s and early 1960s. Pay was often better than in rural areas, even sometimes for the same job, as Mr Rzoska told us. Like the work in rural areas, jobs in town tended to be low paid and unskilled, with opportunities in areas such as factory or domestic work. In 1971, more than three-quarters of employed Māori men in the Whanganui urban area were in the census category of ‘Production, Transport Equipment Operators and Labourers’, as were nearly half of employed Māori women. Census data show that Māori in our inquiry district consistently earned less than their non-Māori neighbours throughout the 1960s and 1970s. The difference between Māori and non-Māori incomes was greater in rural areas than in the towns and cities.

### 19.5 The Obstacles to Land Development

Why Māori farms did not prosper is a complicated question, and there are many ways of answering it, with reasons applying more or less strongly in different parts of the district. The Crown could not have managed or controlled some of these even if it had been so minded – the wheat price crash of 1855, for example, and the Depression of the 1930s. The poor land quality of large parts of the district was another problem that was insoluble. Additional factors affecting Māori in particular were ongoing land alienation and the land title system, which were to a large extent within the Crown’s control. Contemporary issues which the Crown could have offered assistance with were agricultural and business knowledge, and finance. We now discuss some of these factors in more detail, and how the Crown responded to them.

#### 19.5.1 Land quality

The Whanganui district is not over-endowed with land that is good for agriculture. The two largest areas of reasonable quality are near the coast, and some parts of the
Murimotu area to the south of Mount Ruapehu (see map 19.2) Māori no longer owned most of the land in these areas by the end of the nineteenth century.

The poor quality of much Whanganui land was overlooked for some decades, probably up until the 1920s, to the detriment of Māori and settler alike who tried and failed to farm inferior land. We have talked already about how land in the upper reaches of the Whanganui River and to the west of the district was and remains poor farmland, with weak sedimentary soils that erode in the high annual rainfall. Erosion, even before the widespread deforestation that preceded farming, was widespread. It also has a propensity for what was called ‘reversion.’ After vegetation was burned to clear the land, piripiri, mānuka,
and fern competed with newly sown pasture. Further burn-offs did not solve the problem, but instead allowed noxious weeds to establish. Access into the remote and mountainous terrain was a persistent problem, and roads and services were slow in coming. For a long time the Whanganui River was the only way to transport wool and other produce to market.

In the 1920s, many Pākehā farmers abandoned the struggle to convert rugged former bush land into profitable units, and ‘walked off’ the land. In 1928, James Johnson, a settler on the Waharangi 6E block near Pipiriki, wrote that

I am one of the Massey settlers who have been mistaken in the value of the river land; and if we do not get relief from the high rent we have to pay for the land a great many more of the struggling pioneers will have to leave their homes, and the land will go back to fern and weeds . . . If the settlers do not get the rents reduced on their section, most of us will be compelled to give up our homes. Most of the settlers are hard working men but have been mistaken with the land, it will not hold the grass like the lower land, and it is very hard to winter young stock here, on account of so much rain in winter . . .

The land board ended Johnson’s lease seven years later due to his failure to meet lease conditions. Because he was leasing Māori land, his inability to make any money to pay rent also created problems for its owners. As we saw in the native townships chapter, by the mid-1920s a Crown official was expressing the opinion that there was no future in farming around Pipiriki, and it might be better to remove the settlers and let the land revert to bush (see section 17.5.4(2)).

Eastern parts of the district were also challenging. The land around Karioi was described by an official in the 1930s as comprising powdery volcanic soil, very porous, and ‘anything but conducive’ for plant growth. Although good enough for some crops such as oats and turnips, it was not suitable for dairying, as ‘[t]o permanently establish pasture on lands [such as these] is next to impossible.’ While dairying could be established if enough money was spent, the cost was too high at that time.

So the land itself significantly challenged farming efforts, and it is plain in hindsight that some areas should not have been cleared at all, because the outcome was environmental degeneration. Nevertheless farm development did succeed in some areas of course, and for particular periods when the market was good. It was a question of who had the money to develop the land, and whether the cost of building up the farm was justified by the profits to be made.

However, although this is far from one of the best farming districts, agriculture in the region is still a significant producer. In 1995–96, it contributed $41 million to the Whanganui economy – although this figure included forestry.

19.5.2 The amount of land
The Crown’s extensive land purchases in the 1880s and 1890s reduced the proportion of Māori land in the district to about one-third, making it less likely that Māori would be able to establish larger farming enterprises such as incorporations, or large individual farms.

Between 1840 and 1900, the amount of land in the inquiry district that Māori owned declined from 100 per cent to 34.2 per cent, or from 2.1 million acres to 400,000 acres. In the twentieth century, 400,000 more acres were alienated, most of it by 1920 and, again, mostly to the Crown. As we have seen, at Pūtiki in the early twentieth century, many had only an acre or two, which sufficed only for subsistence gardening and perhaps a small surplus for sale in nearby Wanganui. Many blocks along the river were the same. The remaining land included urupā and other wāhi tapu, infertile areas such as sand dunes and very steep hills, and areas used for housing, none of which could produce an economic return. Hapū and iwi also gradually lost access to other resources, particularly fishing grounds.

19.5.3 Farm size
Māori landholdings were shrinking but, given the land quality in this district, units larger than the average farm size, with access to working capital, would likely have had better prospects. We have no statistics for the size
Map 19.2: Whanganui land use capability. Most of the land in the district has serious limitations on its usefulness for agriculture.
of freehold farms in Whanganui. However, on the Māori land in the centre of the district, although it was contrary to the Government’s policy of promoting smaller farms, some of the European lessees seem to have farmed much more than 1,000 acres per family. We detailed the extremely large leaseholdings of wealthy businessmen Studholme, Russell, and Howard in the nineteenth century in the Murimotu area in chapter 12. Joseph Studholme created a successful farm on the better part of 9,000 acres of leased land on the Ruanui block in the 1890s.

The Stout–Ngata commission remarked on the example of the Craig family who were leasing land in both the Aotea and Maniapoto–Tūwharetoa Māori land districts. One of the family, William Craig, leased 7,500 acres, and was negotiating for 12,000 more. On the vested land, which we discussed in chapter 18, the sections made farms of varying sizes. Most were well under 1,000 acres, but a number of families held several leases, getting around restrictions on farm size by having more than one family member hold a lease, or leasing lots in different sections. For instance, in 1920 the Bartrums leased 3,000 acres near the Whanganui River, and the Duigans leased 3,800 acres in a number of sections. The Bartrums farmed there until at least the 1990s.

Even farms with very good soil became larger in New Zealand as the economics of farming changed. And so it was in Whanganui – for those who could afford to augment their landholdings. For example, land at Piriaka was fertile enough for dairy farming and cropping. (This was also true for other land in the district, like land near the coast, and also inland along the Whanganui and Whakapapa River flats near Taumarunui.) At Piriaka, the railway provided good transport, and a dairy factory was established in Piriaka village. Even so, the majority of settler farms in that area changed hands in the 1920s and 1930s, as the 90- to 200-acre blocks that the Crown sold in the nineteenth century became uneconomic and farms were amalgamated. It seems likely that Māori farmers had less opportunity to expand, having less access to working capital. In part the lack of access to finance was due to their land title situation, as we discuss below. The Tānoa and Te Uhi whānau who farmed at Piriaka, were adversely affected by factors like these (see above section 19.4.3(2)).

19.5.4 The land title system

This report has already canvassed the inadequacies of the land title system. By the 1890s, many politicians and officials had become aware of the problems. One of the most important was the lack of a legal structure for owners to operate communally.

(1) No legal means for groups to operate effectively

In 1891, the Rees–Carroll commission detailed the problems and ill effects of Māori land law, including the 10-owner rule, the individualisation of hapū and iwi land, and frequent and piecemeal law changes. One of the effects of individualised but undifferentiated interests in lands, they wrote, was that those who improved the land had no guarantee that they would benefit from their work:

If a man sowed a crop, others might allege an equal right to the produce. If a few fenced a paddock or small run for sheep or cattle, their co-owners were sure to turn their stock or horses into the pasture.

The commissioners noted that attempts to provide for communal land management like the Native Committees Act 1883 and the Native Land Administration Act 1886 were unsuccessful, because they gave no power or control to Māori communities. Following the Rees–Carroll report, there were more law changes in the 1890s, but these also had problems. The Native Land Court Act 1894 enabled the court to incorporate block owners, who could then manage their land as a single legal entity through elected block committees. However, the committees’ powers were very limited, and the sale or lease of land often required extensive Government involvement.

(2) Incorporation not popular

Despite some early interest from Whanganui Māori in the new laws, incorporations and trusts did not become widespread in the district until the second half of the twentieth century. In March 1897, Rotohiko Rerepare and 64 others,
owners of the large Morikau block (27,000 acres) near the Whanganui River, wrote to Richard Seddon describing a detailed plan for development: they would subdivide the land, set aside areas for their own use, and lease and sell the remainder of the block as farm and town sections to Europeans. They would get a mortgage to develop roads and bridges. They requested the Crown to help them form an incorporation so as to ensure that their various hapū, which they estimated numbered over 1,000 people, would ‘derive some material benefits and advantage’ from their good quality land. The Crown sent the rules for incorporation to the petitioners, but owners’ plans went no further as the Native Land Court investigation of title to the block did not take place until 1899. We consider the subsequent history of the Morikau block later in this chapter.\(^{172}\)

In one other case, owners did incorporate. In May 1897, Rēneti Te Kaponga of Karatia (Galatea) and several other owners of the small Wharepū block in the southern area of the inquiry district applied to the Native Land Court for incorporation. According to Te Kaponga, the owners planned to subdivide the land into township and farm sections for lease or sale. The court approved the application. An elected block committee of seven members, including Hoani Te Whatahoro Jury and Te Aohau nikitini, was established, but the plan for a township does not seem to have gone any further. The block was later partitioned into five sections, some of which were leased out on long leases.\(^{73}\)

We know of only one instance in Whanganui when the Crown actively encouraged block owners to incorporate. As we have discussed in chapter 14, in March 1897 James Carroll encouraged the owners of the large Ōhotu block to incorporate and either farm the land themselves or lease it. It did not happen, though. Ōhotu was instead vested in the Aotea District Māori Land Council and leased out. (See section 14.4.2 and chapter 18.)

Other district inquiry Tribunals have concluded that Māori owners chose not to form incorporations either because the legislation gave the Government too much control; the incorporations were unable to raise finance or there was little suitable land remaining in Māori ownership by the time the provisions came in.\(^{74}\) In Whanganui, the Crown seems to have concentrated from 1900 on encouraging Māori in Whanganui to vest land in the new district Māori land councils.\(^{75}\)

(3) Multiple ownership a problem

The Māori land councils failed to solve one of the biggest problems with Māori land title, that of developing multiply owned land for Māori to farm themselves. Initially, under the Maori Lands Administration Act 1900, district Māori land councils were supposed to identify and designate suitable land for inalienable papakāinga, but there was no particular mechanism designed to encourage Māori to farm either vested or freehold land. However, from 1909, under the Native Land Act of that year, Māori land boards could also develop farms for the benefit of the owners. This had implications for land in Whanganui, as we describe below.

Multiple ownership was not just a problem of land administration. It was also one of the biggest barriers to borrowing for development. To get a mortgage, owners had to be able to give lenders a secure land title so that if a borrower failed to repay the loan, lenders could then sell the land. This was an ongoing obstacle. Looking at the Whanganui situation in 1907, the Stout–Ngata commission noted that even where farming was more advanced, in the east and south of the district, the majority of land blocks had more than one owner. There were 230 titles in this area: 63 were in sole ownership; 102 were in family groups of two to 10 people; 30 were in family or hapū groups of 11 to 20; and 34 were in hapū groups from over 20 to 320 people.\(^{76}\) For the 175 blocks where there were 10 or fewer owners in the title, owners could, at least in theory, sign a joint mortgage. We investigate mortgages in section 19.5.6.

(4) Partitioning issues

Partitioning in the early twentieth century created further problems. It has been noted in this inquiry and others that Māori land was often partitioned without thought to farming requirements. Land was partitioned down to areas below a viable farm size, and the requirement that all blocks have road and water access led to some very
oddly shaped blocks. Before it was absorbed into a small farms scheme, for example, Raetihi 2B2C3C1 comprised just 16 acres (0.06 square kilometres), but stretched over 3.5 kilometres between the Raetihi–Ohākune Road and Mangarewa Road (see map 19.4). Tahu Nēpia described Kaitangata 5 as ‘a very thin strip of land which would make it difficult to even turn a car around in it’.

Other groups retained substantial areas, but with little or none of it suitable for agriculture. Groups and individuals alike often owned a number of small pockets of land scattered over a wide area. For example, in the middle of the twentieth century Kataraina Tāhau’s whānau had two farms, one at Mākākaho and one at Mangaporau. She told us it would take half a day by horse to travel between them.

19.5.5 Farming experience and education
As we saw in our overview, by the late nineteenth century, Māori in Whanganui had been exposed to farming practices and were widely engaged in farming. We know little about how they learned about it, though. Missionaries and Government officials played a part, but there is a dearth of evidence about the extent to which Māori derived knowledge from other informal networks. No doubt working for settler farmers contributed to knowledge of farming. Competitions and agricultural associations gave settlers access to self-help, and evidence suggests that Māori might also have taken part in Whanganui. In chapter 14, we described some of the prominent Whanganui men involved in farming. Útiku Marumaru, for instance, was an elected member of the Wanganui Agricultural Association in the early twentieth century.

(1) Stout and Ngata want Māori educated in farming
Māori were clearly learning farming techniques informally, but from at least the 1890s the Crown got the message that Māori needed formal education in farming: the Rees–Carroll commission said so in 1891, and the Stout–Ngata commission repeated it in 1907 and 1908. Witnesses told Stout and Ngata that a lack of knowledge was holding back Whanganui Māori farmers. For example, some still had merino sheep (perhaps those originally brought to Whanganui from the Wairarapa), which were quite unsuited to the wet climate, allowed to run semi-wild, and were of inferior quality.

The commissioners, for their part, saw farming as a panacea, and were encouraged to find among the Māori they encountered some who, with ‘guidance and instruction’ could ‘make farming a success, and by their example lead others to adopt the same healthy occupation’. They wanted to see all Māori receive farming education: all ages would benefit from training to become ‘efficient settlers’; education for children should have ‘an agricultural bias’; there should be ‘systematic guidance and efficient leadership’ for youth and adults through specialist training on State experimental farms, and visits from agricultural inspectors. The establishment of communal farms under supervision of the district Māori land boards with Pākehā managers ‘would provide the necessary impetus and organized practical instruction’. The commission applied its communal farm model to the Morikau 1 block, setting out how the land could be subdivided and managed as an example for the region. In a further report in 1908, the commission emphasised the country’s obligations to assist Māori by giving them both time to learn, and education in farming.

(2) Formal education
The claimants submitted that the Crown did not respond adequately to the need for Māori education in farming. However, formal agricultural education was rare for all New Zealand farmers in the nineteenth and early twentieth centuries, and there is some evidence that, Whanganui Māori were included in the limited Crown assistance available for improving farming at the time. By the end of the nineteenth century, the Government’s role in agricultural education was gradually increasing. It set up a system of agricultural inspectors to assist with the control of disease and dispense other advice. We have given instances of inspectors having contact with Whanganui Māori. The Crown also set up State research farms to improve agriculture. One, at Moumāhaki in South Taranaki, was 40 kilometres east of Wanganui. Established in 1893 and operating until 1925, this farm was set up...
He Whiritaunoka: The Whanganui Land Report

primarily for research purposes. However, the demand for farming education was such that by 1908 Moumāhaki was enrolling young men, both Māori and non-Māori, as cadets. Rangihiwinui Hiroti from Gonville in Wanganui was a cadet there until volunteering for army service in the First World War. He died in the war.189

The State secondary school curriculum emphasised farm training, but this would have had little impact on Māori because only a very small percentage went to secondary school.190 One promising initiative, not connected with the Government, was the Manunui Maori Boys Agricultural College. Set up by the Presbyterian Church in about 1912, and supported by local Māori leaders, it aimed to give farm and orcharding training to Māori at a boarding school and 200-acre farm near Taumarunui. It closed within a few years.191

The Crown’s most significant local farm training initiative was the Morikau station and surrounding farms, which were meant to implement the Stout–Ngata commission’s recommendations for practical farm education for Whanganui Māori. We discuss the outcome of that scheme below.

19.5.6 Finance for Māori farmers
Most Māori in Whanganui lacked the necessary funds to develop their land. As we saw in earlier chapters, for a number of reasons land sales did not result in much profit that could be used for development. When the Stout–Ngata commission visited Whanganui in 1907, witnesses identified one of the barriers to Māori farming as the low purchase prices that the Crown was paying.192 The purchase money was then often reduced by survey costs, court fees, and other expenses associated with the Native Land Court process. Moreover, loans were difficult to obtain.193 In the early twentieth century, many agreed that cheap State loans would be desirable for Māori, but on the whole these did not materialise. The Crown argued in this inquiry that State loans were limited for all, and furthermore that ‘governments faced an extremely difficult balancing exercise between protecting Māori land on the one hand, and enabling Māori to use land for raising finance on the other’.194 This is a reasonable point. A regime that resulted in Māori losing their land in mortgagee sales would have been just as bad, or possibly worse.

Here, we assess the extent to which mortgage finance was available to Māori, and whether the Crown could have taken more or different action to reduce the barriers to accessing lending, while appropriately protecting Māori land ownership. First though, we summarise the Crown’s changing policies on mortgaging Māori land.

1) Crown policy up to 1900
From at least the 1870s, some politicians were uneasy about allowing Māori to mortgage their lands, believing that it was not in their best interests. John Sheehan, for example, said in 1873 that the typical Māori mortgage borrower ‘dribbled his money away in small sums, and the greater part of what he received was spent in ardent spirits’.195 As Native Minister, Sheehan was later responsible for the Native Land Act Amendment Act 1878, section 4 of which banned mortgages on Māori land.

The 1878 Act was repealed in 1886, but for more than 20 years afterwards there were restrictions on alienation – which included mortgage – to parties other than the Crown.196 The 1892 ban on alienations to private parties initially allowed the completion of lease or sale transactions that had commenced, but not mortgage transactions. When this was changed the following year, Hōne Heke, the member of the House of Representatives for Northern Māori, approved, pointing out that mortgage restrictions made it difficult for Māori to raise money.197

There were also some provisions by which Māori could vest their land in a trustee, who was then able to mortgage the land. The first Act to allow this was the Native Land Laws Amendment Act of 1897. This seems to have been little used, probably because owners felt it took too much power away from them, and by 1907 the Stout–Ngata commission described it as ‘practically a dead letter’.198 Chapter 14 explained how the Maori Lands Administration Act 1900 allowed district Māori land councils to mortgage vested land.199

In 1894, the Liberal Government passed the Government Advances to Settlers Act, with the aim of providing affordable credit to small farmers. The fund was limited,
and had strict rules – and even more stringent rules for Māori than Pākehā. The following year, Government departments were authorised to lend money to Māori incorporations for development purposes, under the supervision of the Public Trustee. In order to be used as loan security, land had to be free from ‘all encumbrances, liens, and interests other than leasehold interests’. This disqualified large areas of Māori land, which was subject to survey liens and other encumbrances resulting from the Native Land Court process. The land also had to be registered under the Land Transfer Act, which was not done automatically for Māori land. When land was multiply owned and not incorporated, every owner had to consent to the mortgage. Although an important safeguard for owners, in practice it meant that incorporation was the only practical option for borrowing money on blocks with many owners.

(2) Mortgages on Māori land
In this section, we overview mortgages on Māori land in our inquiry district up to 1928. Our investigation is limited, for the statistics for this period were not comprehensive, and after 1928 there were none. Also, the available data generally related to the Aotea District Māori Land Board area, which included Taranaki, Manawatū, and Wellington as well as Whanganui. Isolating Whanganui-only figures was not possible.

From 1902 to 1906, the Aotea Māori land council recommended the removal of restrictions for mortgage purposes on 4,261 acres of land in its district. Unfortunately we do not know how many mortgages this related to, how much money it involved, or whether the mortgages actually occurred. The most complete statistics relate to the Aotea Board’s mortgage confirmations from 1910 to 1928. Since boards had to confirm only private mortgages, the statistics probably did not include State mortgages.

(a) What the available figures show: The figures show that from 1910 to 1928, the Aotea board confirmed 247 mortgages covering 38,906 acres, an average of 158 acres per mortgage. In the average year, the board confirmed 13 mortgages covering 2,048 acres, with the highest numbers in the late 1910s and early 1920s. From 1929 to 1950, we only have acreage figures, and those indicate that few mortgages were confirmed in those years. In only one year, 1930, did the number of mortgaged acres exceed the 1910 to 1928 average, and in most years fewer than 500 acres were mortgaged. There were 10 years in which the board did not confirm any mortgages at all.

Our main source for the detail of mortgages, Paula Berghan’s block narrative report, focused on successful applications, meaning we know little about those which were declined. The loans were generally to develop the land, and purchase stock for farming. Other recurring purposes were to pay old debts, and housing.

(b) Mortgages we know about: We know of only five mortgages in Whanganui before 1900, the earliest being in 1860. Two were with the Advances to Settlers Office. Amounts borrowed ranged from £130 to £1,500, and two involved Māori women who had married Europeans.

There are more mortgages from the 1910s onwards. In 1913, for example, Mairekura C, valued at £1,822, was mortgaged for £400. The owner, described as ‘fairly competent in business matters’, wished to improve the land and purchase stock, and had previously been declined a State mortgage. Loans in this period were usually taken out on land that was under lease, in order to develop other land. Rents from the lease were assigned to the lender as repayment for the loan. Typical was one from a private lender in 1913 on a Kai Iwi block of 168 acres. The land was leased out and the Māori owner and his son needed a loan to develop two other sections elsewhere for farming. In 1915, Te Rua Pikimairāwae, who owned the leased 1,165-acre Ruanui 2B2 block, mortgaged the land for £2,000 for 10 years. The money was to clear debt and pay death duties, and to build a house and woolshed at Karioi, where Pikimairāwae’s husband was farming. In 1921, she took out a second mortgage for £300, to pay for running costs on the Karioi farm. The loan was needed as ‘previously all expenses have been paid out of wool cheques but owing to the slump in wool it has been necessary to borrow from the present mortgage’. The original mortgage was still in effect, and the land was being leased at £291
The Aotea land board approved a £1,885 mortgage over Maungakāretu 4B3 in 1916, with the board president describing owner Ruha Hartley as ‘practically a European’. These examples illustrate how mortgages tended to be granted to sole owners. However, finance could sometimes be obtained on multiply owned land, whether under incorporation or simple joint ownership. In 1914, the five owners of Pākaraka 2B1 signed a memorandum of mortgage and obtained a loan from the Aotea Māori land board. But even when owners agreed to borrow money, there could be time-consuming and expensive obstacles to overcome. For instance, in one case, owners first had to survey and partition out the interests of minors, who could not be party to the mortgage. In 1916, the owners of Waimarino 3K2B and Raetihi 2B2C3 formed an incorporation to borrow money and develop the land. After incorporation, the block was subdivided and the owners of some of the subdivisions leased their blocks out, thereby ‘defeating the original intention that the land should be farmed under a committee of management’. However, a reduced mortgage was then approved for the land not under lease. This shows that making decisions collectively was not the only challenge: it was also tricky getting them to stick.

(c) Land loss as a result of failed mortgages: Mortgages did not necessarily lead to positive outcomes. As Tony Walzl stated in his research report, the obtaining of mortgage finance was always a risky venture due to the short term of the agreements with no assurance of ongoing credit being available beyond the term of the mortgage. Therefore the raising of capital through mortgages always carried the very real threat of land loss if success on the land did not occur within a timeframe required to repay the finance advanced.

We received evidence of several Whanganui Māori losing their land, or coming close to it, as a result of mortgage debt. One example was the case of Rangiwhakateka, who was the sole owner of Kōiro 6. In 1919, he took out a £1,600 mortgage, partly to develop and rent Tawhitinui B and C, which were vested in the Māori land board, and partly for debt repayment and furniture. He was described as a ‘capable farmer’ who had quickly paid off an earlier State Advances Office mortgage. However, when Rangiwhakateka applied to sell Kōiro 6 four years later, part of the reason was to repay his mortgage, on which he still owed £1,600. The Tawhitinui blocks had run into trouble; Rangiwhakateka’s flock of sheep had diminished; and the farm was losing money. The acting registrar of the Native Land Court reckoned Rangiwhakateka would be better off keeping the land and selling his leasehold and stock. We do not know what happened next. Kōiro 6 was sold in 1938.

(d) Paternalism of the land board: The land boards’ role had a decidedly paternalistic aspect, as they decided whether to approve mortgages on Māori land, and often held rent money in trust. This was intended to help and protect Māori, and sometimes did so. In the early 1920s, for example, Hākopa Kiwa and his children came very close to losing their house and land, Pākaraka 2B1, through arrears on a private mortgage. The Māori land board recommended an order in council prohibiting alienation, although Kiwa was able to pay his arrears before this became necessary. In another case, though, the land board caused serious problems for the owner it was supposed to protect. In 1929, Kahukiwi Hekenui took out a £1,900 mortgage on Kai Iwi 5B1 to buy stock and pay off a Public Trustee mortgage from 1915. The land was being leased out, and the board approved the mortgage on the condition that it managed the rent money, paying some to Hekenui and keeping the rest for mortgage repayments. However the board miscalculated the interest payments required, leaving inadequate money to repay the loan. To make matters worse, the board had agreed to reduce rents on the block because of the Depression. Unable to repay the mortgage, Hekenui sold her land in 1935.

(e) Other forms of security: One important alternative to mortgaging the land was using stock or crops as security.
Stock and station agents, farmers’ cooperatives, and other private lenders provided significant farm finance on this basis for many farmers. Some Whanganui Māori financed dairy farming in this way, gaining loans from local dairy companies. We do not have any figures on the interest rates, or the availability of such loans, although it seems likely that, given the higher risks involved in lending on something as uncertain as the anticipated future profits from crops and stock yet to be grown and sold, terms were probably steeper.

(3) The Advances to Settlers Office
The limited figures available on mortgages to Māori from the Advances to Settlers’ scheme, together with other evidence, suggests that Māori had less access to loans from the Advances to Settlers scheme than Pākehā.

A report by an official in the Government Advances Office stated that between 1910 and 1914, 88 Māori nationally were granted loans totalling £46,580 from the Advances to Settlers’ scheme. From 1912 to 1914, Māori had received £23,960 from the Advances Office out of a total amount of £1,905,070: this equated to 1.25 per cent of the lending.

(a) Strict rules for Māori borrowers: Strict rules imposed by the Government Advances Office from the late 1890s required Māori seeking an Advances mortgage to:
- own the land on a registered title in fee simple in their own names;
- have the land leased out on a registered lease to a European and assign enough of the rent to meet the mortgage repayments to the Government Advances Office; and
- have sufficient other land for their support.
While the first rule was similar for owners of general land, the second and third were specifically aimed at Māori. Māori owners could not mortgage land that they lived on, but had to offer other land as security for the loan.

(b) Carroll fails to get a change in the rules: The Native Minister James Carroll discovered the existence of these rules in connection with a mortgage application on the Rangiwaia 4c2c block (2,410 acres), in the east of the inquiry district. From 1899, the seven owners of the block had attempted to obtain a mortgage from the Government Advances Office. The application went back and forth between the owners’ solicitors, the Advances Office, the Aotea District Māori Land Council, the Native Minister, and Cabinet. At one point, the loan was approved, but it was then found that the owners could not comply with the rules because they occupied the land that they wanted to mortgage. Carroll’s view was that, if Māori had a good title to their land and a reasonable chance of success at farming, they should qualify for an Advances loan. Despite much correspondence, and the support of some of his Cabinet colleagues for a change in the rules, the Advances Office would not budge. Its view was that the conditions were carefully drawn up, as much in the interests of the Natives, as in those of the Department, and seem to carry out the spirit as well as the letter of the Statute – wherein it is provided that assistance to settlers should be afforded in such manner as is consistent with the public safety. Experience has proved the wisdom of this procedure. The Board moreover considers that it would be extremely undesirable for a Government Department to be placed in the position of having to foreclose on Native Land.

It seems, then, that the rules arose from a view that Māori were at greater risk of defaulting than non-Māori, and from a disinclination for the Government to have to conduct mortgagee sales of Māori land. As a consequence, the Government Advances Office would accept less risk for Māori than settler applicants.

(4) Crown response to need for development loans
Crown policy after 1900 was to remove many of the restrictions that Māori faced in mortgaging their land, and to pass legislation aimed at encouraging lending. There was considerable debate about this, particularly the inevitable prospect of mortgagee sales. Carroll and Ngata supported enabling Māori to mortgage their land, provided that there were certain safeguards. Some form
of supervision to reduce the risk of failure or default and provide protection from unscrupulous lenders was suggested. It was considered that the requirement for the approval of district Māori land councils and boards would provide this protection. Inalienable papakāinga would also provide somewhere to live, if the worst should happen and the mortgaged land was lost.\textsuperscript{239}

(a) \textit{Legislative amendments}: The Government did not remove the Advances to Settlers Office’s extra rules for Māori borrowers, but instead introduced legislative amendments to try to provide other avenues of borrowing. In November 1903, Māori were enabled to assign rents from vested lands to \textit{any} Government lending department as security for the interest on a loan.\textsuperscript{240} Eventually, this provision did assist some owners, but as we saw in chapter 18 on vested land, rents on that land remained very low, and to begin with were non-existent, because it took several years to lease out the land. Moreover, Hōne Heke pointed out that often the land Māori sought to mortgage was their only land; they did not have other land from which to assign rents as security.\textsuperscript{241}

From 1905, the Minister of Lands could use the Lands for Settlement Fund to lend Māori owners up to a third of the unimproved value of their land for farming purposes.\textsuperscript{242} The Government also turned its attention to Māori incorporations’ borrowing powers: from 1906, incorporations could raise mortgage loans from Government lending departments following a resolution of owners and with the consent of the district Māori land board.\textsuperscript{243} In the early twentieth century, there were few Whanganui incorporations, so this provision was of little local benefit.

In 1906, new legislation empowered the Government Advances Office to recover a loan by leasing out the land rather than selling it if a borrower defaulted.\textsuperscript{244} This innovation was plainly intended to facilitate borrowing but to avoid mortgagee sales. We do not know, though, how it influenced the practice of the Advances Office.

(b) \textit{More efforts to get State advances to Māori}: A deputation of North Island rangatira requested that the Prime Minister create a special section of the Government Advances Office for Māori mortgages in 1908, which suggests that Carroll’s amendments were not achieving much success. Carroll and Ngata supported the request, but the Prime Minister replied that the legislation had already been altered to enable Māori to access mortgages. He promised, according to one newspaper, ‘to see Maori received fair treatment’ from the Government Advances Office.\textsuperscript{245}

The biggest changes in lending to Māori were probably caused by the wide ranging removal of restrictions on the alienation of Māori land under the Native Land Act 1909. This probably encouraged more private lending, and this was indicated in the mortgaging trends we outlined earlier.\textsuperscript{246}

Two other sources of State mortgage funds were established in the early 1920s. In 1921, the newly created Native Trustee was empowered to lend out the accumulated funds he received from the administration of Māori land, which had not been distributed because the sellers or beneficiaries could not be correctly identified.\textsuperscript{247} The following year, Māori land boards were also given the power to provide mortgages to Māori, mostly from funds held in trust for owners.\textsuperscript{248} Neither of these changes made a substantial impact, however. An unstable economy caused produce prices and land values to slump. In the end, neither the trustee nor the district Māori land boards were able to provide substantial loans.\textsuperscript{249} At the same time, mainstream State lenders were now concentrating solely on Europeans, and telling Māori to seek funding from Māori sources. Ngata pointed out that the Native Trustee and the land boards received no State money. The Central North Island Tribunal observed:

Maori were, in fact, funding what little land improvements they could make for farming themselves, while being effectively excluded from much larger sources of State finance such as the Advances to Settlers fund.\textsuperscript{250}

(c) \textit{The success of the measures}: Did any of the legislation introduced between 1903 and 1922 lead to an increase in State lending? We have no evidence that it did in
Whanganui. There is a small possibility that, at least from 1910, lower reporting requirements for State lending might have hidden an increase in such lending. But the Government Advances Office was the biggest State lender, and considering its hard line on mortgages on Māori land, it seems unlikely. As far as we can tell, then, the Crown’s efforts to lessen barriers to Māori obtaining mortgages were to little effect.

What all this meant, of course, was that Māori had less access to borrowing from State sources, and probably had to borrow at less preferential rates. In the Rangiwaea case we mentioned above, the owners eventually borrowed the money privately.251 Ngāti Rangi claimant Toni Waho told us that the private loan enabled the whānau to successfully develop, and later expand, their farm so that today their descendants are some of the few with significant landholdings in the area.252 In that case, there was an alternative to the Government loan, and eventually a successful outcome. But it seems that Māori landowners could not often replicate this scenario, and more usually had little alternative but to sell or lease out their land.

### (5) Conclusions on mortgage finance for Māori

In the nineteenth century mortgages were often banned. While this ostensibly proceeded from a desire to protect Māori, in the wider context of the Crown’s land purchase activities, prohibiting Māori from mortgaging seems disingenuous. The law permitted Māori to sell their land to raise money as they saw fit, so why could they not use it as security for a loan, which created only a risk that a mortgage might fail and alienation might result?

In the early twentieth century, given that Māori lacked experience with mortgages, and because it was desirable to protect them from further land loss, it was reasonable to require official approval for mortgages on Māori land – and the likes of Carroll and Ngata supported this approach. The Aotea land board does seem to have provided some protection for Māori. However, even with oversight, some land was lost to mortgage default, and it is likely that unregulated mortgage lending would have created a much worse problem.

However, some of the conditions placed on Māori borrowers were unfair and discriminatory. The Advances to Settlers Office had a policy that they would only lend money on Māori land that was leased out. Some in the Government opposed this limiting condition, but it did not change.

Many of the Crown’s other measures were irrelevant to Māori owners whose land was in multiple ownership, because they were frequently unable to provide the required security to get loans. Incorporating land was a possible way round this, but incorporations were very much untested, and lenders may well have seen them as a poor risk.

One of the few immediate solutions was to vest land in district Māori land boards for the purpose of Māori farming. Vesting allowed the Crown to retain considerable control over finances, and therefore to lend significant amounts of money. One of the Crown’s first efforts to lend money for development in this way was on Morikau Station in Whanganui, which we discuss below.

### 19.6 Land Development Schemes

#### 19.6.1 Introduction

In this section, we look at land development schemes, which were intended to transform multiply owned Māori land into profitable farms. The first of these, the Morikau farm scheme, took advantage of new legislation enabling Māori land boards to manage land on behalf of their owners. The scheme was a precursor to the better known development schemes that Sir Āpirana Ngata championed from 1929. We now turn to discuss the claims about the Morikau and ‘Ngata’ schemes.

#### 19.6.2 The Morikau scheme

In 1906 and 1907, the Crown vested the Morikau 1, Rānana, and Ngārākauwhakarara blocks, totalling about 15,000 acres, in the Aotea District Māori Land Board, and in 1912 the Rānana Māori Reserve was also vested. Unlike the vested land that was the subject of chapter 18, the Crown intended that owners would farm this land. About 3,000 acres were used for small owner-occupied ‘papakāinga’ farms, and the rest was combined into one
farm, generally known as Morikau Station. The Aotea board appointed a farm manager to run it, and owners were supposed to train and work there.255

At this time, vested land was normally leased out: for owners to be involved in turning it into a farm was a new way of doing things. A 1909 law change made it possible for district Māori land boards to run farms on vested land on behalf of the owners. The amendment might even have been introduced especially to enable the Morikau farm plan, which was an important innovation in land development. Here we consider its history and outcomes.

(1) How and why the land was vested

In December 1906, the 7,200-acre Morikau 1 block was vested in the Aotea District Māori Land Board; it was ‘in the opinion of the Native Minister, not properly occupied by the Maori owners, but is suitable for Maori settlement’.256 The following April, the 3,100-acre Rānana block was vested in the same circumstances, while the Ngārākauwhakarara block (4,995 acres) was vested because it was infested with noxious weeds.257

In November 1906, Carroll received information that settlers were showing an interest in leasing and purchasing the Morikau block.258 Gregor McGregor later claimed that it was he who alerted Carroll that the block was about to be purchased and persuaded him it should instead be used to teach young Māori about farming. McGregor had connections to Māori; in 1879 he married Pura Te Mānihera, who had much authority in district. She had fought in battles alongside Te Keepa Te Rangihiwinui, and was a great grand-daughter of Te Māwae.259 Carroll moved swiftly, vesting Morikau 1 in the Aotea District Māori Land Board under the provisions of the Maori Land Settlement Act Amendment Act, passed only that year.260
The 1906 Act gave the Native Minister power to transfer to a Māori land board any Māori land that was not ‘properly cleared of noxious weeds’ or that was not properly occupied by its Māori owners even though it was ‘suitable for Maori settlement’. Under the Act, the land board could lease to the general public any land vested on account of noxious weeds, although it could also choose to set such leases aside for Māori. Any land not ‘properly occupied’ was to be leased to Māori only. The Act did not require the Minister to seek owners’ consent before vesting the land.

It was the Stout–Ngata commission that instigated the vesting of the other two blocks, Ngārākauwhakarara and Rānana. Concerned at the activities of a few Europeans who were amassing large numbers of leases in the district, and wanting to safeguard the land for Māori to use themselves, the commissioners telegraphed Carroll to get him to arrange urgently for Rānana to be vested for Māori occupation. They recommended that Ngārākauwhakarara, overrun by blackberry, should be vested under separate provisions for leasing to the public. Carroll vested the blocks in March 1907.

In January 1912, the 197-acre Rānana reserve block, which included Rānana Pā, was also vested in the Aotea land board. It too was infested with noxious weeds. As a village settlement, Rānana reserve had been subdivided into very small parcels, but we do not know how many people were living there at the time of vesting. In 1911, the inspector of rabbits and noxious weeds had reported to the land board president that parts of the reserve were ‘unpassable for man or beast’ due to thickets of gorse, blackberry, and sweetbriar. The president felt that it would not be practical to deal with the weeds on the other vested blocks without simultaneously eradicating those on the reserve, and recommended vesting as the most effective means to bring this about. We do not know whether the owners played any part in these decisions.

(2) How Morikau was to operate

The rush to vest the land meant there was no agreement on how it would be managed, nor any effective legislation in place to enable farming by the land board. This led to some confusion, disagreements, and a delay of some years before development could begin.

At some stage not long after Morikau was vested in 1906, Carroll met with some of the Morikau owners to discuss how the vested land should be developed. He proposed the creation of a farm run by a manager who would employ local Māori and teach them farming, so that they could then develop their own farms. When the Stout–Ngata commission visited in March 1907, it heard a number of different opinions about how to manage the land. Some of the owners wanted to work the land themselves, and the owners of Rānana and Ngārākauwhakarara wanted this too. The Aotea land board president, Thomas Fisher, was of the view that as trustee the land board’s ‘paramount duty’ was to secure revenue as soon as possible for the owners. At the time, the law did not provide for the board to farm the land on behalf of owners. However, Fisher thought that the board should appoint a European manager to farm the entire Morikau block, with owners given preference for farm employment. The commissioners’ response was that although this would overcome financial problems, it would do nothing towards the most important goal, which was the encouragement of individual Maoris to engage in farming pursuits by themselves going upon the land, and by using body and mind in the struggle with nature to develop the independence, forethought, thrift, and resource necessary to make of them citizens of the colony in the fullest sense.

Their recommendation was that the European manager should operate along the lines that Fisher suggested, but on less than half the block. The rest should be divided into small farms and leased to the owners, whom the manager would supervise and instruct. In the long run, ‘if the experiment proved successful’, the main farm could also be divided into small farms.

At least some of the owners of each block, led by Wikitōria Keepa (also known as Wiki Taitoko, the daughter of Te Keepa Te Rangihiwiniu) and Wi Pāuro, were in favour of forming incorporations, with committees of owners to run large farms and set aside 1,000 acres as
Committee members were elected over the summer of 1907–1908, and in April Carroll applied to the land court for an order of incorporation for Morikau. However, on 9 May Fisher told Carroll that in his understanding the law allowed the land board to lease the land to owners, but as the land board now legally owned the land it was not available to the owners to incorporate and manage the land as they wished. Fisher suggested that rather than forming an incorporation, the owner committees could simply lease the land from the board. However, at a meeting with owners some days later, Fisher suggested that the committees would need to work with a manager that the board appointed – although, as we have noted, there was in fact no provision for this in the legislation. Wikitōria Keepa and Wī Pāuro articulated the opposition of owners to working with the land board unless owners had ‘absolute control’ of the land.

(3) Development begins
Development halted pending the passage of the Native Land Act 1909, which authorised district Māori land boards to develop vested land as farms on behalf of the owners. Section 292 of the Act gave the land board control over finances and management, but owners maintained influence through an elected farm management committee. The land board could appoint a farm manager with the agreement of the Native Minister. The manager was answerable to the land board; was chairman of the owners’ committee; and had to manage the farm in accordance with the committee’s recommendations. The board could also raise money on the security of stock or crops, or mortgage the land with any Government lending department with the consent of the Native Minister.

In 1910, once the Act came into force, the Native Department Under-Secretary recommended that the blocks be run on separate accounts, but with a shared manager. Claimant counsel argued that the authorities dismissed the owners’ practical suggestion that the rentals from the neighbouring Morikau 2, which was under lease, be used to pay off any loans on Morikau 1. However, the under-secretary reported that the ownership of both blocks appeared to be the same and therefore the rentals could be used to work Morikau 1, ‘for a start’, with further arrangements for mortgaging to follow. In June 1910, Carroll arranged with owners for a manager, and an elected farm management committee, to farm both
Morikau and Ngārākauwhakarara according to the 1909 Act, while Rānana was to be left to owner occupation for the meantime.\textsuperscript{280} Gregor McGregor was appointed as the farm manager of Morikau in August 1910.\textsuperscript{281}

McGregor wanted the owners of Rānana to yield control of that land, so in 1910 he suggested giving them the worst parts, including all those that were blackberry infested. His idea was that, by making the terms upon which the area was given back 'so severe', it would not be long before 'they would be glad to hand it back' to the board.\textsuperscript{282} We do not know whether these threats were carried out, but it was not long before the Rānana owners
asked for the block to be included in the combined farm, and McGregor became manager of all three blocks. In April 1911, owners elected six of their number as a farm management committee for all three blocks. From this point, official correspondence tends to refer to the blocks as a single unit.

Apart from the Morikau station, about a thousand acres from each of Morikau and Rānana – which included the ‘best part’ of Rānana – were then divided into small papakāinga units of 50 to 200 acres for the resident owners to farm. There were also papakāinga farms on Ngārākauwhakarara, although our sources differ about how many acres these were. The papakāinga farmers worked their land on 12-year occupation licences, with rent payable to the board. Unlike lessees under formal leases, occupation licensees could not borrow on the security of their licence to occupy (see section 18.6.2).

(4) Resistance to the scheme
Some owners were still not reconciled to the scheme. From about late 1910, Pāuro Marino and his whānau began occupying and running stock on part of the Morikau block, claiming that they were entitled to the land. Part of the problem seems to have been that Morikau 1 was not properly surveyed, making it unclear how much of the land the board controlled. Marino, whose life we discuss in chapter 25, was jailed in 1911 after he claimed 700 acres as his farm and refused to move his stock off. McGregor and other owners cut his fences to make way for the station stock that McGregor managed, and Marino began legal action, which led to a counter-suit from the Aotea Māori land board. Marino was declared a trespasser and ordered to stay off the vested land, and when he refused he was sentenced to prison for contempt of court. He was released after two weeks upon his undertaking to obey any decisions of the land board, and to remove his stock within a fortnight of returning to Whanganui. After discussions with leading owners, it was agreed that Marino would occupy a certain amount of land at Rānana, but it is unclear whether he did.

In 1912, 48 owners of Morikau 1 wrote to the Native Minister saying that they did not know ‘how and why the Board became possessed of our land’ and strongly objecting to the Board ‘occupying our land’. They pointed out that they had been farming some of the land and running stock on it. That is all we know about their position.

(5) Scheme finances and management
Once a management structure was in place, work on the station progressed quickly. Bush was felled, fencing erected, paddocks ploughed and grassed, and stock purchased. In 1913, between 150 and 200 Māori were living there. Some who had previously lived elsewhere sold those other interests and moved to live on land in the scheme. Some of the papakāinga farms were also progressing well, although lack of funds was an issue. McGregor said that some of the papakāinga farmers were careless and lacked energy.

(a) Complaints about management: Other owners were unhappy about management of the farm. A group of owners sent a letter of complaint to the Native Minister in December 1911, making these points:

1. In our opinion too much money is being expended by the management in unnecessary things.
2. Moneys are being expended unnecessarily by the management on works outside of the Morikau No 1 block.
3. Workmen who are owners in this block state that they are being paid with Morikau No 1 money, for work done by them on the Ranana and Rakauwharara [sic] blocks.
4. Although the operations of the management on the block are not yet substantially advanced on a system, a large preliminary sum has been spent on a large house and water-pipes.
5. Cash expended by the Manager and his Committee from the time that they began down to date 31st March 1911, totals £2,388.6.5 which is debited against Morikau No 1.

The Native Department responded promptly, sending the under-secretary to investigate the following month. In his opinion, McGregor was doing good work and the expenditure was justified, especially in view of the severe weed infestation.
In October 1912, the Māori land board inspected the land and consulted the owners’ committee about the management arrangements. In a questionnaire, the board asked the committee if it was satisfied with the work done on the scheme, knew of any complaints, or knew of anyone who wished for their land back. It also asked for the committee’s opinion of the current rate of expenditure and whether it agreed that it ‘should help Mr McGregor in every way and share the responsibility with him’. The committee responded that it was generally satisfied and wanted to continue with the current arrangements.

(b) Growing debt: By the end of the decade, however, some of the owners were repeatedly calling for McGregor to be replaced. They knew that Morikau Station was accruing increasing debt. Early in 1912, the board sought approval to mortgage Morikau for £7,000, Ngārākauwhakarara for £3,000, and Rānana for £1,000, with the money to be spent on development work. By August the following year, more than £12,000 had been spent on the blocks, and the board was seeking approval to borrow up to £25,000, some of which was to be spent on the papakāinga farms. However, costs were mounting for improving access, putting in fencing, and buying grass seed and other materials to establish pasture before more stock could be introduced. The removal of blackberry from Ngārākauwhakarara was ‘annually costing more than the block produces’. By 1914, the board reported that a loan of £32,000 was required to cover the existing £12,000 mortgage, the board’s overdraft of £14,000, and £6,000 for more development. The First World War price boom seems to have helped the farm’s finances, as there was a net profit of £4,878 in 1916. The following year, however, the land board president alleged that the farm stock had been overvalued, and so the reported profits were double the actual profits. He also criticised McGregor for failing to communicate properly with the board.

In the early 1920s, the land board’s new president wrote that although the developed parts of the farm were in a good state, large areas were still under bush. Rather than borrow more to finance clearance, he suggested selling half the station for soldier resettlement, with one-third of the proceeds going to the owners and the other two-thirds to farm development. He also suggested converting the remaining land into a dairy farm. This idea was not taken up, as the Crown did not want to buy the land.

Some dairying did begin in the 1920s, but this was significantly handicapped by the lack of roads, which forced the farmers to transport their cream by expensive river freight. The station was struggling at this time, with an inspection finding that there were still 800 acres overrun by blackberry and gorse. Although nearly £3,500 had been spent clearing weeds, it had not reduced the area infested, but had only stopped their spread.

(c) Owners’ discontent: In 1924, Parete Weretā and 211 other owners petitioned the land board, pointing out that the board had been working the land for 14 years without the owners receiving any benefit. They also argued that McGregor was neglecting noxious weed eradication and fencing, and at 67 was too old to run the farm effectively. Te Hirata Te Ua and others also accused him of interfering with the papakāinga landholdings for the benefit of his Māori in-laws. The board president and a Native Trustee official inspected the farm and confirmed that weed control and fencing had ‘gone back’, but blamed this on lack of money.

The station was still in debt, and had been making losses despite the high wool and stock prices that were making neighbouring farms profitable. McGregor’s explanation was that the station needed cattle to keep down secondary growth, but cattle farming was not particularly profitable. Then the owners discovered, much to their alarm, that the £32,000 mortgage attached to the entire vested area, including the papakāinga areas. In a letter to the member of Parliament for Western Maori, Māui Pōmare, Hēnare Pūmipi wrote

So every owners who are occupying a Papakainga or an acre of land is carrying a £2-per acre mortgage over his holding and get no benefit from the mortgage incurred by the Board even grave yard is not exempted from mortgage. The Board must have mortgage the whole stock & barrel and all, including Papakaingas something radically wrong somewhere.
By 1924, Morikau Station was running an overdraft of some £4,000 from Māori land board funds, in addition to the mortgage of £32,000. The size of the overdraft seems to have been the final straw for the Aotea land board and it replaced McGregor in 1925.316

The owners complained in 1928 and 1929 that the land board was to blame for the financial situation. The board president agreed that there had been problems, but considered that the new manager, Piper, had dealt with many of the management issues. The valuation reports and balance sheets show steady progress from the late 1920s onwards, despite the Depression of the 1930s.317

(d) Better days: Owners received a small profit distribution in 1934, and by 1937 the mortgage had been reduced to £24,000.318 By 1946, all debts were cleared, and the farm was returning regular profits. Between 1948 and 1951, money was set aside for the renovation of Matahiwi, Kaiwhaiki, Karioi, and Raetihi marae, and the school at Rānana.319 During this period, Hoeroa Marumaru and other owners began discussions with the Māori Affairs Department about regaining control of the farm. Marumaru, the ‘driving force’ of the negotiations, wanted the Māori land board to remain in an advisory capacity to owners, who would run the farm as an incorporation.320 Negotiations stalled when Marumaru died in 1952, but resumed around a year later. In 1954, the three blocks in the station were amalgamated and the Morikaunui Incorporation set up. On 30 June 1955, control of Morikau Station was handed over to a committee of management on behalf of the incorporation owners.321

Some claimants expressed similar sentiments about the Morikau Incorporation as they did about its larger neighbour, Ātihau–Whanganui Incorporation. Ronald
Rangiwhakateka Hough told us that individuals gained little financial benefit from Morikau, probably because of the number of shareholders; that the station does not employ many owners; and while access to the land is not restricted, owners now have little influence over their ancestral land in the incorporation. 322

(6) **Owner-occupied farms, employment, and training**

Development of the larger station was prioritised, so it took some years to establish the small papakāinga farms. The owners’ committee took the lead in deciding how much land to set aside, locations, and who would occupy the sections. Between 1910 and 1914, approximately 3,000 acres were subdivided into areas of between 50 and 200 acres for owners on all three blocks. Later, the total area increased to 3,750 acres. 323

The Māori land board did not lease the farms to the owners, but instead issued 12-year occupation licences with rent payable. Licences were used on other vested lands but we do not know why this tenure was chosen.
here, or why the licences were so short. The decision was an important one because licences, unlike formal leases, could not be offered as security for borrowing. Possibly owners decided that they did not want the risks of leasing and borrowing. The plan on the Morikau scheme seems to have been for owners to finance the development of their farms through a mixture of employment on the station, and through the station supplying them with stock and materials on credit.324

McGregor employed owners for development work, and reported that the money earned was enabling owners to begin improving their own sections. He encouraged them to improve their stock by buying up their old mixed-breed merino sheep and replacing them with superior Lincoln’s, which were better adapted to Whanganui’s high rainfall.335 Owners could also use the station’s sawmilling plant and equipment to assist with chaff cutting and shearing at a small cost.326 In 1914, McGregor and the land board president strongly supported the owners’ committee’s request to the Native Department for more funds to develop the papakāinga areas.327 The president suggested that the owners’ committee and farm manager could supply materials to owners who would then owe the station. The Department seems to have agreed, as the next year the owners’ committee was authorised to supply fencing materials to the owners. The materials were charged against the relevant farms as a standing debt at 5 per cent, ‘to be collectable . . . when the opportunity offers’. Seed and manure were also supplied on the basis that their cost would be repaid out of the resulting crop.328

(a) What about training? On the other hand, three years later, Aotea land board president James Browne reported that he had ‘the vague idea that the real object of the farm was to teach the owners farming’. This object, he thought, had either been lost sight of or had been found impractical, and none of the owners was employed on the farm nor learning any farming skills. He added that ‘the Manager is quite willing and anxious to teach and assist them in every way but they simply do not want to learn’.329 Nevertheless, some progress continued to be made on the owner-occupied farms. A Native Department field supervisor reported in 1920 that most lots were fenced, ‘and several of the occupiers are following the methods adopted on the station with pleasing results’. Stock was also showing ‘a very marked improvement’.330 Other sections were deteriorating, however.

Browne’s successor, Judge Frank Acheson, agreed that the training purpose of the farm was not being met. He blamed the owners for this, writing that they ‘have entirely failed to rise to the occasion’, ‘show little desire to farm their own lands properly’, and ‘evince little practical interest in the farm’.331 Acheson felt that a switch to dairy farming would be beneficial, as the farmers would receive regular cream cheques and so the rewards of farming would be more evident.332 McGregor also supported a conversion to dairy, for similar reasons, although he recognised that this would require more borrowing.333 Nothing seems to have been done, though.334 The increasing debt on the station at this time might have meant no funds were available to help owners to develop their own farms.

We do not really know the truth about owners’ inclination to participate in training opportunities. There was considerable antipathy between McGregor and some of the owners, so that could have had an influence. Perhaps owners were dispirited by the lack of success on their small lots. It was apparent later that they were undersized, and some lacked a good water supply.

(b) Owners get freehold lots: By 1924, the initial progress experienced on papakāinga farms had plateaued. Unable to borrow money, and receiving none of the expected revenue from Morikau Station, owners struggled.335 After discussions with the Māori land board president, owners agreed that freehold titles would give them a better prospect of success as they could then get loans.336 The Under-Secretary of the Native Department suggested that formal leases would also enable owners to borrow, but we do not know whether the land board president put this option to owners. In his view, freehold was ‘the fairer option’, and the under-secretary does not seem to have taken this further. By the end of 1924, the papakāinga farmland was partitioned from the station and returned to the owners on separate titles.337
(c) New manager disinclined to employ owners: When Piper took over the management of Morikau Station in 1925, the land board instructed him to give owners preference for any work on the farm at current rates. Piper was willing to share his expertise, and reported that he had taught the Rānana farmers how to prevent death and calf loss from ragwort poisoning. But he was reluctant to employ Māori on the station.

In 1928, owners made at least four separate complaints that more and more non-Māori were being employed, despite owners having the necessary skills and responding to requests for tender with competitive prices for their services. The fact that they were yet to receive any dividends from the farm contributed to their frustration. ‘We must live as well as Europeans,’ stated one petition, ‘considering we are not receiving any dividend from the farm.’ Piper’s response was that with some exceptions, the owners had proved to be unreliable workers and he ‘would sooner hand over the management to somebody else than have the worry and trouble with any more Maori contractors.’ Judge Browne, who had returned as president, supported the manager, taking the view that the land was being farmed for the benefit of all the owners, and not only those who resided on the land, so the farming should be carried out so as to maximise profits. The Native Minister was aware of the complaints but took no action and the situation continued as before.

In the late 1930s, after further owner requests for employment and training, more Māori were employed, and several went on to be managers of Rānana and Morikau stations.

(7) Conclusions on the Morikau scheme

The Morikau scheme was a well-intentioned innovation in Māori land management. There would be a partnership between Māori and the Crown directed at realising the early twentieth century vision of successful Māori farming communities: papakāinga for Māori occupation; larger farms for greater profit; and Māori engaged in agricultural education. This concept had much going for it, but there were failures in implementation.

The scheme was effective in keeping the land in Māori hands, when it appeared likely that it would otherwise have been sold. The only alienations from any of the Morikau farm blocks were relatively small takings for public works. In 1938, a group of Māori from Rānana, Hiruhārama, and Pipiriki, petitioning for a grant to attend the opening of a memorial to James Carroll, stated:

We consider that it is greatly due to the Late Sir James Carroll’s foresight that the remnants of our lands now vested in the Aotea District Maori Land Board and other lands now in our occupation were saved from the Jaws of the ‘Land Sharks’ of those days . . . [Emphasis in original.]

Looking at what happened elsewhere, we think those owners were probably right.

The station also became profitable. Development began in 1910, the first net profit was made in 1916, losses followed in the 1920s, and then recovery in the 1930s. Perhaps the venture did not achieve its full potential in McGregor’s last years as manager, but the initially slow returns were probably more attributable to the level of borrowing required to meet the considerable cost of development, and the outlay to contain the huge noxious weeds problem on the Ngārākauwhakarara block and the Rānana reserve. Under such circumstances, the owners could not reasonably expect to profit from the Morikau farm for many years, but this does not seem to have been their expectation. It was particularly hard for the papakāinga farmers, who also needed money to develop their land. They did not get credit from the main farm that enabled them to purchase stock and materials – although some of it at five per cent interest. They could also borrow farm equipment. Really, though, they were unlikely ever to be able to overcome the fundamental problem that their farms were too small to be viable in the long run.

We have seen that the owners received little in the way of employment or training on the Morikau farm from about 1917 through to the 1930s. We were unable to discover exactly why this was, but antipathy between managers and owners almost certainly contributed. Whatever the cause, the lack lessened the chances that the owners would be able to successfully manage their own farms in
The situation seems to have improved by the late 1930s, and several owners were able to obtain the experience and expertise they needed to assume leading roles on the farm once it became independent in the 1950s.

The planned power nexus, with the land board exercising governance, and management shared between the manager and the owners’ committee, did not eventuate. Although the legislation enabled elected advisory committees to be set up, and the farm manager was meant to act in accordance with their recommendations, that would only have worked easily with a manager who wanted to function cooperatively. Otherwise, the land board would have had to oversee things to ensure that the power balance was maintained. However, Māori were not represented on the land board from 1913, managers made their own decisions, and the owners ended up as petitioners for influence on their own land.

The creation of an incorporation to run Morikau and its return to owner control in the 1950s seems to have been managed with a high degree of owner input. Some owners told us that they felt disconnected from the land. We talk about this problem with Māori incorporations in chapter 18 on vested land. However, in the case of Morikau the papakāinga farms were separate from the main station, so whānau were able to remain in occupation of that land.

19.6.3 The development schemes of the 1930s

We turn now to the large-scale land development schemes that the Crown set up from 1929. By then, the slide into the Great Depression had started, putting extra strain on the ability of the Native Trustee and the district Māori land boards to meet the Māori need for loan finance. In response, the Crown introduced legislation that greatly widened the scope of State involvement in Māori farming, and gave unprecedented levels of State funding to Māori land.

The biggest scheme in our district was known as the Rānana development scheme, and involved parts of Rānana, Morikau 1, and Ngārākauwhakarara blocks. Another very large scheme was at Manunui, but it lay mostly outside the inquiry district and we received no claims about it. There were also small schemes at Aramoho, Kōpuaruru, and Kai Iwi. Below, we look at the organisation and funding of the schemes, how they were managed, and what benefits, if any, they delivered to the owners.

(1) Ngata’s vision

One of Sir Āpirana Ngata’s first actions on becoming Native Minister in 1928 was to set up a new system of Māori land development schemes, by which he hoped to overcome the long-standing barriers to turning Māori land in multiple ownership into profitable farms. Unlike the Morikau scheme, owners retained title to the land under development, with the Crown taking over some control and management. Funding came from the Native Land Settlement Account, originally set up under the Native Land Act 1909 to fund the purchase and settlement of Māori land. An element of compulsion remained: the Native Minister could gazette land for development without owners’ consent, and once land was in the scheme owners could not alienate any part of it, or do anything to interrupt development. Speaking about the new schemes, Ngata said: ‘The difficulties as to title were literally stepped over, and the development and settlement of the lands made the prime consideration.’ Over 70 schemes were set up across the North Island, with large Government loans approved for development.

(2) The structure

The Minister of Native Affairs had ultimate control of the schemes, but in practice seems to have delegated his power to the local Māori land boards. From 1935 the Board of Native Affairs – comprising Government ministers and heads of department – governed development schemes, and had the power to determine who occupied what land, and under what conditions. It was not until 1949 that district Māori land committees provided local Māori representation in the management structure. On a day-to-day basis, district farm supervisors and foremen oversaw and ran the farms, and owners did most of the farming for a daily wage. A supervisor would lay out and then oversee farms in a defined area, while the foremen were Johnny-on-the-spot, living on or close to their schemes,
managing stock purchases, distributing seed and fertilizer, organizing and supervising additional labour, and giving advice to owners about their farm work. In most Māori land districts, the district supervisor was European, as this would ‘inspire confidence in official quarters’, as Ngata put it, while foremen were Māori and able to ‘deal with the psychology of the Maori workers and settlers’. Over the years, another layer of supervision was added in Whanganui as field supervisors joined the district supervisors in monitoring farming operations. Field supervisors were generally responsible for specific schemes, while the district supervisors continued to oversee all schemes in the area. Farm managers replaced foremen.

19.6.4 The Rānana scheme

(1) An overview

The Rānana development scheme involved the parts of Morikau 1, Rānana, and Ngārākauwhakarara that were no longer part of Morikau station – mainly former papakāinga blocks that were taken out of the scheme in 1924. Two Māori settlements, at Rānana and Hiruhārama, were also included. When the development scheme was established in 1930, it was made up of 51 sections from the three blocks. The following year, another 28 sections from the three blocks plus the Rānana reserve were added. In total, the scheme covered 4,516 acres.

The scheme comprised one large station, plus smaller farms. Initially there were 26 small farms, of which 10 were fewer than 100 acres, but over time steps were taken to enlarge them, either by merging them or by taking land from the station. By 1971, the average size was 200 acres, although three were still fewer than 100 acres. When some of the small farms were abandoned, they were used to enlarge other small farms or added to the station. A farm manager and workers ran the station, which at its largest was about 2,560 acres. In the 1960s, a number of the small Rānana reserve sections were released from the scheme, as was one farm. In 1972, the station – comprising 1,434 acres at this point – and at least two other farms that were no longer occupied – were leased to Morikaunui Incorporation for 21 years to clear the debts on the land.

We do not know exactly how much land was leased to the incorporation (claimant evidence suggested it was 30 of the original sections), or what happened to the balance of the land at that point: the evidence we received was not clear as to whether any established farms were released from the scheme to owners.

At end of the lease in 1993, the incorporation did not want to continue to lease the Morikau block and over the following years the Crown arranged the return of sections to owners. At the time of our hearings six sections remained to be returned from the Morikau block. It appears the incorporation may have continued to lease land from the Ngārākauwhakarara and Rānana blocks.

(2) Was the Rānana scheme well run?

Asking whether the Rānana scheme was well run, we look into how it was managed and supervised, then try to ascertain how effectively the Crown, land board, and farmers worked together to tackle difficult issues such as noxious weed control, the transition to larger farms, and debt.

Hoeroa Marumaru, a member of the Morikau farm owners’ committee, instigated the Rānana scheme, with support from some other owners. The papakāinga farms of the former Morikau scheme had not prospered, and their owners were struggling with increasing debts. The debt levels of at least nine farmers exceeded the value of their stock, and another six had debt and no assets. In 1929, Marumaru and owners Hekenui Whakarake and Hēnare Pūmipi inspected the land and reported favourably to the Native Minister on the feasibility of establishing a scheme at Rānana, which they hoped would be a solution to the owners’ precarious financial situation.
very well,’ and that the registrar, Brooker, was ‘doing good work for us.’ Marumaru was involved in discussions on how each farmer’s debt would be dealt with, and the board and committee agreed on how the anticipated profits would be divided between debt repayment and income payments to the farmers.

The owners’ committee also recommended the appointment of the first farm supervisor, K C Guthrie. Browne noted in November 1930 that the Rānana scheme differed from other development schemes in that ‘it was practically a going concern when taken up.’ The farmers had run their own affairs for years, and ‘the introduction now of new methods has no doubt – upset them somewhat.’ Browne thought Guthrie might not have the necessary tact to manage this situation. Indeed, at the request of the owners, Marumaru took over as farm supervisor in April 1931, although, at his own request, only on a part-time basis.

At the same time, Robert Tanginoa Tapa was appointed as foreman of the Rānana scheme, and Ngene Takarangi was made responsible for issuing stores, keeping wage-sheets, and other clerical duties.

The Māori land board also listened to Marumaru and
the owners’ committee when assigning land to farmers. For instance, Marumaru advised in 1932 against allocating any more land to one particular family because:

one of the fundamental principles of the ‘Ranana Development Scheme’ is to assist as many of the owners as it is possible to farm on the area available, and not to help to increase already big holdings. [Emphasis in original.]\(^{374}\)

We do not know if the owners’ committee continued to function beyond the first year or two, but the appointments of Marumaru, Tapa, and Takarangi seem for some years to have maintained good relations between the Māori land board and owners.

The first 10 years of the Rānana scheme was a period when it was closely managed and supervised. Marumaru was heavily involved until 1937, and after that continued on a reduced basis. Tapa was the full-time resident foreman until 1941, when he resigned to take up a unit farm on the scheme. Both men were experienced in farming: Marumaru was associated with the Morikau scheme for years before becoming supervisor of the Rānana scheme, and Tapa came from a strong farming background (see sidebar).\(^{375}\) The chief supervisor Blackburn made visits, and an additional farm supervisor was employed alongside Marumaru in mid-1937.\(^{376}\)

(b) Problems emerge: Between 1938 and 1941, owners began to complain about the management of issues such as noxious weeds, low incomes, and the scheme’s growing indebtedness. Acting Native Minister Langstone visited the scheme in 1938 and was less than sympathetic, exhorting the owners to take more responsibility for their own sections and to work harder at eradicating the weeds.\(^{377}\) However, the Aotea District Māori Land Board registrar took the complaints seriously when owners sent a petition in 1942. The investigating committee it set up, which included Marumaru, recommended closer supervision of farming operations, and debt relief. Supervision did not improve though, perhaps because of the involvement of many officials and farmers in the Second World War. Some debt relief eventuated, which we discuss below.\(^{378}\)

In fact, supervision gradually declined. After Tapa resigned, he was not replaced, and a district farm supervisor took over his duties. A farm supervisor, working only part-time, replaced Marumaru in 1938.\(^{379}\) However, Marumaru remained involved as a property supervisor, and influenced the department’s approach to the scheme until his death in 1952.\(^{380}\) Rangi Mete Kingi, another owner, was chairman of the Morikaunui Incorporation Board from the late 1950s and a field supervisor with the

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\(^{374}\) Marumaru supported the Rānana Development Scheme and, in the late 1940s, he led the negotiations for Morikau Station to be transferred back to the owners’ control. He died in 1952 before the negotiations could be completed. On 30 June 1955, the control of Morikau Station was handed over to a committee of management on behalf of the Morikaunui Incorporation.

\(^{375}\) Marumaru was associated with the Morikau scheme for years before becoming supervisor of the Rānana scheme, and Tapa came from a strong farming background (see sidebar).

\(^{376}\) The chief supervisor Blackburn made visits, and an additional farm supervisor was employed alongside Marumaru in mid-1937.

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A Farming Family in Whanganui

Tanginoa Tapa, a kaumātua of the Rānana scheme, was a descendant of Rēneti Tapa, one of the earliest sheep farmers in the district. Tanginoa was one of the owners who met with Āpirana Ngata in late 1929 or early 1930 when the Rānana land development scheme was proposed. His daughter-in-law, Te Rīna Tapa, told us:

he instilled the values in the community. He was extremely knowledgeable in korero, waiata and tikanga. He knew all about the tapu places, taonga and whenua. . . . He was one of the claimants to the Awa back in the 1930s.¹

Tanginoa was particularly against selling any more Māori land:

Tanginoa and the other old people were very clear about the hapu lands. The whenua was for our tamariki and mokopuna. We are only the kaitiaki. He always said that we should never sell our land.²

His son, Robert Tanginoa Tapa (right), was also a highly regarded farmer in the Rānana scheme. He was foreman in the 1930s, and farmed 230 acres in the early 1940s. In 1941, the land board recognised him as ‘a particularly able dairy farmer’. He was a prize-winner in the Ahuwhenua farming competition in 1945 and 1946.³

Māori Affairs Department in the 1950s. After Marumaru died, Kīngi took on the role of liaising between owners and the department.³⁸¹

Supervisors and other officials continued to visit land in the scheme and undertook formal inspections from time to time, but the land was isolated and hard to reach, which seems to have limited the ability of the Māori land board and Native Department officials to provide more supervision.³⁸² It is not clear how the changing administrative arrangements and lack of supervision affected the farmers, many of whom by this time were experienced farmers themselves.

Officials obtained consent from owners for major decisions. Following the Second World War, Crown officials encouraged owners to include Rānana in the Government rehabilitation scheme and allow returned servicemen to lease some of the land. This move, the Aotea district land registrar told a meeting of Rānana scheme elders in 1951,
would 'get the Returned Servicemen on the land'; ensure that the scheme was 'fully productive'; and provide owners with regular annual rent. Owners were prepared to allow suitable 'returned Servicemen from our own people' to settle, but they did not support the inclusion of Rānana in the general rehabilitation scheme. We know of two ex-servicemen, Wally Te Kuru and Hēmi Bailey, who were settled on farms in the Rānana scheme. Another, Rēneti (Ned) Tapa, also sought settlement and had the support of the Aotea Māori land board, but in the end could not come to agreement with other owners about the basis on which he would lease the land.

By the late 1950s, Tāme Wanihi (Tommy Wallace) was managing Rānana station, but we received little evidence about how the station was run in the post-war period. By this time, owners wanted the development scheme land – including the station – back under their control, and they revived the owners' committee with this aim in mind. However, in the meantime, decisions needed to be made about specific problems, and owners and officials differed strongly about the best approach.

(c) Noxious weed control: One of the biggest problems on the Rānana development scheme was noxious weeds. Many sections were overrun with blackberry and gorse that had never been controlled completely, despite decades of trying. Once pasture was established, ragwort also grew very strongly, putting cattle at risk of poisoning.

Weed eradication was labour-intensive, and during the Depression, the Government subsidised additional Māori workers to carry it out. By 1938, there were 114 labourers at Rānana. As well as grubbing out manually, noxious weeds were sprayed with chemicals, and sheep were used – they could eat ragwort without significant harm for a limited time. From the early 1940s onwards, labour shortages and increasing labour costs undermined earlier work as weeds reappeared and were very costly to clear. In 1952, the Under-Secretary of Māori Affairs commented that noxious weeds affected all farmers in the area:

The past history of the Wanganui River lands occupied by Europeans and Maoris alike is not a very happy one, as the quick reversion to second growth and gorse on land cleared many years ago is a noticeable feature on most areas being farmed to-day. This fact led to the abandonment of vast areas of lands still unoccupied because of this known reversion factors and the high cost of regrassing. This district has always been known as the 'graveyard of fortunes'.

Heavy machinery and new chemicals were tried in the 1950s and 1960s, but reports on their effectiveness were conflicting. In 1961, one official wrote that Rānana Station was covered in blackberry and gorse, while another stated that it was 'a beautiful picture, clean and green with the sheep and cattle in thrifty condition'. Overall, it seems, the battle with the weeds was not won.

(d) Farm shape and size: We have noted that the small farms were originally part of the Morikau papakāinga. Most of the blocks were partitioned when they were returned to the owners in early 1925, and it is unclear how they came to be badly planned and lacking adequate water, as officials now described them. The water problem could be fixed only by piping water in, which risked overloading the sections with debt.

Some of the farm sections were only 50 to 60 acres. Initially, this was considered enough for small-scale dairying, but the ragwort infestation meant that the land could not be heavily stocked. By 1942, it was clear that some farms were too small to be viable, and needed to be amalgamated into larger blocks. For some of the owners, this meant giving up sections that had been kept out of Morikau Station and partitioned for their particular use. Perhaps realising that there was not much alternative, the owners agreed in 1943 to some limited amalgamation of smaller farms into larger units.

After the Second World War, the official word was that farms needed to be enlarged further. In 1947, the field supervisor overseeing the Rānana scheme, GT Livesey, reported that an economic unit was 35 cows and 150 sheep on 100 acres of better class land. 'There was no use beating about the bush,' officials told a meeting of owners, 'the country was sheep country'. By 1957, an economic unit required at least 180 acres, carrying at least 800 sheep or

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Farming at Rānana

Paretūrere (Polly) Teki was born in 1908. She worked on her father’s farm at Rānana from the age of 12, taking over the farm after his death. From 1930, the farm was in the Rānana development scheme. Mrs Teki was soon recognised as a keen and hard-working farmer, and became one of the best-known and well-loved characters in the area, raising at least 16 adopted children. She was still farming at Rānana in the 1970s. Hoani Hīpango told us that Kui Teki, as he called her, eventually got out of debt through her ‘determination to keep going and not fail’, and supported her own and another whānau, ‘five of whose mokopuna she put through college’. She did not have a good relationship with Government officials. Mr Hipango told us that ‘When the department officers used to come to her farm she used to threaten to shoot them because she would be fed up with the service they provided, or more to the point what they didn’t provide’. 

Paretūrere (Polly) Teki with her great-grandson, Mahirini Whale, and two of her daughters (Juliana Whale and Evelyn Broad) and their husbands (Billy Whale and Peter Broad), Rānana, 1999
The owners were mostly opposed to further amalgamation, expressing strong attachment to their own sections. A number of owners with small units wanted to take their land out of the scheme, but officials opposed this, questioning how owners would be able to continue farming such small areas. In 1959, owners did agree that land should be taken from the main station to create two new farms that would be leased to nominated owners, and also to increase the size of some of the more successful small units. As it turned out, the projected cost of clearing the weeds on the station area delayed this plan.

Discussions about the future of the scheme and its farms were complicated by the Crown's plans to build a hydro dam at Ātene and flood much of the area. We discuss the proposed dam and its impacts in chapter 26. Because of the uncertainty about the area's future, the Board of Māori Affairs refused to approve the creation of any more individual farms, and in 1961 decided not to undertake any more investment or development until a decision was made. The board reversed this decision two years later when it realised that the scheme needed more money to survive, but it would only fund work above the anticipated flood area.

(e) Debt: Like most marginal farms, the Rānana development scheme struggled to achieve a balance between raising enough money to making the land profitable, and avoiding an overly large debt burden. We saw how a large mortgage and other loans were needed to develop the farm at Morikau, and even then it took more than 20 years to turn a profit. The Rānana development faced a similar struggle, but with a less successful outcome.

Several of the small Rānana development farms were already burdened with debt when they entered the scheme. When they became independent of Morikau Station, they obtained credit with local dairy companies for stock, equipment, and other goods but soon fell into financial trouble due to poor land, weeds, inexperience, and too little land, equipment, and finance. By 1930, 15 former papakāinga farmers owed a total of more than £2,000 to two local companies, with six of them no longer having any stock or assets with which to repay their debts. It appears that most of this debt was paid off as a development scheme expense.

The scheme's debt steadily increased during the 1930s, reaching £12,978 in 1934, and £45,536 in 1939. A labour shortage caused by better-paying public works employment meant that land development was not progressing as quickly as had been hoped. The ragwort infestation raged on, and cream production fell over this time, reducing the scheme's income. Interest accounted for more than half of the debt increase in the late 1930s. A summary of accounts in 1940 showed that, of 25 units, three had managed to reduce overall debt in the last year, but for many, revenues were only just covering interest payments and providing very low incomes. Owners told the Native Minister that under current circumstances there was little hope of ever returning a 'reasonable living wage' to the occupants of many of the small farms.

In 1942, the Government approved debt relief for 13 of the then 20 active individual farms, and their loans were put into interest-free accounts for five years. This might have worked in the short term. In 1951, the Under-Secretary of Māori Affairs, Tipi Tainui Rōpiha, noted that some of the accounts were 'in a very healthy condition', but we do not know to which units he was referring.

(f) The station debt grows: One of the issues on the station was that the debts of eight sections abandoned between 1937 and 1944 were added to the station's development costs. In 1953, an inspecting accountant for the Department of Māori Affairs noted in an item called 'general development' in the station account that debt had increased by some £9,592 between 1942 and 1952. However, £5,183 of this was actually from previous unit accounts and had been merged into the station account. As the abandoned units were added to the station area, it had evidently been found impractical to continue to administer their accounts separately. The accountant also noted that of, a £17,380 increase in accumulated loss, almost all of it, some £17,365, was interest on the debt. The Department of Māori Affairs was alarmed but hoped that good prices for farm products would continue and enable repayment.
Further large investment: In the early 1960s, the Crown persuaded debt-averse owners that the only way forward was a further large investment in the station. Once the new development started, debts grew quickly. In 1962, owners reportedly had £10,000 equity in the scheme, and officials hoped that in approximately 10 years the land could be debt free. But by 1971, the position was $15,000 (equivalent to about £7,500) negative equity, and officials now had no hope that the debt could be paid off.

Long-term improvement was elusive for a number of reasons. In comparison with its successful neighbour Morikau, the Rānana development was much smaller. It was also fragmented – there were seven miles between the two main areas – and was developed later, when labour costs were higher.

An accountant who inspected the scheme in 1952 pronounced that it had more ‘administration and practical difficulties’ than he had ever seen.

In 1971, Rangi Mete Kingi, drawing on his lengthy history with the development, wrote a major report on the scheme. He strongly suggested that the Crown’s maintenance of the station accounts lay at the root of the debt problem. It was difficult to discern who was liable for what debts, and owners refused to pay debts that could not be demonstrated to be theirs. This was why uncollected interest debt on the station area now amounted to $50,000.

The end of the development scheme: By the time Mete Kingi wrote his report, three of the 14 individual farms remaining in the Rānana scheme were under lease to Pākehā, and two were leased to the Morikaunui Incorporation. It is unclear what was happening with the other nine, but one report suggests there were seven owners actively farming the land. By this stage there was no realistic prospect of developing the station into individual farms, and the most feasible way to reduce the debt was to lease the land to the Morikaunui Incorporation. Between 1972 and 1973, the Rānana station, reduced to 1,434 acres, was leased to the incorporation for 21 years.

The Crown postponed interest charges on the debts for 10 years, with that arrangement to remain in place for the final 11 years of the lease to the extent necessary to extinguish the total debt completely. This was effectively a guarantee that the land would, so long as the rent was paid as agreed, be debt free by the end of the rental term. For the Crown this meant that if any debt remained at the end of the lease, the Crown would have to write it off. We were not supplied with any documents on the management of the lease beyond 1975 and we therefore do not know how much, if any, debt the Crown wrote off at the end of the lease.

With the setting up of the lease, the Crown’s involvement with the land largely ended. The Māori Trustee kept the accounts, and oversaw the lease as agent of the owners. Between 1993 and 1994, the lease expired, and much of the land was returned to owners. They set up individual trusts to manage their respective areas, although we do not know to what extent farming is undertaken today.

Some claimants were concerned that, while it was under lease, much of the original fencing between sections was removed, and there was considerable gorse growth on the land. They argued that the Māori Trustee should have taken measures to ensure gorse was controlled more effectively when the land was under its administration. In addition, they pointed to an outstanding rates bill from this period. Consequently, they were reluctant to take their land back, and at the time of our hearings some land remained under the Māori Trustee.

Did the scheme have benefits for owners? The aim of the Rānana scheme was to save land in Māori ownership, give employment during the Depression, and provide assistance to enable owners to establish and maintain viable farms. The first objective was largely achieved. By 1929, the Crown had significantly reduced its purchase of Māori land, but purchases by private parties continued, and the economic straits of the 1930s might well have induced owners to sell their interests. The provision of employment in the scheme at this time was one clearly positive aspect of the Rānana development.

The objective of enabling owners to establish and maintain viable farms was not achieved, for the reasons...
we have discussed. On the positive side, there was considerable development in the 1930s, with many improvements such as houses, and fencing. Owners did benefit to some extent from the supervisors’ knowledge of stock and noxious weed management. The 1953 financial report on the scheme stated that some ‘units have proved reasonably successful’.

By the late 1950s, there were 14 farmers remaining. We do not know how many paid off their development debts, but one farm section was released from the scheme in the 1960s. The scheme did contribute to the creation of a farming community, with a number of families farming at Rānana for some decades, although ultimately they could not survive on a small scale in a remote location.

19.6.5 Smaller schemes

Aramoho and Kōpuaruru, which were reserves from the Whanganui purchase, were included in the Whangaehu land development scheme. Neither was particularly successful, and by the end were largely leased out to neighbouring farmers. The claimants said owners did not benefit from the scheme, and that Crown failures were to blame. There was also a development scheme on six Kai Iwi blocks in the early 1940s. Here, too, the claimants said that owners did not benefit, but we received no evidence about the scheme and therefore cannot inquire into it.

(1) Aramoho

Aramoho 8c2 (95 acres) became part of a land development scheme in August 1938. The chief supervisor proposed that the land should be used to employ local Māori. Its problems were lack of access, and noxious weed infestation. The plan was to clear the gorse and blackberry over three to four years to create a dairy farm unit. The Board of Native Affairs approved the plan and expenditure of £1,439. Financial difficulties soon emerged, though, and the department agreed to a 100 per cent subsidy for the cost of labour.

In 1942, the Crown purchased the adjoining Aramoho 8c1 (13 acres) to include in the scheme. Waata Te Piira Hipango farmed both it and Aramoho 8c2, but his health deteriorated. The field supervisor reported that he was ‘very doubtful’ whether a Māori farmer with ‘sufficient experience’ could be found to manage the property and ‘obtain returns sufficient to produce a reasonable standard of living’, so in 1945 the Aotea district land board registrar suggested leasing out the land in the scheme.

This is what happened. In 1946, both blocks in the scheme were leased for a period of 10 years to a non-Māori farmer, Roland Young. Hipango told the Native Land Court that any lease should include the right of owners to continue collecting firewood from the land, but we do not know if the decision to lease was discussed with other owners.

As the rents went to pay off the scheme’s debts, including the purchase price for Aramoho 8c1, owners received no rent from the lease from 1946 until at least 1952. In recognition of the owners’ financial contribution to Aramoho 8c1, the Crown vested it in the owners of the 8c2 block in 1952. Four years later, both blocks were released from the scheme, and the owners continued leasing the land to Young.

(2) Kōpuaruru

In October 1939, on the recommendation of the Native Department, Kōpuaruru (57 acres) was included in the Whangaehu development scheme. At the time, Kōpuaruru and another block included in the scheme had a combined mortgage of £600. One of the two owners, Rira Hiroti, was the nominated occupier, although it was her cousin, Hēnare Takarangi, who actually managed the farm. Both Hiroti and Takarangi enlisted for service in the Second World War, and so management of the farm fell to Takarangi’s brother. Officials reported concern about noxious weeds, consequent low production, and high debts. In 1948, Hiroti informed the Department of Māori Affairs that she wished to retain the house on Kōpuaruru but did not want to farm the land. Recognising that it would deteriorate if it was not farmed, the department agreed to subdivide the land in 1950, return the housing section to Hiroti, and lease out the remainder for a period of 21 years.

At least two department officials recommended that the department write off part of the scheme’s debt at the same time. ‘The owner does not appear to be entirely to blame,’
one stated. 'We took over the farm when it had an equity of £1000. Today after 11 years under us there is none.'

A month later he wrote again: 'It seems to me our stewardship is not altogether blameless and some relief should be given.' He considered that if the department had leased out the property during the war, at least £500 of its debt would have been avoided. We do not know if any debt relief was granted, but note that the land was leased for about six years longer than was originally planned. At the end of the first lease term, the block still had development debts, and the department wanted it to be debt-free before it was returned to the owners. This was finally achieved in May 1975, and Kōpuaruru was released from the scheme two years later.

(3) Conclusion
These two schemes faced real obstacles: noxious weeds, occupiers leaving for service during the Second World War, and a lack of other owners to take on the farming. They were also too small to be viable. The blocks were retained in Māori ownership, but their inherent disadvantages could not be overcome: there was even less possibility of enlarging the farms at Aramoho and Kōpuaruru than at Rānana. The decision to end the schemes therefore came more quickly. In the case of Kōpuaruru, not leasing out the land sooner probably made the debt levels higher than they needed to be, and for this the Crown’s management was responsible. The one benefit we could discern from any of these smaller development schemes was that the land was at least not sold.

19.7 Post-War Rehabilitation Assistance
After the Second World War, the Government established a scheme to help returned servicemen get into farming. The aim was, as the official history of the rehabilitation scheme put it, to give returned servicemen ‘the opportunity of returning to civil life on terms at least as favourable as those which would probably have applied as a result of their own efforts had they not served in the Armed Forces.’ The claimants submitted that the scheme operated so as to provide fewer opportunities to Māori than non-Māori. In setting out the evidence that came before us, we are conscious that the military veterans kaupapa inquiry will explore these topics much more fully.

19.7.1 Rules for rehabilitation scheme applications
Applicants received rehabilitation scheme farms either by allocation or by ballot. Farms were allocated if land needed further development before it was settled. In exchange for working on the land for a wage, returned servicemen gained the right to take over a defined section once development was complete.

The ballot system was altogether more complicated. There were two ballots, one for general land and one for Māori land. All applications were put through a grading system designed to ensure that the returned servicemen had the necessary skills to succeed as farmers. The most capable were given A grades. There were separate grading systems for Māori and non-Māori, but actually they seem to have been identical except that Māori who were assessed as having good farming skills but who were financially inexperienced were given an A grade, but it was tagged. The tagging indicated that they would be under the supervision of the Department of Māori Affairs until deemed capable. Non-Māori without the necessary financial skills were also to be supervised, but not to the same extent, and their grade was not tagged.

Whether or not a grade was tagged was important because, until 1954, Māori with tagged grades were only eligible for specific Māori land ballots, whereas untagged applicants were eligible for both general and Māori land ballots. The evidence suggests that Māori living in more traditional or Māori-dominated communities tended to apply for the Māori land ballots, whereas Māori who were more ‘assimilated’ or living in mostly non-Māori communities tended to apply for the general ballots. We saw no evidence to indicate whether a Māori returned serviceman could put his application into both ballots.

In June 1950, there were 11 Māori returned servicemen awaiting settlement in the Whanganui area, of which five were tagged and six had unrestricted A grades.
19.7.2 The Raetihi Farm Settlement

One of the areas available to returned servicemen under the rehabilitation scheme was the Raetihi Farm Settlement at Mākaranui. As we saw in chapter 15, the Crown had acquired some of this land for a small farm settlement in the 1930s. From 1948, 13 new sections were created, ranging in size from 1.5 acres to 264 acres. These were then combined and redivided into six small farms for returned servicemen, with a total area of almost 1,488 acres. To our knowledge, only one of the returned servicemen who received a farm in the scheme at Raetihi was Māori. His name was John Maihi, and his son, also called John Maihi, gave evidence before us. Mr Maihi (junior) told us how his father enlisted under his stepfather’s name, Green. Under the name Green, Mr Maihi (senior) was allocated a rehabilitation scheme farm at Marton, but when he went there to take up the farm the local committee which was overseeing the ballot process told him that as he was a Māori he was not entitled to take up land at Marton, and had to go. My father dug his heels in, and insisted he had the same rights as an ex serviceman as a pakeha.

After the intervention of his former employer, Mr Maihi (senior) was allocated one of the farms at Raetihi.

19.7.3 Māori applicants in Whanganui

Apart from Mr Maihi, we know of three other Whanganui Māori returned servicemen who received rehabilitation scheme farms. Two were dairy farmers and one was a market gardener. It is not clear why there were so few, given that there were at least six untagged A-grade applicants in the district.

The Crown also encouraged Māori owners to make the Māori land development schemes available for rehabilitation purposes. By 1949, five Māori ex-servicemen were settled on established Māori land development schemes in Whanganui. We have discussed the two men who were settled on the Rānana scheme. Another man, James Koti, was settled on Ringi Tānoa’s farm on Waimarino 6, which was by that time in the Manunui land development scheme. The Maori Finance Rehabilitation Committee turned down an offer of the leasehold of part of Morikau 2 for resettlement of Māori ex-service personnel; we do not know the proposed terms, or why the offer was declined.

Nationally, of the 557 Māori returned servicemen who had been through the grading system by this time, 113 were settled on either Māori or general rehabilitation scheme land; 100 were settled on development scheme farms; and another 20 financed their own settlement. In total, 233 (41.8 per cent) were settled, while another 202 (36.3 per cent) had been graded A and were awaiting settlement. The remainder were in training, were awaiting training, or had withdrawn. Māori returned servicemen in Whanganui were also eligible for farming loans through the Māori Finance Rehabilitation Committee. John Davis borrowed £700 in 1946, to purchase a leasehold interest at Nukumaru, plus stock and equipment.

It is clear that not all Māori returned service personnel in Whanganui were able to access rehabilitation farms, but the information we received was insufficient to draw conclusions. The system of tagging the grades of financially inexperienced Māori ex-servicemen was potentially discriminatory and unfair, but we had too little evidence to say whether or not this was the case. Nor can we say whether Māori returned servicemen were discriminated against in either the allocation or ballot of farms.

19.8 Other Crown Assistance after 1945

A number of claimants submitted that the Crown has provided too little assistance for Māori land development in the post-war period. The evidence we received suggests that there were a number of Crown (and regional government) initiatives, but the nature of the land and the legacies of the past meant they were largely unsuccessful. Crown aid mostly consisted of help with horticulture, and assistance for Māori land trusts.

19.8.1 Horticultural advice

In 1949 and 1950, a Government horticultural supervisor, HJ Fell, travelled around the region to promote
horticulture. He met a few Māori along the Whanganui River and closer to Wanganui town at Ātene and Kaiwhaiki who were interested in horticulture. Fell thought settlements along the river had small areas of land with potential to grow fruit, but the barrier was their distance from market. Land at Kaiwhaiki had more commercial potential because of its proximity to Wanganui, and Fell met one person there who had started clearing two acres for vegetable growing. However, applicants for assistance tended not to follow them through, and Fell speculated that a likely reason was that the small areas of land that seemed suited to horticulture were often those with the most confused titles. It was probably difficult for owners to agree on how the land should be developed.
Fell also travelled to the Raetihi and Ōhākune district. At the invitation of the Raetihi Māori Tribal Committee, he met about 12 people who wanted to start market gardening. He reported they had sufficient suitable land, but would need a £300 loan. There were then some departmental delays, and although a loan was finally approved, it is not clear whether the Raetihi farmers ended up receiving much assistance. We do not know what followed.

19.8.2 What kind of assistance was needed?
In the case of some of the upriver settlements, it is doubtful whether the money the Government was offering would have overcome the disadvantages of location. In 1959, the Minister of Agriculture stated that to establish viable orchards along the river would entail roading costs alone of 'hundreds of thousands of pounds'. This, together with the cost of developing the land itself – especially clearing noxious weeds – caused the Government to back away. By 1962, it was reported that almost no crops were being grown along the Whanganui River.

Urbanisation reduced the rural Māori population in this period, but when long-term leases to non-Māori farmers expired from the 1950s onwards, Māori wanted to make use of the land themselves. Trusts were set up to manage the land collectively, but in the end some were leased out again, usually to non-Māori farmers, or sold. We heard many similar accounts; the following two are representative of the difficulties facing owners.

(1) Ngāpukewhakapū Lands Trust
In the 1980s, the Government encouraged development by lending the Ngāpukewhakapū Lands Trust $11,000 through the Māori Affairs Department. The trust manages land around Ōtoko Marae, near the Mangawhero River. It took until 1992 to repay the loan, but the trust was able to establish and maintain a small sheep and beef farming operation for the benefit of owners and the marae.

Some Whanganui owners also praised advice that Te Puni Kōkiri has provided in recent years about managing their land in trust, and how it has helped them navigate the Government bureaucracy.

(2) Kaitangata blocks at Parikino
Orchard development was also tried again on land near the Whanganui River. Te Hemopō Kora of Ngāti Hinearo and Ngāti Tuera told us of a development loan of $60,000 from the Wanganui Regional Development Council (a Crown-funded organisation under the Ministry of Economic Development) in the 1980s to help establish orchards on the Kaitangata blocks at Parikino. A trust was set up to manage some of the blocks. Repaying the loan proved very difficult, and at one stage it looked as if the land would have to be sold. Eventually, the owners repaid most of the money, and the council wrote off part of it.

(3) Conclusion
Overall, Crown assistance to Māori farmers in our district after 1945 was not sufficient for them to turn a corner as far as successful farming was concerned. But actually, we do not know what level of assistance would have achieved this, or whether such investment would have been at all sensible. The land in the district has severe limitations, and Māori land there will never support tangata whenua entirely, or even significantly. Although the policies and practices of earlier decades were often flawed, they were also sometimes well-intentioned and popular. Ultimately, everybody’s efforts were foiled by the nature and location of the land still in Māori hands and by the climate.

19.9 Findings
We agree with the Crown that there were considerable obstacles to Māori developing successful farms in this area. Compared with many other parts of New Zealand, the bulk of Whanganui land is unsuited to arable or pastoral farming: it is rugged land that is susceptible to erosion and reversion, and the type of soil copes poorly with the high rainfall. That said, the district is very large, and development possibilities varied across the region, and at various times there was clearly some scope for successful development.

At the beginning of the twentieth century, the new ideas for Māori rural development had significant support.
Māori leaders and Crown representatives were united in the view that developing Māori land for their future benefit was a kaupapa that deserved attention and funding and the Crown supplied both, to some extent. With the benefit of hindsight, it must be doubted whether the ideas that gained traction were the best ones. However, Whanganui land development schemes helped the retention and, in some cases, development of Māori land.

In previous chapters we have canvassed a range of barriers to the development of Māori land. They included the problems associated with multiple ownership, the costs of partition and survey, and a form of title that was difficult to use. A barrier connected with the nature of title to Māori land was one that the Crown could most easily have influenced: the difficulty of accessing credit.

We acknowledge that the Crown had a difficult balancing act to perform here. To fulfil its duty of active protection, the Crown had to consider the risk of foreclosure associated with mortgaging. Yet, it also had to uphold the property guarantees inherent in article 2, which included the right for Māori to develop their land. To do that, Māori needed access to loans. The Crown should have tried harder to enable lending for the development of Māori land, at the same time as protecting it from foreclosure.

One approach would have been to provide Māori with more and better access to low cost State lending. In fact, the Government Advances to Settlers fund was more or less unavailable to Māori landowners because of the plethora of rules that made almost all of them ineligible. Like other Tribunals before us, we find that the rules that excluded most Māori from the Government Advances to Settlers fund were unfair and unreasonable. The Crown should have directed officials to assess Māori applications on their merits, and could have actuated this approach by amending the Government Advances to Settlers Act 1894. We concur with the Central North Island Tribunal that

By failing to provide state assistance equivalent to that being offered to other landowners of limited means to enter farming, the Crown was in breach of the Treaty principle of equity and in breach of its obligation to actively protect Māori in their Treaty development right to participate in farming.

Creative solutions should also have been sought to the loss of land upon default: some land could have been made inalienable, ensuring the maintenance of tūrangawaewae and cultural survival. The Crown could also have tried to make the title system less unwieldy, so that Māori landowners might have been able to access private lending.

In an effort to solve the acute need for funding and other development assistance for Māori in Whanganui, the Crown turned to compulsory vesting. In Whanganui, not only did the Crown vest Māori land without consent, it also prevented owners from carrying out their own plans for development. Although these actions were unfair, and could be seen as a breach of article 2 of the Treaty, they need to be considered in the circumstances of the time and alongside the benefits of such schemes. We agree with the Kaipara Tribunal where it said:

- On the one hand, compulsory vesting can be seen as a form of temporary confiscation . . . On the other hand, the land was preserved in Māori ownership . . .
- . . . The Ōtakanini owners got their land back, whereas in so many other blocks, the leasehold, and the piecemeal purchase of individual interests by the lessee, ended in total alienation by sale. Furthermore, when the Ōtakanini owners did resume control of their land in 1958, they inherited a substantial asset – developed farm land – in the largest contiguous piece of Māori land in southern Kaipara.

In compulsorily vesting Whanganui land, the Crown intended to overcome some of the many problems afflicting Māori agricultural development in Whanganui and elsewhere. In particular, it sought to protect remaining landholdings from further alienation, develop Māori land into profitable farms, and train Māori to become effective farmers. These were all laudable aims, which Whanganui Māori largely shared.

Vesting enabled the Crown to lend on a relatively large scale, on land with multiple owners, and at reasonable rates, while also protecting owners from as much risk as possible. Morikau Station was one of the earliest large successful farming enterprises for Māori in New Zealand, and also provided benefits for communal causes, principally
The success of Morikau suggests what might have been if the Crown had not set about its purchasing programme with so much disregard for Māori development and had properly fulfilled its obligations to act in partnership with Māori.

On the other hand, we criticise some aspects of both the Morikau and 1930s schemes. Primarily, they took too much control from Māori landowners. The Central North Island Tribunal found that the Crown has an obligation to actively protect Māori in utilising and developing their property, and that this includes the right to retain reasonable control over the land. That Tribunal found that, for development purposes, it may be necessary at times to agree to suspend some rights of property ownership for a period . . . Treaty development rights require this to be done only in so far as it is reasonably necessary.\(^{478}\)

We agree. In Whanganui, the Crown did not ensure that owners retained as much control as possible. As a result, the schemes did not employ owners and their whānau at either manager or worker level as much as they would have wanted. The triumvirate of the Māori land board, the farm owners’ committees, and the farm manager could have worked to involve owners sufficiently, and in some places and for some periods it did work, and worked well. However, when key players moved on or changed their involvement, the balance was lost, and the Crown did not set in place mechanisms to ensure that it was maintained.

Moreover, there was a lost opportunity at Morikau for Māori to benefit from more systematic farm training in the 1910s and 1920s. Māori looked to training as an important gain from the Crown’s compulsory vesting of their land. The Crown should have, but did not, ensure that training was consistently given, and nor did it address the situation at Morikau that saw relationships deteriorate so that owners became alienated from the scheme in all kinds of ways for some years.

We also agree with claimants, and indeed with some former Crown officials, that the Crown was responsible at least in part for the poor financial state of the Rānana scheme, which by the end was woeful. We accept that the Aotea land board and the Crown made financial decisions in good faith, and that risk is an inherent part of farming and farm development. Also, that the isolated location and rampant noxious weeds made the land very expensive to develop. It was not possible for the Crown to shield Whanganui Māori from this reality.

The Crown’s fault was in the way the debts from abandoned lands at Rānana were merged and spread across the sections in the station area without clarifying who was liable for the debt or its interest. This made it impossible for owners to know for what part of the debt they were responsible, and so they declined to pay. Then the Crown proposed further investment and borrowing in the mid-1960s, which wiped out some hard-won equity and led to ballooning debt. The Crown did not accept any responsibility, though, and its solution – leasing some of the land to the Morikaunui Incorporation – was in our view ungenerous. It removed the land from owners’ control for a further 21 years, and prioritised repayment to the Crown. Similar action was undertaken in the Kōpuaruru scheme, when the lease was extended for six years longer than originally intended, in order to make the land debt-free before its return to owners’ control. Such unwillingness to take responsibility breached the Crown’s duty of active protection and its obligations to assist Māori development.

In the latter part of the twentieth century, the Crown gave assistance in the form of development loans and practical advice, but we lack the detailed evidence necessary to make findings for this period.

19.10 Recommendations

We concur with the Wairarapa Tribunal’s approach to twentieth century land issues, and here we set out recommendations for Whanganui that borrow from that report. In addition to general redress for the breaches committed and the prejudice suffered, we recommend that:

- the Crown work with Whanganui Māori in light of the significant breaches of the Treaty relating to keeping and using Māori land, to design a means whereby the Crown:
provides a workable system in which it lends money to owners of Māori land on the security of that land; and/or

guarantees lending to owners of Māori land by other institutions unwilling to accept Māori land as security;

the Crown engage with Whanganui Māori in a Crown-funded project to assist Māori to engage (if they wish to) in the level of Māori Land Court activity that would be necessary in Whanganui to:

- effect amalgamations and exchanges to ameliorate the effects of the poor partitioning of titles in the past; and

- apply for the court to exercise its new jurisdiction to facilitate access to landlocked land;

(this recommendation, if accepted, would involve the Crown in paying for the costs of surveyors and lawyers); and

the Crown engage with claimants with a view to facilitating the return to the successors of former owners of Rānana Development Scheme land still in the hands of the Māori Trustee. Claimants seek the land back in reasonable condition and free of encumbrances.

Notes


3. Submission 3.3.59, pp 5, 18

4. Ibid, pp 22–23; submission 3.3.151, pp 5–6

5. Submission 3.3.59. p 23

6. Ibid, pp 23–24

7. Ibid, pp 14–15

8. Submission 3.3.151, p 18


10. Submission 3.3.59, pp 29–32

11. Submission 3.3.53, p 76

12. Submission 3.3.59, p 29

13. Ibid, pp 27–29

14. Ibid, p 29

15. Ibid, p 33

16. Ibid, pp 6–8

17. Submission 3.3.117, p 24

18. Submission 3.3.121, pp 30–31

19. Ibid, pp 3, 23

20. Ibid, pp 8–11

21. Ibid, p 27, 28

22. Ibid, pp 32–33, 35

23. Ibid, p 12

24. Ibid, p 29

25. Ibid, pp 131–132, 156

26. Ibid, pp 131–132, 156

27. Ibid, pp 72–80

28. Ibid, pp 29–32

29. Ibid, pp 1040–1045

30. Document A154 (Walton), p 124

31. Document A36 (Marr), p 21

32. Document A154 (Walton), p 141

33. Document A36 (Marr), pp 25–26; doc A61 (Rose), p 20

34. Document A154 (Walton), pp 131–132, 156

35. Document A36 (Marr), pp 21

36. Ibid, pp 159–160


38. Document A100 (Macky), p 329

39. Document A61 (Rose), p 42


41. Document A61 (Rose), pp 46, 87–88


43. Petrie, Chiefs of Industry, p 235

44. Document A61 (Rose), p 46

45. Ibid, p 48

46. Rex H Voelkerling and Kevin L Stewart, From Sand to Papa:
A History of the Wanganui County (Wanganui: Wanganui County Council, 1986), p 74
47. Smart and Bates, The Wanganui Story, p 146
50. [Registrar-General’s Office], Statistics of New Zealand for 1861, Including the Results of a Census of the Colony Taken on the 16th December in that Year (Auckland: [Government Printer, 1862]), tbl 4; [Registrar-General’s Office], Statistics of New Zealand for 1867, Including the Results of a Census, Taken in December of that Year (Wellington: Government Printer, 1869), tbls 4, 34
51. Document A61 (Rose), pp 87–88; R W Woon, upper Wanganui, to Under-Secretary, Native Department, 21 May 1875, AJHR, 1875, G-1, p 13
52. Document A61 (Rose), p 73
53. Ibid, p 87
54. ‘Ploughing Match at Aramoho’, Wanganui Chronicle, 28 August 1874, p 2
55. Document A61 (Rose), pp 87, 135; Petrie, Chiefs of Industry, p 225
56. Document A61 (Rose), pp 89, 91, 115; doc A75 (Horan), pp 45, 69
57. Petrie, Chiefs of Industry, pp 236–237
60. ‘Showing for each County the Extent of Land in Cultivation and the Live-stock held by Maoris, according to Returns obtained at the Census of March, 1901’, Results of a Census of the Colony of New Zealand taken for the night of the 31st March 1901, available via https://www3.stats.govt.nz/historic_publications/1901-census/1901-results-census/1901-results-census.html; ‘Table Showing for each County in New Zealand the Number of Horses, Cattle, Sheep and Pigs in 1901’ and ‘Acreage under Sown Grasses, and Cultivation Generally, for Each County, as on the 15th October 1901’, New Zealand Official Year-Book, 1902, available at https://www3.stats.govt.nz/new_zealand_official_yearbooks/1902/nzoyb_1902.html. Results for Māori group Whanganui and Waitōtara counties together; this is not made clear in the online version.
62. Document A154 (Walton), p 126; ‘Showing the Maori Population in each County according to Principal Tribes, with Numbers at each Age-period’, Results of a Census of the Colony of New Zealand, 5th April 1891, available at https://www3.stats.govt.nz/historic_publications/1891-census/1891-results-census/1891-results-census.html; ‘Showing the Population of the Counties (exclusive of Maoris), distinguishing Chinese and Half-castes, with the Number of Houses Inhabited, Uninhabited, and in course of Erection, classified according to Materials and Rooms’, ‘Showing the Population of the Boroughs (exclusive of Maoris), distinguishing Chinese and Half-castes, with the Number of Houses Inhabited, Uninhabited, and in course of Erection, classified according to Materials and Rooms’, ‘Showing the Maori Population in each County according to Principal Tribes, with Numbers at each Age-period’, Results of a Census of the Colony of New Zealand taken for the night of the 31st March 1901, available via https://www3.stats.govt.nz/historic_publications/1901-census/1901-results-census/1901-results-census.html.
64. Waitangi Tribunal, He Maunga Rongo: Report on the Central North Island Claims, 4 vols (Wellington: Legislation Direct, 2008), vol 3, p 933
65. Document A145 (Bayley), pp 41–45
66. ‘Showing for each County the Extent of Land in Cultivation and the Live-stock held by Maoris, according to Returns obtained at the Census of March, 1901’, Results of a Census of the Colony of New Zealand taken for the night of the 31st March 1901, available via https://www3.stats.govt.nz/historic_publications/1901-census/1901-results-census/1901-results-census.html; ‘Table Showing for each County in New Zealand the Number of Horses, Cattle, Sheep and Pigs in 1901’ and ‘Acreage under Sown Grasses, and Cultivation Generally, for Each County, as on the 15th October 1901’, New Zealand Official Year-Book, 1902, available at https://www3.stats.govt.nz/new_zealand_official_yearbooks/1902/nzoyb_1902.html. Results for Māori group Whanganui and Waitōtara counties together; this is not made clear in the online version.
68. Other figures are: between 1886 and 1911 the numbers of sheep owned by Māori in Whanganui County and Waitōtara, were reported to have increased from 12,714 to 41,738. From 1906 to 1911, Māori land growing crops also increased from 1383 acres to 1713 acres. The 1911 figures are for Whanganui, Waitōtara, and Waimarino counties. Waimarino county, created in 1902, was previously part of Whanganui: see doc A51 (Walzl), pp 14, 162.
70. Document A120 (Anson), pp 3–4
71. Document A61 (Rose), p 313
72. ‘Showing for each County the Extent of Land in Cultivation and the Live-stock held by Maoris, according to Returns obtained at the Census of March, 1901’, Results of a Census of the Colony of New Zealand taken for the night of the 31st March 1901, available via https://www3.stats.govt.nz/historic_publications/1901-census/1901-results-census/1901-results-census.html; ‘Table Showing for Each County in New Zealand the Number of Horses, Cattle, Sheep and Pigs in 1901’ and ‘Acreage under Sown Grasses, and Cultivation Generally, for Each County, as on the 15th October 1901’, New Zealand Official Year-Book, 1902, available at https://www3.stats.govt.nz/new_zealand_official_yearbooks/1902/nzoyb_1902.html; ‘Census of the Maori Population
19-Notes


73. Document A132(a) (Pōtaka); doc B38 (Waitokia), p 8; doc C18 (Tapa), pp 3–4; doc F7 (Tāiairoa), p 9; doc K1 (Ranginui), pp 4–5; doc K4 (Fox), pp 5–7. Some of this evidence seems to relate to later periods, but probably applies also to earlier decades.

74. Document A32 (Stevens), pp 77–82; doc L10 (Māreikura), pp 12–13

75. Document A32 (Stevens), p 78

76. ‘Special Report upon the Potato-blight’, AJHR, 1906, H-26A, p 29

77. Ibid, pp 24–30

78. Document A61 (Rose), p 318

79. Document A165(bb) (Dawson, Devereaux, and Stowe supporting documents), pp 12959, 12962

80. ‘Kai Iwi and Westmere Notes’, Wanganui Chronicle, 4 September 1902, p 2; doc A51 (Walzl), pp 14, 161–162, 514

81. Document A51 (Walzl), pp 14, 162

82. Document A37(c) (Berghan), pp 1248–1250

83. Document A61 (Rose), p 313; doc A37(c) (Berghan supporting documents), pp 1248–1250

84. Document A61(d) (Rose supporting documents), p 2198

85. Document A61 (Rose), p 314

86. Document A145 (Bayley), pp 49–51, 58

87. Document A42 (Oliver), pp 85–86

88. Document A145 (Bayley), pp 40–41

89. Ibid, p 92


91. Document A145 (Bayley), p 98

92. Ibid, p 100

93. Ibid, pp 110–111

94. Document A61 (Rose), pp 322–324

95. Document A51 (Walzl), p 514

96. Ibid, pp 514–515

97. Ibid, p 514

98. Ibid, pp 519–520, 522

99. Document A37 (Berghan), pp 816–819

100. Document A145 (Bayley), p 73


102. Document A145 (Bayley), p 73

103. Document A32 (Stevens), p 43

104. Merrilyn George, Ohakune: Opening to a New World, 2nd ed (Ōhākune: Kapai Enterprises, 1993), pp 159–160

105. ‘Extracts from Reports of Sub-Enumerators’, 25 May 1906, AJHR, 1906, H-26A, p 20


108. Document A61 (Rose), p 175. See also ‘A Patriotic Meeting’, Wanganui Chronicle, 25 August 1917, p 6, which names eight from the area who joined up after a meeting to celebrate the renovation of Parokino marae.

109. ‘Employment of Maoris on Market Gardens’, 11 October 1929, AJHR, 1929, G-11, p 2

110. Document A145 (Bayley), p 51

111. Document A67 (Shoebridge), p 17; doc A114 (Young and Belgrave), p 130

112. Document A114 (Young and Belgrave), p 130

113. Document A36 (Marr), p 122

114. Document A99(g) (Joel), p 69

115. Document A51 (Walzl), p 192

116. Document A59 (Oliver and Shoebridge), pp 97–98; doc A99(g) (Joel), p 67

117. Document A67 (Shoebridge), pp 20, 23–24

118. Ibid, p 20

119. Ibid, p 24

120. Ibid, pp 21–22

121. Document A51 (Walzl), pp 86, 147, 410

122. Ibid, pp 264–265, 284

123. Ibid, p 410

124. Document A145 (Bayley), pp 101–103

125. Document I7 (Waho), pp 21, 23

126. Document I7 (Waho), p 21; doc I16 (Wilson), p 7; doc 19 (Tānoa), p 8; doc 112 (Tānoa), p 7; doc 11 (Le Gros), p 18

127. See doc 11 (Le Gros), p 19; doc 18 (Tānoa), paras 50–69; doc 19 (Tānoa), pp 11–15; doc 111 (Harvey); doc 112 (Tānoa), pp 13–15; doc 113 (Te Ruruku), pp 5–7.

128. For example, see document D51 (McDonnell), pp 5–7.

129. Document B1 (Clarke), p 43


Documents B16 (Pauro); B17 (Huwyler), and B20 (Matthews) have further evidence of Kaiwhaiki land problems.

131. Document D51 (McDonnell), pp 5–7. The blocks do not include Mangaporou itself, which was sold in the 1870s: see document A37 (Berghan), pp 229–234. The name appears in the records as both Mangaporou and Mangaporou.

132. Document D51 (McDonnell), pp 5–7

133. Document B5 (Patea), p 6

134. Document 19 (Tānoa), pp 19–20

135. Document B46 (Tuka and Te Utupoto), p 3

136. Document A61 (Rose), pp 507–508

137. Document A61 (Rose), pp 508–510

138. Document A165(dd) (Stowe, Dawson, and Devereaux supporting documents), p 14,059

139. Document B7 (Rzoska), p 29

140. Ibid, p 39; doc B8 (Ranginui), p 7; doc B10 (Teki), p 7

141. Document A61 (Rose), p 520

142. Ibid, pp 520–521
Wharepū was in the north-west corner of the Maraetaua block.

In 1980, approximately 53 per cent remained as Māori land, and was set aside as a reservation for members of Ngāti Apa.
Ibid, p 611; Michelle Horwood and Che Wilson, Te Ara Tapu Sacred Journeys: Whanganui Regional Museum Taonga Māori Collection (Whanganui: Whanganui Regional Museum, 2008), p 31

260. Document A51 (Walzl), p 287

261. Maori Land Settlement Act Amendment Act 1906, ss 3–4

262. Document A51 (Walzl), p 163

263. Ibid, pp 287–288, 291; Stout and Ngata, 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 2

264. 'Vesting Land in Maori Land Boards', 18 January 1912, New Zealand Gazette, 1912, no 4, p 189


266. Ibid

267. 'Native Land Commission', Wanganui Herald, 30 March 1907, p 2


269. Stout and Ngata, 'Interim Report on Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 13

270. 'Native Lands in the Whanganui District', AJHR, 1907, G-1A, p 13

271. Document A51 (Walzl), pp 293–295; Jessie Munro, ed, Letters on the Go: The Correspondence of Suzanne Aubert, translated by Jessie Munro with the assistance of Sister Bernadette Wrack (Wellington: Bridget Williams Books, 2009), p 212 n 91


273. Ibid

274. Maori Land Settlement Act 1905, s 8

275. Document A51 (Walzl), p 293

276. Ibid, pp 293–294

277. Document A51 (Walzl), p 297

278. Submission 3.3.59, pp 17, 23; submission 3.3.11, p 9; submission 3.3.132, p 15


280. Ibid, p 299

281. Ibid, pp 304–305

282. Ibid, pp 299–301. The committee members were Aterea Taiwhati, Te Moana Tauri, Rangiwhakakea, Wiari Te Patu, Hēnare Aterea, and Maehe Ranginui.

283. Ibid, pp 298, 312

284. In 1910, the owners set aside a 993-acre papakāinga, but in 1912 only 350 acres were reserved for the owners: ibid, pp 298–299, 312.


286. Document A51 (Walzl), pp 300–304

287. 'Marino v Whakatika and Others', Wanganui Chronicle, 20 June 1911, p 8

288. 'Pauro Marino's Persistency', Wanganui Chronicle, 23 September 1911, p 6; 'Pauro Marino and the Land Board', Wanganui Chronicle, 4 October 1911, p 7; 'Pauro Marino', Wanganui Chronicle, 7 October 1911, p 5

289. 'Marino v Whakatika', Wanganui Chronicle, 20 June 1911, p 8; doc A51 (Walzl), pp 300–304; doc A51(b) (Walzl supporting documents), pp 494–496; 'Will Go to Gaol', Marlborough Express, 26 September 1911, p 3; 'Pauro Marino', Wanganui Chronicle, 7 October 1911, p 5

290. Ibid, p 314


292. Ibid, p 317

293. Ibid

294. Ibid, pp 314–320

295. Ibid, p 321

296. Ibid, p 305

297. Ibid, p 306

298. Ibid, pp 312–313

299. Ibid, p 436

300. Ibid, p 308

301. Ibid, pp 313–314

302. Ibid, p 317

303. Ibid

304. Ibid, pp 320, 436

305. Ibid, pp 321–322

306. Ibid, pp 424–425

307. Ibid, p 426

308. Ibid, p 429

309. Ibid, p 427

310. Ibid, p 436

311. Ibid, p 437

312. Ibid, p 438

313. Ibid, pp 431–432

314. Ibid, p 432

315. Ibid, p 438

316. Ibid, pp 322, 436–437

317. Ibid, pp 441–442, 448

318. Ibid, pp 450, 453

319. Ibid, p 466; doc A51(b) (Walzl supporting documents), p 692

320. Document A51 (Walzl), p 471

321. Ibid, pp 471–479

322. Document D46 (Hough), p 6

323. Document A51 (Walzl), p 312

324. Document A101 (Horan), pp 102–103

325. Robinson, Te Pae Tawhiti, p 26

326. Document A51 (Walzl), p 316; Robinson, Te Pae Tawhiti, p 25

327. Document A51 (Walzl), p 314

328. Ibid, pp 317–320

329. Ibid, p 321

330. Ibid, p 423

331. Ibid, p 424

332. Ibid, pp 425–426

333. Ibid, p 430

334. Ibid, pp 424–425


336. Document A51 (Walzl), p 434

337. Ibid, p 439
19-Notes

338. Document A61(d) (Rose supporting documents), pp 2199–2200
340. Ibid, p 445
341. Ibid, p 447
342. Ibid, pp 447, 448
343. Ibid, pp 442–448
344. Ibid, p 448; doc A51(d) (Walzl supporting documents), p 1386; Robinson, Te Pae Tawhiti, pp 31, 36, 39, 42–43
345. Document A66 (Mitchell and Innes), pp A79, A89, A172
346. Document A51(d) (Walzl supporting documents), pp 1278–1280
348. Loveridge, Maori Land Councils and Maori Land Boards, pp 135–140
350. Ward, National Overview, vol 2, p 415; Loveridge, Maori Land Councils and Maori Land Boards, pp 141–143
351. Loveridge, Maori Land Councils and Maori Land Boards, pp 86, 141
353. Ward, National Overview, vol 2, p 415
354. Waitangi Tribunal, He Maunga Rongo, vol 3, p 1018; Loveridge, Maori Land Councils and Maori Land Boards, p 143
356. Ibid
357. Document A51(d) (Walzl supporting documents), pp 1387, 1393–1395, 1416–1417, 1453, 1493
359. Ibid, p 596
360. Document A51(c) (Walzl supporting documents), pp 1231–1232; doc A51 (Walzl), p 576
361. Document A51(d) (Walzl supporting documents), p 1641
362. Ibid, pp 1472–1474
364. Document A51(d) (Walzl supporting documents), p 1637; doc A51 (Walzl), p 704
366. Document A51(c) (Walzl supporting documents), pp 1236–1238
367. Document A51 (Walzl), p 575
368. Ibid, p 577
369. Document A51 (Walzl), pp 578–583; doc A51(c) (Walzl supporting documents), pp 1205–1206
370. Document A51 (Walzl), p 588
371. Ibid, pp 577, 591
372. Ibid, pp 596, 715
374. Document A51(c) (Walzl supporting documents), pp 1101–1102
375. Document A51 (Walzl), pp 616–618
376. Ibid, p 618
378. Document A51 (Walzl), pp 642–646
379. Ibid, p 713
380. Ibid, pp 618, 719; doc A51(d) (Walzl supporting documents), pp 1413
381. Document C15(a) (Hipango), p 3; doc A51 (Walzl), pp 475, 624; doc A61 (Rose), p 546; doc A51(d) (Walzl supporting documents), pp 1453, 1643
382. Document A51 (Walzl), p 717
383. Ibid, p 655
384. Document A61(f) (Rose supporting documents), pp 3168, 3172, 3180, 3193
385. Document A51(d) (Walzl supporting documents), pp 1329, 1408, 1410–1418, 1462, 1467–1468; doc A61(f) (Rose supporting documents), pp 3198, 3202
387. ‘Native Land Development’, AJHR, 1932, G-10, p 48; doc A51 (Walzl), pp 578, 616–617
388. Document A51 (Walzl), pp 601–602, 627
390. Document A51 (Walzl), pp 661–662
391. Ibid, pp 661–663
392. Ibid, p 687; doc A51(e) (Walzl supporting documents), p 2000
393. Document A101 (Horan), p 39
394. Document A51 (Walzl), pp 575, 614, 626. For work done on water supplies, see document A51(d) (Walzl supporting documents), pp 1295–1297, 1388.
395. Document A51(d) (Walzl supporting documents), pp 1341–1345
396. Document A51 (Walzl), pp 642–644
397. Ibid, p 648
398. Ibid, pp 669–674; doc A51(d) (Walzl supporting documents), pp 1500–1501
399. Document A51 (Walzl), pp 672–673
403. Document A51 (Walzl), pp 688, 740; doc A51(d) (Walzl supporting documents), pp 1507, 1638
404. Document A51(d) (Walzl supporting documents), pp 1552–1553, 1638
405. Document A51 (Walzl), pp 574–575, 577–579
406. Ibid, p 580
407. Ibid, pp 583–584, 597
408. Ibid, pp 601, 602, 613, 617, 629
409. Ibid, p 613
410. Ibid, p 617
411. Ibid, p 629
412. Ibid
413. Ibid, p 634
414. Ibid, pp 644, 647; doc A51(d) (Walzl supporting documents), pp 1431–1435, 1437–1442
415. Document A51 (Walzl), pp 644, 647; doc A51(d) (Walzl supporting documents), pp 1341–1345, 1437–1442
416. Document A51 (Walzl), pp 659
417. Document A51 (Walzl), pp 646; doc A51(d) (Walzl supporting documents), pp 1469, 1472–1473
418. Document A51(d) (Walzl supporting documents), p 1468
419. Document A51 (Walzl), pp 664, 667
420. Ibid, pp 688, 702. In 1971, the debt was $142,152, while assets (excluding unimproved land values) were $126,892, leaving a $15,000 shortfall.
421. Ibid, p 698; doc A51(d) (Walzl supporting documents), p 1611
422. Document A51 (Walzl), pp 633, 639, 645
423. Document A51(d) (Walzl supporting documents), p 1467
425. Document A51(d) (Walzl supporting documents), pp 1638, 1641
426. Ibid, pp 1632–1637
427. Document A51 (Walzl), pp 703–704
428. Document A51(d) (Walzl supporting documents), pp 1617–1619
430. Document A51(d) (Walzl supporting documents), p 1467
432. See, for example, the release of Ngārākauwhakarae section 12 (136 acres): ‘Releasing Land from the Provisions of Part xxiv of the Maori Affairs Act 1953 (Ranana Development Scheme)’, 8 June 1962, *New Zealand Gazette*, 1962, no 38, p 913.
433. Submission 3.3.59, p 33
434. Submission 3.3.106, pp 52–53
435. Document A64 (Bassett and Kay), pp 148–149
436. Document A64(a) (Bassett and Kay supporting documents), p 70
437. Document A64 (Bassett and Kay), p 197; doc A64(a) (Bassett and Kay supporting documents), p 68
438. Document A64(a) (Bassett and Kay supporting documents), p 65
439. Document A64 (Bassett and Kay), pp 195–198
440. Document A64(a) (Bassett and Kay supporting documents), pp 59, 61; doc A64 (Bassett and Kay), pp 293–295
441. Document A64 (Bassett and Kay), pp 294–295
442. Ibid, pp 297–298
443. Ibid; doc A64(a) (Bassett and Kay supporting documents), p 50
444. Document A64 (Bassett and Kay), p 298; doc A64(a) (Bassett and Kay supporting documents), p 48
445. Document A64 (Bassett and Kay), p 299
446. Document A169(n) (Beaglehole, Devereaux, Innes, and Stowe supporting documents), p 7479
447. Submission 3.3.46, pp 2–3
448. Document A169(n) (Beaglehole et al supporting documents), pp 7588
449. Ibid, p 7567
450. Ibid, pp 7560, 7616
452. Wai 888 R01 doc A69 (Hearn), pp 566–567; doc A169(n) (Beaglehole et al supporting documents), pp 7616–7618; doc A169(b) (Beaglehole et al supporting documents), pp 541, 566; doc A169(o) (Beaglehole et al supporting documents), p 7976
453. Document A169(n) (Beaglehole et al supporting documents), pp 7287, 7614
454. Document A169(h) (Beaglehole et al supporting documents), p 4163. This figure seems to relate to the Wanganui rehabilitation district. We do not know the exact boundaries of this district, but it seems to have been smaller than the Aotea Māori Land District.
455. This scheme is generally referred to as the Raetihi Farm Settlement in official correspondence.
456. Document A54(u) (Innes post-hearing evidence), p [4]; doc A169(k) (Beaglehole et al supporting documents), pp 5868–5873, 5892; doc N8(a) (Maihi responses), app b
457. Document N8 (Maihi), paras 7–10
458. John Maihi was also known as John Green. See doc A169(k) (Beaglehole et al supporting documents), p 5892; doc N8 (Maihi), paras 1–10; doc N8(a) (Maihi responses), p [1]. Of the six farms established on Mākaranui, three were balloted, one was sold to a neighbouring farmer, and the other two, Mr Maihi’s and one other, seem to have been allocated. The names of the other farmers were W Mabbot, J T Punch, K J Ritchfield, E A Wallace, and A R Brown. See document A169(k) (Beaglehole et al supporting documents), pp 5864–5866, 5868–5873, 5883, 5886, 5892, 5896, 5900; Department of Lands and Survey, ‘Annual Report on Settlement of Crown Lands’, AJHR, 1950, c-1, p 65; submission 3.3.97, paras 5.1–5.15.
Farming at Rānana

1. Document A51(d) (Walzl supporting documents), pp 1344, 1439; doc c15(a) (Hipango), pp 2–3; 'Mothering by the Dozen', Dominion, 31 May 1999. p 9

A Farming Family in Whanganui

1. Document c18 (Tapa), p 2
2. Ibid, p 4
WAIMARINO IN THE TWENTIETH CENTURY

20.1 Introduction
In chapters 14 to 18, we addressed the administration, alienation and development of Māori land over the course of the twentieth century. Particular topics we focused on were Crown purchasing practices, the meetings of owners system, title difficulties, the lack of protection for Māori reserves, compulsory acquisitions for scenery, and Māori development of their lands, both with and without Crown assistance. In this chapter, we consider how all of these came together to create different impacts on certain Māori land: the parts of the Waimarino block that Māori still owned.

20.1.1 What happened in the late nineteenth century history: recapitulation
In chapter 13, we described how, in a period of just over a year in the late 1880s, a huge tract of customary land that came to be called the Waimarino block was taken through the Native Land Court and permanently alienated from its traditional ownership. The history of this block was as turbulent as any, with its flawed title determination process, and the Crown’s rapid purchase of more than 411,000 acres of Māori land where more than 40 tribal descent groups claimed customary rights. No sooner had the Native Land Court finished its cursory investigation of title than the Crown’s agents set about buying up the land, which was still being surveyed. In their haste, they cut corners, made misleading statements, and on occasion even broke the law.

We also chronicled a partition process that was far less than ideal. The Native Land Court set about dividing out the Crown’s interests in April 1887 and, despite the disaffection of tangata whenua, awarded it 411,196 acres, or 91 per cent of the block’s original area, as Waimarino 1. The court awarded 41,000 acres to the 100 owners who did not sell to the Crown, and divided it into seven blocks (Waimarino 2–8), ranging in area from 18,350 (Waimarino 3) to 60 acres (Waimarino 8).

From the land it had purchased, the Crown set aside six reserves (Waimarino A–F) for those who had sold their interests in Waimarino. Covering 33,140 acres, these reserves comprised substantially less than the 50,000 acres that the Crown had promised to the sellers in the 1887 Waimarino purchase deed. Like the non-sellers’ blocks, the sellers’ reserves varied in size, from 14,850 acres (Waimarino A) to 420 acres (Waimarino F).

We found deficient the process of identifying and creating reserves for Waimarino owners who sold to the Crown, and of defining, without their meaningful participation or consent, the blocks for those who did not sell. There were too few acres for tangata
whenua, whether sellers or non-sellers, and most of the land was described by surveyors as 'rough', 'poor' or 'broken'. The Crown decided on reserves for hapū that were, in some instances at least, a considerable distance from their places of primary residence. It left some kāinga out of the original reserves – examples were Kirikiriroa, Kākahi, Kaitiēke, Tawatā, and Tīeke – and it also left out many wāhi tapu. Then the survey of the reserves was not completed until 1899, 13 years after they were created. The result was a long period of confusion about what land was and was not reserved, including uncertainty about the status of the very places where communities were living.
70 per cent of the land in the Waimarino block that the Native Land Court awarded to Māori as seller reserves and non-seller blocks – between 51,510 and 53,046 acres – had passed from its Māori owners into Crown or private ownership. Māori no longer owned any of the non-seller blocks Waimarino 2 and 8 and the seller reserves E and F, and owned very little in Waimarino 4, Waimarino B, and Waimarino C&D. Seventy per cent of the original area of Waimarino 3, and 58 per cent of Waimarino A, were no longer in Māori hands. The only block where Māori still owned more than half the original area was Waimarino 5.

How, when, and why did so much of the relatively small amount of land remaining to Māori in 1900 end up being alienated in the century that followed? As we shall see, different reserves were alienated in different ways at different times. The Crown, for instance, compulsorily acquired substantial portions of Waimarino 4 for defence purposes, scenic reserves and roading. It also took parts of Waimarino 2, 5, and C&D for scenic reserves. In addition to takings, it purchased more Māori land in the block: almost the entirety of Waimarino B; all of Waimarino F, 7 and 8; and a substantial portion of Waimarino 4.

While the Crown acquired a significant portion of the land remaining in Waimarino, much more went to private buyers: between 1899 and the end of the twentieth century, Crown acquisitions from Waimarino reserves amounted to just over 13,000 acres, but private buyers bought almost 37,000 acres. The private purchases included almost all of Waimarino 2, C&D, and E, as well as substantial portions of Waimarino 3 and A.

The alienation of Māori land in these Waimarino blocks took place in two waves. The first, and by far the most substantial, was between 1911 and 1930, when more than half of the combined area of the seller reserves and non-seller blocks passed out of Māori hands. During this period, private interests purchased more than 28,000 acres – or 38 per cent – of the combined area, while the Crown acquired 15 per cent. The second wave took place between 1951 and 1975, and involved the alienation of 9,395 acres of Māori land, or almost 13 per cent of the combined area. Private buyers purchased all but 1,007 acres of the Māori land sold during this second surge.
<table>
<thead>
<tr>
<th>Block</th>
<th>Original area (acres)</th>
<th>Number of original owners</th>
<th>Hapu affiliation of original owners</th>
<th>Area alienated (acres)</th>
<th>Remaining Māori land in 2004 (acres)</th>
<th>Percentage of original area remaining Māori land in 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waimarino 2</td>
<td>3,640</td>
<td>8</td>
<td>Ngāti Hinekura</td>
<td>3,640</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Waimarino 3</td>
<td>18,350</td>
<td>50</td>
<td>Ngāti Ātamira, Ngāti Kahukurapane, Ngāti Kahukurapango, Ngāti Maringi, Ngāti Ngaronoa, Ngāti Pare, Ngāti Ruakōpīri, Ngāti Tamahuatahi, Ngāti Tamakana, Ngāti Tāngaiwharau, Ngāti Te Wairehe, Ngāti Tūkaiora, Ngāti Tūmānuka, Ngāti (Te) Wairehe</td>
<td>12,890</td>
<td>5,460</td>
<td>30</td>
</tr>
<tr>
<td>Waimarino 4</td>
<td>3,450</td>
<td>14</td>
<td>Ngāti Ātamira, Ngāti Maringi, Ngāti Kahukurapango, Ngāti Ruakōpīri</td>
<td>2,726</td>
<td>0.03*</td>
<td>0</td>
</tr>
<tr>
<td>Waimarino 5</td>
<td>13,200</td>
<td>31</td>
<td>Ngāti Matakaha, Ngāti Poumua, Ngāti Tauengaaro</td>
<td>4,985</td>
<td>8,215</td>
<td>62</td>
</tr>
<tr>
<td>Waimarino 6</td>
<td>1,350</td>
<td>3</td>
<td>Ngāti Hinewai</td>
<td>1,072</td>
<td>278</td>
<td>21</td>
</tr>
<tr>
<td>Waimarino 7</td>
<td>950</td>
<td>2</td>
<td></td>
<td>950</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Waimarino 8</td>
<td>60</td>
<td>6</td>
<td>Ngāti Hinekohara, Ngāti Hinewai</td>
<td>60</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td>Total</td>
<td>41,000</td>
<td>100</td>
<td></td>
<td>26,323</td>
<td>13,953</td>
<td>34</td>
</tr>
</tbody>
</table>

* The Pēhi Whānau own 724 acres of Waimarino 4 as general rather than Māori land.

Table 20.1: Waimarino non-seller blocks
## Waimarino in the Twentieth Century

<table>
<thead>
<tr>
<th>Block</th>
<th>Original Area (acres)</th>
<th>Number of original owners</th>
<th>Hapu affiliation of original owners</th>
<th>Area alienated (acres)</th>
<th>Remaining Māori land in 2004 (acres)</th>
<th>Percentage of original area remaining Māori land in 2004</th>
</tr>
</thead>
<tbody>
<tr>
<td>Waimarino A</td>
<td>14,850</td>
<td>367</td>
<td>Ngāti Ātamira</td>
<td>8,508</td>
<td>6,342</td>
<td>43</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kahukurapane</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Kaweau</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Maringi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ngaronoa</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Pare</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Poumua</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Rangi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Ruakōpiri</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tamahuatahi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tamakana</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tangiwharau</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tara</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Te Wairehe</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tūkaiora</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tūmānuka</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Whākiterangi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waimarino B</td>
<td>9,270</td>
<td>50</td>
<td>Ngāti Hinekura</td>
<td>8,567</td>
<td>703</td>
<td>8</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Matakaha</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tauengaarero</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waimarino CD*</td>
<td>4,540</td>
<td>108</td>
<td>Ngāti Hinewai</td>
<td>4,535</td>
<td>5</td>
<td>0.1</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Tūkaiora</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Whati</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waimarino E</td>
<td>4,060</td>
<td>99</td>
<td>Ngāti Kahukurapango</td>
<td>4,060</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Maringi</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Waimarino F</td>
<td>420</td>
<td>42</td>
<td>Ngāti Hinekohara</td>
<td>420</td>
<td>0</td>
<td>0</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Hinewai</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>Ngāti Whata</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

| Total    | 33,140                |                            |                                    | 26,090                 | 7,050                               | 21                                                    |

* Waimarino C and D were combined by the Native Land Court in March 1912.

**Table 20.2:** Waimarino sellers’ blocks
20.1.3 What the claimants said
Claimants urged the Tribunal, when inquiring into the alienation of Māori reserves and non-seller blocks in Waimarino, ‘to consider the factors and various reasons behind why Whanganui Māori were forced to sell their lands’. First and foremost amongst these was the insufficiency of the areas that the court – at the Crown’s direction – awarded to sellers and non-sellers following the purchase. As Michael John Le Gros (a descendant of Kōpere Tonga Tānoa and Tānoa Te Uhi) put it: ‘the main reason the land was lost was because there was never enough in the first place’. Left with land that was insufficient in quantity, inadequate in quality, and sometimes far removed from established kāinga and burial places, Māori owners all too often found themselves with no choice but to sell holdings that could not sustain them. The individualised system of tenure exacerbated the situation, fostering partition and fragmentation, and rendering individual sections less viable and sometimes inaccessible. Rates imposed additional burdens upon landowners whose land was undeveloped and producing no income.

Claimants argued that, having breached the Treaty in its initial purchase of Waimarino, ‘the Crown was under an even greater obligation’ to ensure that sellers and non-sellers alike ‘retained sufficient reserves for their present and future needs’. Instead, the Crown set in place a legal framework that ‘enabled land to be alienated more easily’. The Native Land Act 1909 made it possible for a minority of owners to alienate a block, which was exploited repeatedly by Crown and private purchasers alike. As a result, land in Waimarino was sold without the authority or even the knowledge of owners.

Claimants also drew the Tribunal’s attention to the Crown’s compulsory acquisition of significant areas of Māori land within Waimarino. Especially hard hit were the owners of Waimarino 482, whose land was taken for railway, roads, a scenic reserve, and defence purposes. Claimants were particularly aggrieved that the Crown chose to take so much land from an area supposedly reserved for those who had not agreed to sell their land to the Crown. In selecting the non-sellers’ block for compulsory acquisition, Government officials showed ‘no recognition’ that Waimarino 482 was ‘a small reserve . . . which was intended to support the owners for many years to come’. The claimants said that the Crown deliberately targeted Waimarino lands for compulsory acquisition because ‘Māori land was easier and cheaper to take, with less consultation required and only the minimum of protection’.

Claimants also condemned the Crown’s procedure for notifying owners of intended compulsory acquisitions, which was especially poor in the case of land taken for a planned defence training ground in 1911. The Pēhi family (Wai 73) said that they did not become aware of the full extent of land taken ‘until some time in the 1970s’. The Gazette notice proclaiming the Government’s acquisition of their land was not brought to their attention, and they ‘continued in ignorance of the fact that their land was, legally, no longer theirs’.

A further source of grievance was the Crown’s failure to provide adequate compensation for land it acquired compulsorily. Claimants pointed to the Crown’s failure to pay any compensation at all for the land it took for public works such as the main trunk railway. They also criticised the Native Land Court’s ‘monocultural assessment’ of the value of land taken for a defence training ground and scenic reserves.

In addition, claimants decried the ‘inadequate nature’ of the Crown’s offer-back regime for land no longer required for the purpose for which it was taken. The 1,051 acres taken for a defence training ground in 1911 were in fact never used for that purpose, yet it was not until November 1940 that the Government acknowledged that the land was no longer required for the purpose for which it was compulsorily acquired. Even then the Crown took no steps to return the land, preferring ‘almost any alternative public purpose . . . to returning land to Whanganui Māori ownership.’

20.1.4 What the Crown said
Reminding the Tribunal that most of the block was sold in 1886 and 1887, the Crown submitted that it was ‘unrealistic’ to expect that much of Waimarino would be in Māori hands today. It also noted that a ‘substantial’ portion
of the non-sellers’ blocks remained in Māori ownership, and there was ‘no specific evidence’ of the reasons for the alienation of Māori land in Waimarino over the twentieth century. The Crown considered it to be significant that almost all of the land sold in this period went to private interests. With the exception of the initial 1887 Crown purchase, and the compulsory takings from Waimarino 4B2 between 1910 and 1912, the Crown contended that ‘virtually all’ alienations of Māori land within the Waimarino block were to private purchasers. As all of these private purchases were carried out after 1912, they would have been covered by the protections laid out in the Native Land Act 1909 and subsequent legislation.

The Crown took issue with the claimants’ assertion that land reserved to Whanganui Māori had been lost because of the Native Land Act 1909. It argued that there was no causal link between the 1909 Act and the alienation of land reserved in Whanganui (including Waimarino). The Crown suggested that there was most likely ‘a variety of reasons’ why Whanganui Māori sold parts of their former reserves. All the 1909 Act did was simplify the process for those who chose to sell.

On the subject of compulsory acquisitions, the Crown reiterated the acknowledgment of Treaty breach it made to the National Park Tribunal regarding the taking of 1,417 acres for defence purposes from Waimarino 4B2 in 1911. The taking of this land without first notifying the owners and allowing them an opportunity to contest the Government’s decision, was, the Crown conceded, a breach of the Treaty and its principles. The Crown did note, though, that ‘new information’ turned up by Crown historians indicated that ‘at least some owners’ were notified of the taking, and that following objections from owners, Government officials made ‘adjustments . . . to the amount of land taken’. Officials decided to reduce the area of land acquired for the proposed defence ground from 1,417 to 1,050 acres to take account of kāinga, cultivations, and urupā.

The Crown accepted that the 1,050 acres taken from Waimarino 4B2 for the defence training ground ‘was never used for the purpose for which it was taken.’ The land, however, was ‘retained for a legitimate national interest’ – the National Park – which obviated any need for ‘an offer back or engagement with the previous owners’. The Crown made no submission regarding the level of compensation provided to the owners of Waimarino 4B2, or whether the Crown had deliberately targeted the block for compulsory acquisition.

20.2 Stout and Ngata’s Hopes for Development

20.2.1 The Stout–Ngata commission and Waimarino

On 26 April 1907, the Stout–Ngata commission presented its ‘Interim Report on Native Lands in the Whanganui District’. Although the commissioners do not appear to have visited the remaining Māori land in Waimarino, they did have the opportunity to hear from an unspecified number of those who owned it at meetings in Wanganui, Pipiriki, Maraekōwhai, and Taumarunui. As a result, they obtained information about all but one of the Māori blocks there, Waimarino 5.

Stout and Ngata reported that Europeans had already acquired leases for 2,000 acres of Waimarino 4 and 100 acres of Waimarino 6, for periods of 21 years. There were also applications pending for the rest of Waimarino 6 (from the Puketapu Sawmilling Company) and for the entirety of both Waimarino 2 and Waimarino E. Europeans were also negotiating to lease all of Waimarino B, C, and D, these reserves being ‘much sought after’ by European investors.

(1) Land for Waimarino owners wanting to farm

Yet if a good number of owners – especially those who were not resident – were content to lease their remaining Waimarino lands to Europeans, others were keen to farm the reserves themselves. The Commissioners reported that ‘the Ngatiuenuku living at Manganui-o-te-Ao’ sought a partition of Waimarino 3, to enable them to farm their part of the block. The owners of Waimarino A also wanted to partition their reserve, wanting to delineate a papakāinga as well as an area for farming. ‘Some of the owners of Waimarino E’ likewise wanted to cut out portions of their block ‘for their use as farms’.

Referring to the area in general, Stout and Ngata
expressed optimism that with ‘systematic instruction and assistance’, Whanganui Māori would be able ‘to make farming a success’. They also noted that ‘though a minority of owners’ could ‘afford to sell a proportion of their interests’ it would ‘not be wise to treat the mass as having surplus lands for sale’. With these considerations in mind, the Commissioners recommended that all of Waimarino E; 8,000 acres of Waimarino 3; 4,000 acres of Waimarino A; and the remaining 1,450 acres of Waimarino 4 should be set aside for use by their Māori owners. Waimarino E and the remaining, unleased, portion of Waimarino 4 were to be administered ‘for Māori settlement’ by the District Land Board. For Waimarino E, this would mean dividing a portion of the block into papakāinga, a reserve for timber and firewood, and a communal farm in which local Māori could be supervised and instructed in the arts of agriculture by a ‘competent person’. The remainder of the block was to be cut into ‘suitable areas’ and leased to Māori, preference being given to those who had ‘already effected improvements of the land’.

In addition to the land earmarked for farming, Stout and Ngata recommended that 600 acres within Waimarino 3, and all of Waimarino 8 and Waimarino E, should be set aside as papakāinga land for communal use and settlement. The 600 acres of papakāinga for Waimarino 3 were to be located around the settlement of Manganui-a-te-ao, where Ngāti Uenuku (the principal owners of the block) were living.

(2) Waimarino land for others to lease
The Commissioners also recommended that a significant tract of the remaining Māori land within Waimarino be made available for ‘general’ – that is European – settlement. Included in this category was all of Waimarino 2 and Waimarino B, as well as the considerable expanses of Waimarino 3 and A that remained after carving out land for papakāinga and Māori farming. Rather than being sold outright, this land – amounting to 33,510 acres – was to be leased to members of the general public. In making such a recommendation the Commissioners were following, at least in part, the opinion of a considerable number of owners who appear to have seen leasing as the most effective means of deriving income from their share in land that was multiply owned.

Stout and Ngata received no information about Waimarino 5, and made no recommendations concerning Waimarino C, D, and 6, even though each of the three blocks was being targeted for European lease. Nevertheless, their report captured important information about Whanganui in general, and Waimarino in particular, at a certain moment in time – 1907. It was by far the most comprehensive Crown investigation into Māori landholdings up to that point, and no other inquiry of similar length or detail would be carried out in the twentieth century. Noting the impact of large-scale Crown purchasing upon the district, the report alerted the Government to the fact that most Māori land owners in Whanganui were no longer (if they ever had been) in possession of surplus land that could readily be made available for sale.

(3) An optimistic vision
Despite its underlying paternalism and the recommendation that almost half the area of the remaining Māori land in Waimarino be made available for leasing to European settlers, the commissioners presented an optimistic vision for the future development of at least some of Waimarino’s Māori-owned blocks. At the centre of this scheme was the possibility of Waimarino Māori being able to sustain themselves on their land by farming. In order to make this vision a reality, the commissioners considered that Whanganui Māori would need a sufficient quantity of land to establish viable family farms, as well as the resources and expertise to make those farms a success. To this end, they recommended that significant tracts of land be set apart in at least some of the Waimarino blocks, and that those Māori who wished to take up the challenge of farming be provided with appropriate and systematic training and assistance.

What Stout and Ngata were recommending, therefore, was a plan by which the Crown entered into partnership with the owners of the Waimarino reserves to ensure that
at least some would be able to develop their land and prosper. For such an outcome to be achieved the Government would need to make an ongoing commitment to ensuring that Māori had the skills and resources necessary to succeed as farmers in the early twentieth century. Even more importantly, the Crown had to ensure that Waimarino Māori retained sufficient land to make farming viable.

20.2.2 Waimarino 3 owners’ aspirations for development
As Stout and Ngata reported, at least some of the Māori owners of land in Waimarino wished to remain on their land and develop it for farming. Noteworthy here were the residents of Manganui-a-te-ao or Waimarino 3, whom the commission identified as belonging to Ngāti Uenuku. These owners had been trying to secure Government support for their plans to develop their land since at least 1903. In January of that year, after a meeting with Richard Seddon at Rauetihi, they secured what they believed to be his approval for their proposals to convert their holdings into viable farms. According to licensed interpreter John Chase, the Premier had promised to assist the owners of Waimarino 3 to improve their holdings by facilitating subdivision and by lending them money.

By June 1907, nothing had come of the Premier’s promises. The residents of Manganui-a-te-ao petitioned the Native Minister for the Government to make Waimarino 3, which was a non-seller block, into a reserve for themselves and their children. The petitioners told the Minister that they were prepared to adapt themselves ‘to the present day methods of farming’ and had no doubts that they would succeed, so long as they could obtain assistance from the Loans to Settlers Department, and the money was ‘prudently expended in improving the land’. They noted that there were some non-resident owners who ‘prefer leasing to residing on their sections and farming’, but that other owners had already proved themselves successful farmers or graziers, and would thus require ‘but little assistance’. Rather than leasing the land to Europeans, therefore, it should be made available to members of their hapū who had ‘but little or no land at all’ and ‘would be glad enough to become the Lessees’.

In 1907, the resident owners of Waimarino 3 applied to the Native Land Court for subdivision of the block. According to the interpreter Chase, the purpose of the subdivision – which cost at least £100 – was to improve the land and add more stock, and in the year that followed, the occupying owners ‘cleared Bush, Burnt, and grassed nearly 1,000 acres’. Progress, however, was frustrated when the Native Appellate Court took three years to rule on an appeal against part of the subdivision. In February 1910, Chase wrote to the Liberal member of Parliament for Taumarunui William Thomas Jennings about the still unresolved appeal. The letter noted that, in addition to seeking the subdivision of their land, the people of Manganui-a-te-ao had also voluntarily paid £100 in rates in the hope that the Government ‘would then be moved to assist them’. Chase also emphasised the work ethic and expertise of the resident owners, many of whom had ‘proved themselves to be good hardworking farmers, and could clear grass and fence their respective sections in very quick time if allowed to do so’.

JW Davis, one of the surveyors who eventually marked out the subdivision between 1910 and 1911, also commented on the determination of those living on Waimarino 3 to develop the land. He credited ‘the few Natives living on Waimarino 3’ with showing ‘a remarkable zeal of progress’. Bush felling, he reported, was well in hand, and some hundreds of acres had been burnt and grassed during the previous three years. Moreover, he was sure that once the Māori owners had been made ‘certain as to the position of the subdivisional boundaries’, they would considerably extend their bushfelling operations.

The case of the resident owners of Waimarino 3 validates Stout and Ngata’s insight that some at least of the owners of Waimarino reserves had both the capacity and the ambition to make their land into viable farms. In order to do this, however, they would need – as the people of Manganui-a-te-ao recognised – the partnership of the Government. Waimarino Māori farmers looked to the Crown to protect their land from alienation while providing them with a secure and certain title. They also sought practical assistance such as low interest loans for...
developing their land. What they were asking for was, in fact, the same consideration from the Government that European settlers enjoyed.

20.3 First Wave of Land Alienation, 1910–30

20.3.1 Introduction

Stout and Ngata issued a timely warning in 1907 against any great degree of land purchasing in the Whanganui area, and recommended instead that sizeable tracts in both the Waimarino seller and the Waimarino non-seller blocks be set aside for their Māori owners to farm. They also recommended that smaller areas be reserved as papakāinga for settlement and cultivation. The remaining land, they thought, could be made available for lease to European settlers.

The Crown did not heed Stout and Ngata’s cautions. Rather, it facilitated, and was itself a key participant in, a twenty-year wave of purchasing land in Waimarino – sometimes compulsorily. In terms of acres alienated, this wave was surpassed only by the initial Crown purchase of 1886–1887.

According to Peter Clayworth, whose figures the claimants adopted and the Crown did not contest, between 1910 and 1930 Māori ownership of land in the Waimarino seller reserves and non-seller blocks reduced by 39,451 acres, or 53 per cent of their original area. Of the sellers’ reserves, more than 22,000 acres, or two thirds of their original area, was alienated. In the blocks set aside for non-sellers, owners sold a lesser but still significant proportion: 17,018 acres, or 41.5 per cent, of the blocks’ aggregate area.

The 15 years immediately following the Stout–Ngata commission’s report saw the fastest reduction in Māori holdings in the blocks. Clayworth calculated that between 1911 and 1920, 27,914 acres, or 37.5 per cent, of the combined area of the Waimarino sellers’ reserves and non-sellers’ blocks went out of Māori hands. Of this, the Crown acquired 10,500 acres, including more than 2,000 acres through compulsory acquisitions for roading, scenery preservation, and – in the case of 1,051 acres taken from Waimarino 4 – national defence.

Between 1911 and 1930, significant portions were alienated from blocks where Stout and Ngata recommended that land should be set aside for papakāinga, or for farming by owners. The Crown purchased the whole of Waimarino E and F in 1926, although the commissioners recommended these be reserved for their owners as papakāinga land. By 1925, Waimarino E, which Stout and Ngata suggested its owners should be left to farm, had been sold mainly to private purchasers. Private interests also succeeded in purchasing large parts of Waimarino 3 and Waimarino A, although Māori owners still retained most of both blocks in 1930.

Why was so much of the remaining Māori land in Waimarino alienated between 1910 and 1930? To what extent was this attributable to Crown action or inaction? Was the Crown complying with its Treaty obligations to Waimarino landowners during this period? In the following section, we look at the Crown’s compulsory acquisitions, its other purchases, and whether it played a role in facilitating private purchasing.

20.3.2 The Crown compulsorily acquires Waimarino land

Most of the almost 40,000 acres of Waimarino Māori land alienated between 1910 and 1930 were ordinary purchases that the Crown or private purchasers negotiated with the blocks’ various owners. However, Clayworth calculated that the Crown took another 2,084 acres under various pieces of public works legislation. The public works included roads; the North Island main trunk railway; scenic reserves along the Whanganui River and the railway line; and ‘defence purposes’ – a planned, but never established, army training ground.

These takings varied considerably in size, from two, three or six acres for a road or scenic reserve, to more than 1,000 acres for the army training ground. The amount of land taken for the various public works purposes differed too: slightly more than 300 acres for roading; 60 acres for the North Island main trunk railway; 789 acres for scenery preservation (including 607 acres along the Whanganui River); and 1,051 acres for defence. Most of this land was taken before 1920. The Crown acquired the Waimarino defence lands in 1911, while the scenic reserves were proclaimed in 1911, 1912, and 1916.
While the Government acquired land compulsorily from most of the Waimarino Māori non-sellers’ blocks and sellers’ reserves, including Waimarino 2, 3, 5, and 6, and Waimarino C, D, and E, one block was particularly severely affected. Between the beginning of 1910 and the end of 1912, the Crown took more than half of the original acreage of the non-seller block Waimarino 4. The first taking comprised 64 acres for the North Island main

[Map 20.2: Status of Māori land, Waimarino block, 1930]
trunk railway on 14 February 1910, under section 188 of the Public Works Act 1908. In October and November of the same year, the Crown took a further 29 acres for road. On 15 March 1911, the Crown requisitioned 1,417 acres from Waimarino 4 for the purposes of defence training-grounds, deploying sections 90 and 225 of the Public Works Act 1908 and section 88 of the Defence Act 1909. The Crown then revoked 367 acres of this taking in December 1911, reducing the acreage from 1417 to 1051.

On 11 May 1912, the Crown used the Public Works Act 1908, the Scenery Preservation Act 1908, and the Scenery Preservation Amendment Act 1910 to take a further 128¼ acres of Waimarino 4 for scenic purposes.

(1) Waimarino 4 takings all breached the Treaty

We analysed Treaty jurisprudence on compulsory acquisition when we inquired into takings for scenic reserves in chapter 16. Our analysis follows other Treaty jurisprudence: compulsory acquisition of Māori land is a prima facie breach of the Treaty because article 2 guaranteed Māori ownership of their land until they chose to sell it. For convenience, we repeat the basic principles here:

- The Crown should avoid compulsorily acquiring Māori land for public works wherever possible.
- Taking Māori land for public works is justified only in exceptional circumstances – that is, where the national interest at stake, and there is no other option.
- If there is no viable option but to use Māori land, the Crown should always undertake genuine consultation and seek the land owners’ agreement. This reflects the fiduciary obligation of the Crown, the need to actively protect Māori rangatiratanga, and the duty of reasonableness on both sides.
- Where exceptional circumstances do demand the use of Māori land, before purchasing the Crown should first explore the suitability of acquiring lesser interests instead. Options include leases, easements, licences, and covenants.

None of the takings of land from Waimarino 4 met these standards. First and foremost, the acquisitions were illegitimate because no exceptional circumstances applied. Secondly, the Crown did not engage in genuine consultation, neither did it explore the possibility of acquiring lesser interests. Having established that the Crown breached the Treaty when it took this land compulsorily, we nevertheless look further into the particular circumstances to ascertain whether its conduct complied with the law laid out in public works legislation. Failure to do that would, in Treaty terms, magnify the seriousness of the breach.

(2) Waimarino 4B2 particularly hard hit

Almost all of the land the Crown compulsorily acquired from Waimarino 4, including the defence training ground and the scenic reserve, came from one subdivision: Waimarino 4B2. The Native Land Court created this block by partition order in June 1907, and awarded it to 18 owners. Originally it comprised 2,004 acres, but by the close of 1912, the Crown’s various compulsory takings had reduced it to 825 acres.

The Crown’s public works takings in Waimarino 4B2 also came before the National Park (He Kāhui Maunga) District Inquiry. Its report sets out findings, but notes that the Tribunal was in some respects constrained in what it could say by a lack of evidence. While the relevant evidence of historians Peter Clayworth and Philip Cleaver was available to the National Park inquiry, we also had the benefit of Brent Parker’s research specifically on Waimarino 4B2. His evidence was filed in May 2010, three years after the final hearing in the National Park inquiry. We have decided to approach afresh both analysis and findings on public works takings in Waimarino 4B2, based on the whole picture conveyed in the evidence and witness cross-examination unique to our inquiry.

(3) Waimarino 4 targeted for public works takings?

Claimants argued that the Crown targeted the remaining Māori owned land in the Waimarino block for compulsory acquisition. In the case of the two takings we focus on in this section, the evidence does not strongly support such an allegation. The 1,051 acres taken from Waimarino 4B2 for the defence training ground were a small part of a much larger area (nearly 28,000 acres) that was already Crown land bought in the original Waimarino purchase.
It was the earlier purchase that drove the acquisition of more land in the vicinity for defence purposes. As regards the 128¼ acres taken for a scenic reserve, the Crown argued that it targeted particular land for scenery preservation not because it was Māori land, but because it was scenic. Research confirmed that the land the Crown took for this purpose was generally close to the railway, the Whanganui River, or both.

Nevertheless, we commented in chapter 16 on how Crown officials saw it as ‘a comparatively easy task to secure’ Whanganui Māori land for scenery preservation. The history of public works in New Zealand consistently demonstrates how those with power to compulsorily acquire land for various works regarded Māori land as cheaper and easier to take than other land.

explained partly by the lesser legislative protections, and the confusing and separate public works provisions, for Māori land. It probably also sprang at least some of the time from a colonial mindset that considered the uses to which central and local government would put land were more important than its Māori owners’ preferences.

From the evidence we have seen, it is fair to say that the article 2 guarantee that Māori would only sell land they wanted to sell was seldom if ever to the fore in officials’ consideration of compulsory acquisitions. If it had been, it would have been immediately apparent that taking land from Waimarino 4B2 was a woeful idea in Treaty terms. This relatively small block was all that owners had left of their interests in the wider Waimarino area. Interests they had elected not to sell to the Crown, but which were extinguished anyway by the Crown purchase of 1886–87.

(4) Land taken for defence purposes

As we have said, the 1,051 acres taken from Waimarino 4B2 for defence purposes were to comprise part of a much larger area that was intended as a training ground for the country’s newly-established territorial forces. However, they were never put to that purpose. Although it turned out that the land was not wanted for the purpose for which it was taken, the Crown did not return the land to its owners. Instead, in 1922, 11 years after its acquisition, the Crown put part of the land – 649 acres – into Tongariro National Park under the Tongariro National Park Act. The balance, divided into two awkward parcels of 346 and 55 acres, remained in Defence Department hands until November 1940, when it was converted to Crown land.

The larger parcel, running between the main trunk line and what is now State Highway 4, became known as section 1 block 1v Manganui survey district. In June 1941, the Crown added it to Tongariro National Park under section 2(1) of the Tongariro National Park Amendment Act 1927. In March 1951, however, the Crown reversed its decision and removed the land from the national park under section 2(2) of the same Act. From 1955, section 1 block 1v was leased to a European farmer under a 30-year renewable lease. In 1992, the Crown decided to return the land to its pre-1911 owners. Towards this end, it terminated the
long-term lease and placed the land in a land bank, where it remains, still as Crown land, to this day.\textsuperscript{78}

The smaller, 55-acre, parcel was designated as permanent State forest in 1941. In 1991, it was transferred to Landcorp under section 24(1) of the State-owned Enterprise Act 1986. The land, which is known officially as part section 1 Survey Office plan 36593, is subject to a resumption memorial under section 27B of the same Act. This means that the Waitangi Tribunal may make a binding recommendation that the land be returned to its previous Māori owners.\textsuperscript{79}

(5) Land taken for a scenic reserve
The Crown took 128¼ acres of Waimarino 482 for a scenic reserve on the recommendation of the Scenery Preservation Board, partially in response to reports that the Māori owners had traded the cutting rights to the block to a European logger.\textsuperscript{80} Notice of the Government’s plan to seize the land drew a letter of objection from Haitana Te Kauhi and eight other owners of Waimarino 4 dated 29 February 1912, and addressed to the Minister of Works. The objectors opposed any of the land ‘being reserved as Scenery or for any other purpose of the Government’; they wanted the land as a home for themselves, and for cultivation by their children; and they complained that the Government had not yet compensated them for the land – and also earth and gravel – it had taken for the railway and roads. They asked the Minister to come to Raetihi where they would be able to discuss their grievances in more detail and come to ‘some mutual agreement’.\textsuperscript{81}

Asked for his response to the letter, the Under-Secretary of Lands and Survey dismissed the owners’ claims, declaring that they neither lived upon the land nor had ‘shown any inclination to do so’; and that their desire to use it as a home was not enough to justify the Crown’s abandoning the scenic reserve.\textsuperscript{82} Acting upon this advice, the Under-Secretary of Public Works informed Haitana and the other signatories that their objections were rejected, and the scenic reserve would be proclaimed. On the subject of payment for the land and gravel taken for road and railway construction, he told the Māori owners that any loss they might have suffered had ‘been more than counterbalanced by the increase in value of the Waimarino Block’.\textsuperscript{83}

(6) Compensation
When the Crown acquired general land for public works, compensation was negotiated between the Crown and the landowner, but ‘Native land’ was different. The Native Land Court determined the compensation.\textsuperscript{84}

The court awarded compensation for the defence training ground like this: £452 1s 5d to the 11 owners of Waimarino 482 whose land was leased out; £200 to Charles McDonnell, the European lessee; and £87 10s to the five owners whose land was not under lease.\textsuperscript{85} For the scenic reserve taking, the Court awarded compensation of £436 16s 9d.\textsuperscript{86} In both cases, the presiding judge determined land value only by reference to economic factors. In the case of the defence training ground, he relied on the opinions of the Valuer General and ‘two capable and experienced valuers’ who respectively put the value of the taking at 10 shillings, five shillings, and two shillings and sixpence an acre. He also took into account the fact that the Māori owners had leased most of the land in question for sixpence an acre.\textsuperscript{87} With the scenic reserve, the key issue was the quantity and quality of the millable timber on the land.\textsuperscript{88} In neither case was there any consideration of the cultural, emotional or spiritual significance of the land to its owners.

(7) Notice not required for defence taking
Notice to landowners is an important aspect of fair process when it comes to compulsory acquisition of land. However, the Crown has tended to use the circumstances of the land tenure system it created for Māori as an excuse to legislate for less notice to Māori landowners. In the case of the land taken here for a defence training ground, the defence purpose for its taking meant that actual notice was not required at all. Section 223 of the Public Works Act 1908, set out a process for the Crown to take land for rail, road or defence purposes. The process involved preparing an accurate map signed by the Surveyor General, and the Governor ‘by Proclamation publicly notified’
declaring that the land ‘is taken or closed for defence purposes’. Once the proclamation was gazetted, the land was Crown land. It is immediately apparent that a publicly notified proclamation might or might not come to the notice of Māori owners of rural land. There is good reason to believe that, in this case, it did not.

(8) The Crown argues that there was de facto notice
The Crown drew on research undertaken by Brent Parker to argue that at least some owners were likely to have been aware of the Government’s plans for public works takings in Waimarino 4 prior to their being carried out. Parker’s evidence revealed that from September 1910, E Phillips Turner, the Inspector of Scenic Reserves, had been at work on the ground defining the boundaries of the training ground for territorials (part-time soldiers). 89 This activity, the Crown surmised, would ‘most likely’ have alerted local landowners to the likelihood that their land was about to be taken. 90 A memorandum that Phillips Turner wrote on 31 January 1911 strongly supports this conclusion. Writing from the Waimarino district two weeks before the proclamation to take the training ground land formally, Phillips Turner informed the Under-Secretary of Lands that Neha, ‘the chief Maori at the kainga here’, wanted 200
acres containing his papakāinga to be excluded from the proposed taking. In fact, Mr Parker pointed out, Neha’s papakāinga was located in the southeastern portion of Waimarino 4, and so his request affected Waimarino 4A1, 4A2, 4A5, and 4B1, and not 4B2. Neha presumably did not know precisely what the Crown’s intentions were. The Crown, though, wanted the Tribunal to note the account of the interaction between Neha and Phillips Turner as showing that at least one local chief knew about the defence taking before it took place, and that there was some negotiation over the land that was to be taken.

The fact that there were things going on in the locality from which tangata whenua could have, should have, or might have inferred that the Crown was going to compulsorily acquire their land is really neither here nor there. We do not know what locals knew. The fact was that the Crown enacted legislation that did not require proper, actual notice to the affected Māori landowners, and we have no evidence that the Crown gave the owners of Waimarino 4B2 any more notice, whether formally or informally, than the legislation required – that is, no notice at all.

(9) Consultation

A cursory discussion, about what appears to have been the wrong land, cannot in any way count as a consultation that the Crown conducted with its Treaty partner about the proposed taking. As regards Waimarino 4B2, we have no evidence that the Crown ever discussed its plans with the owners of the land. The ‘Chief known as Neha’ with whom Crown officials had some contact was not an owner of Waimarino 4B2 but a major holder of shares in Waimarino 4A2. The claimants maintain, and we have no reason to doubt, that at least some of the owners of 4B2 did not know about the Gazette notice that formally proclaimed the Crown’s taking of their land in March 1911. In their letter of 29 February 1912 protesting the Crown’s plans for a scenic reserve on their lands, Hātana Te Kauhī and the other signatories referred to the Crown’s defence training ground taking as a proposal rather than a fait accompli, which by that time it was. The evidence that Te Mataara Pēhi presented to us in May 2008 also supported the proposition that the owners of Waimarino 4B2 might not have known that the Crown had taken their land. Mrs Pēhi (who was born in 1935) told how she and her husband Sonny (the original Wai 73 claimant) were taken by her Koro Tira Koroheke Taurere in 1954 to see the land that she would one day inherit. He pointed out boundaries that were the boundaries of Waimarino 4. According to Mrs Pēhi, her Koro believed that ‘all the land within the boundary was still owned by him and his whanaunga. He was not aware of the various takings that had happened over the years.’

20.3.3 Other Crown purchases

In addition to the land it acquired compulsorily under statutory powers for public works, the Crown also purchased more than 8,000 acres of Māori-owned Waimarino land by negotiation between 1914 and 1930. Most of this came from the seller reserve Waimarino B (9,270 acres) from which the Crown purchased 7,982 acres in 1915. The Crown also purchased the whole of Waimarino F (420 acres) and Waimarino 8 (60 acres) in 1926. In 1930, it acquired Waimarino A1B (268 acres) after foreclosing on a mortgage.

(1) A small minority of owners decide to sell blocks

The Crown’s purchases in Waimarino B, F, and 8 are noteworthy because in each case Government officials were able to purchase the entirety of the piece of land in question by securing the consent of only a minority of the Māori owners. In the case of Waimarino B3B2 (6,915 acres), which the Crown purchased on 16 March 1914, six owners met in Wanganui on 7 November 1913 and agreed to sell a subdivision with 178 owners. In September 1915, six out of 13 owners met at Kākahi and consented to the alienation of Waimarino B3B2A (675 acres). Waimarino 8 was sold to the Crown with the agreement of only 14 of at least 34 owners. The Crown’s purchase of Waimarino F followed a meeting of 11 or possibly 12 of the block’s estimated 133 owners.

The Native Land Act 1909 made possible the Crown’s purchase of entire sections of land with the mandate of
a minority of owners. The Act – discussed in detail in chapter 15 – shifted decisions concerning the alienation of Māori land held by more than 10 owners away from individual shareholders to ‘meetings of assembled owners.’

The quorum for such meetings was set at five, regardless of how many owners there were, or the size of their share in the block. Even in a block with 100 or more legal owners, five owners present or represented by proxy constituted a quorum and could decide to sell. The support of the majority either by numbers of shareholders, or by the quantity of shares, was not required. What was important was being present at meetings – or at least having a representative there as a proxy.

In drafting the 1909 Act, Native Minister James Carroll had apparently intended meetings of assembled owners to allow a degree of communal control over the sale of Māori land. The practical effect, however, was to undermine collective decision making while also bypassing the property rights of individual owners not at the meetings.

(2) Waimarino 7
The Crown’s first purchase of a Waimarino reserve was in 1899. Vested in just two owners – Tārewa Heremaia and Te Moana – the 950-acre Waimarino 7 was advantageously located near the planned route of the North Island main trunk railway, and contained some good quality pastoral land, as well as some potentially valuable stands of tōtara.

Like all North Island Māori-owned land at the time, Waimarino 7 was subject to Crown pre-emption, which meant its owners could legally sell their land only to the Government. In 1897, the owners attempted unsuccessfully to have this restriction lifted so they could enter into a land and timber agreement with a timber miller. Government officials refused the request, and instead resolved to acquire the land for the Crown. In 1899, Surveyor General S Percy Smith reported that the Crown would be doing ‘very well’ to acquire the land for £2 per acre or £1900 in total. This assessment was not made known to the owners and, after some determined bargaining, the Crown in 1899 secured an agreement to buy the land for £800, or about 17 shillings per acre.

By imposing and then enforcing its right of pre-emption Government officials significantly reduced the options available to the owners of Waimarino 7, particularly if they wished to derive immediate revenue from their land. As a result, the Crown was able to purchase the land at significantly less than its own Surveyor General judged it to be worth.

(3) Waimarino B3B2B
According to Peter Clayworth, the Crown’s purchase of much of the original Waimarino B, a seller’s reserve block, was ‘part of a larger Department of Lands plan to settle the Mangapūrua Valley and open up the “back country” of the old Waimarino block.’ The Government made its first attempt to acquire the by-now successively partitioned block in July 1911. A meeting of the assembled owners of the various sections held the following month in Whanganui, however, failed to reach a decision.

Covering over 6,000 acres and with 178 owners, Waimarino B3B2B was the largest of the Waimarino B subdivisions created in 1909 and 1911. On 7 November 1913, a meeting of its assembled owners was held in Wanganui to consider the Government’s offer of purchase. Only three owners of Waimarino B3B2B were actually present: Te Nui Te Kōau, Koiri Tuirirangi, and Ngunu Paranihi. A further three were there by proxy: Te Nui Te Kōau was proxy for his father, Kuramate Te ngatu, and Te Kanapu Haerehuka (who was not an owner) was there as proxy for Rangihae and Ngākura Ropoama. The meeting voted unanimously to sell to the Crown for 18 shillings an acre. JB Jack, the president of the Aotea District Māori Land Board, confirmed the resolution to sell, and observed that although the meeting was not well attended, two previous meetings had failed to attract a quorum, so there had been ample time for other owners to object to the proposed sale.

Thus, in accordance with the procedure set down by the Native Lands Act 1909, three owners voting in person and two representatives exercising three proxy votes carried a motion to sell to the Crown a 6,195-acre block owned by 172 people. There is no record of the other owners complaining; nor of how they were informed either of the meeting itself or of its outcome.
Waimarino B3B2A and Kākahi

As we saw in chapter 13, at the time of the Crown’s original Waimarino purchases, it allocated land to Māori in only a few parts of the block, without any real regard for whether the land allocated would meet the economic, cultural, and resource needs of the owners. The result was that many areas of importance for local communities became Crown land while Waimarino Māori were generally confined to tracts of land that were economically unviable and, for some groups at least, a considerable distance from established kāinga and places of cultural significance.

(a) The descendants of Tūtemahurangi: One group who appear to have been particularly ill-served by the Crown’s allocation of reserves were the descendants of Tūtemahurangi. In her brief of evidence, Lois Jean Tūtemahurangi (one of the claimants for Wai 1203) told us that her tipuna had been living at Kākahi at the time of the Crown’s purchase of Waimarino. Kākahi (located 16 kilometres southeast of Taumarunui) was particularly valued by its tangata whenua for its location on high ground above the Whanganui River, which allowed the people to reside there when the awa was in flood. With its Māori owners apparently unrepresented at either of the key Native Land Court hearings that divided the block, there was no land at Kākahi in either the seller reserves or non-seller blocks.

With their kāinga declared Crown land, the legal interests of Tūtemahurangi’s descendants were restricted to some individual shares in the Waimarino B seller reserve, and even smaller interests in Waimarino 5. Located far downstream from Kākahi in the rugged south-western corner of the Waimarino block, Waimarino B and 5 were, according to Lois Tūtemahurangi, ‘not fit for permanent occupation’, but her tipuna had used them for seasonal mahinga kai.
(b) Tūtemahurangi whānau return to Kākahi: Over time, the Tūtemahurangi family’s interests in Waimarino B became concentrated in the 675-acre Waimarino B3B2A. Few of the block’s owners appear, however, to have been living on the land. In 1905, the descendants of Tūtemahurangi had returned to Kākahi, where they were living on a small section of Crown-owned land in the recently established township, so that their children could attend the school at nearby Piriaka. After talks with Crown officials, the whānau believed they had secured permission to establish a ‘native village’ in the Kākahi township. They consequently built a ‘home for Māori school children’, and had built or were building other whare and a marae. The opening of a school in Kākahi in 1909 strengthened the family’s determination to stay in the township and have their rights to the land they were living on legally confirmed.

In 1913, R.M Takiwā wrote to the Government asking that the approximately three-acre area on which they were living be legally defined and protected as the current uncertainty was ‘very troublesome’. He suggested that a detailed plan of the area be drawn up so that it would be ‘clear as to where we can make our improvements.’

Upon receiving the request for a reserve at Kākahi, the Government moved to eject the ‘squatters’ from their homes and the township, and ordered Māori to pull down the houses they had built. The commissioner of Crown lands, Thomas Broderick, advised his superiors that there was ‘no land set apart’ for this group at Kākahi and that none should be provided. The Crown, he stated, ‘cannot set aside land of such value for a Native Settlement in the middle of what is likely to be a business and residential area.’ Such a settlement ‘in the middle of town’ would be both ‘objectionable’ and a health risk.

(c) Whānau propose land exchange to get a foothold in Kākahi: Faced with this categorical refusal to allow them
land to live on at Kākahi, the Tūtemahurangi whānau petitioned the Prime Minister. Eru Te Kuru, Ngāhuia Rauhoto, Umuariki Rauhoto and Rātū Rauhoto wrote in November 1913 asking to 'exchange [their] interests in Waimarino B3B2A for lands in the Kākahi township'. They explained that their 'main object' was to ensure that their children would be close enough to school to be able to attend regularly regardless of the weather and condition of the roads and streams.\textsuperscript{124}

After some delay, Broderick recommended that the Government take up the owners' offer. It should 'acquire the whole' of B3B2A, and pay 'for part of it by giving the Kākahi section'. It would anyway be difficult to turn the Kākahi residents out of the 'great many houses' they had built there, he admitted – but more importantly, buying Waimarino B3B2A conformed with his opinion that the 'Crown should acquire the whole of the Waimarino B block and open it for settlement'.\textsuperscript{125}

Broderick's superiors agreed. The Crown should buy Waimarino B3B2A – by this time one of the few parts of Waimarino B remaining in Māori ownership. By 1914, however, the original 13 owners in B3B2A had increased to at least 30, and only some of them were living at Kākahi and wanted land there. Seeing that the issue of Kākahi risked delaying matters, Crown officials decided to propose a straight purchase of B3B2A, with no land swap.\textsuperscript{126}

\subsection*{(d) Haggling over terms}

On 1 February 1915, the Native Minister instigated a meeting of assembled owners to consider the Crown's proposal to buy all of Waimarino B3B2A. Seven owners, mostly from the group based at Kākahi, attended. They offered to swap 10 acres at Waimarino B3B2A for the section at Kākahi. They were prepared to consider selling Waimarino B3B2A only if the Government agreed to this exchange.\textsuperscript{127} Broderick told the owners that there would not be a land swap on any terms. The Crown would buy all of Waimarino B3B2A for 18 shillings an acre. The implication was that Māori could purchase the three acres at Kākahi in a separate arrangement later, for £100 per acre. The high price reflected Broderick's belief that the spot where the whānau were living was one of the best locations in a town that would soon blossom.\textsuperscript{128} Nothing was agreed.

At another meeting of owners in July 1915, the owners present again made their acquisition of land at Kākahi a prerequisite for their selling Waimarino B3B2A to the Crown. Dismissing Broderick's £100 per acre – which one owner claimed was well above the going rate for sections in the Kākahi township – they offered to sell their interests in B3B2A in return for enough to purchase the land at Kākahi plus, it would seem, some over. The rest of the owners of the block would receive £2 per acre.\textsuperscript{129} The Crown rejected this counter offer, and went on to place B3B2A under a proclamation preventing the owners from offering their land to private purchasers or securing a mortgage on the land.\textsuperscript{130}

Now, though, what the Native Secretary called the 'non-acquirement' of Waimarino B3B2A was hampering the Crown's plans for the European settlement of adjoining land. The Crown raised its offer to 20 shillings an acre.\textsuperscript{131} At yet another owners meeting in September 1915, the five owners present finally abandoned their insistence on linking their sale of B3B2A to obtaining three acres at Kākahi. Instead, they agreed to offer the land to the Crown for 30 shillings an acre, even though Kato Rauhoto was initially adamant that they should not contemplate selling B3B2A without an explicit agreement over Kākahi.\textsuperscript{132}

Having wiggled out of making any legal commitment regarding the three acres at Kākahi, Crown officials accepted the meeting's offer and purchased B3B2A for £1012 10s. Like the decision to sell Waimarino B3B2B to the Crown almost two years earlier, a small percentage of the block's owners decided its fate. Most of the at least 30 owners of the block took no part in the meetings, negotiations, and subsequent arrangement to sell the block.\textsuperscript{133}

\subsection*{(e) The Crown drives a hard bargain}

Although the Crown had made no binding arrangement to convey the three acres at Kākahi to the whānau living there, everyone involved – the Kākahi community, the Aotea District Māori Land Board, the various Crown officials – expected the Crown to offer the three acres to its Māori residents.
In December 1915, Broderick, who was by then Under-Secretary for Lands, instructed officials to value the Kākahi section in preparation for a sale. He explained that although descendants of Tūtemahurangi had eventually sold their share in Waimarino B ‘without any reference’ to the land at Kākahi, they ‘may’ have been ‘under the impression that they would be allowed to purchase.’ For this reason Broderick expressed himself willing ‘to assist them in that direction.’

The new commissioner of Crown lands, Gordon McClure, visited Kākahi in March 1916. He found the whānau living on the land ‘anxious to get the land vested in them.’ They seem to have got £375 from the Waimarino purchase price and were willing, if needs be, to spend a lot of it on buying the three acres. They offered to pay £80 per acre, or £240 in total. McClure considered this offer to exceed what was fair. The Crown was offering adjoining sections at £25 per acre, so he suggested £100 for the whole section, rather than £100 per acre.

Broderick rejected McClure’s advice. He decided to ‘postpone’ the proposed sale ‘as it may be used as a lever to acquire lands’ the Crown was looking to purchase in ‘another block.’

Understandably aggrieved, Hori Poihipi went on the whānau’s behalf to see the Crown Lands Ranger at Piriaka, and told him that the people at Kākahi wanted action on the matter. He pointed out that ‘a number of men’ from the Kākahi pā were serving in the Great War, and one had been killed. Given that they were ‘fighting with the Pakehas for the safety of the Empire’, he believed ‘that they should receive some further consideration.’ Moreover, they wanted ‘to erect some buildings and improve their land generally’.

The combined effect of this protest and McClure’s strong recommendation to put the Kākahi people ‘legally in possession’ of their land was enough to change Broderick’s mind. He agreed to the sale, but still rejected McClure’s view that the Crown should accept £100 for the three-acre section. He advocated a higher price, because the Crown (actually Broderick himself) had earlier put a value on the land of £100 an acre, and because the whānau had said they would pay £80 an acre. The Aotea District Māori Land Board followed this lead and recommended the price of £240, or £80 per acre. Ten Kākahi Māori bought it for that price in June 1916.

Thus, we see that the Crown drove a very hard bargain for those three acres at Kākahi – which should have belonged to tangata whenua of Kākahi anyway from the time of the Waimarino Purchase, if the Crown had properly located their non-seller interests.

The land board memorandum that recommended the sale commented that there was little demand for land at Kākahi at the time: ‘a great number of sections’ had been offered for sale in the township, but ‘only four’ had been sold. One of these was a one-acre section adjoining the land that the whānau bought, which the Crown sold for £25 on 22 June 1916.

Mrs Tūtemahurangi told us that the need to protect their community meant that her tipuna ‘had no choice but to buy the land’, a fact which the Crown plainly apprehended and exploited.

Waimarino F and Waimarino 8

In their report on the state of Māori lands in the Whanganui district, Stout and Ngata recommended that Waimarino B ‘be made available for [European] settlement.’ They did not consider it essential for its Māori owners to retain the rugged hill country, which surveyor Charles Otway described as ‘very broken, full of slips’, with ‘not one acre of flat land upon the whole block.’ The same could not be said Waimarino F and Waimarino 8, though, and Stout and Ngata recommended these for ‘residence and cultivation’ by the owners and their descendants.

The Crown took no heed, and purchased both blocks in their entirety in 1926. Agreement to sell to the Crown was once more obtained through meetings of assembled owners, at which only a small minority of shareholders were represented.

(a) Background: Situated on the banks of the Whakapapa river on the eastern edge of Waimarino, the 420-acre Waimarino F seller reserve was awarded to 42 owners from Ngāti Hinewai, Ngāti Hinehohara, and Ngāti Waewae. The
reserve shared a boundary with the 60-acre Waimarino 8, which was originally owned by six individuals from Ngāti Hinewai and Ngāti Hinekohara. By 1925, Waimarino F had an estimated 133 owners. Waimarino 8 had at least 34.\(^{145}\)

The Crown's interest in purchasing Waimarino F and 8 appears to have dated from at least May 1918, when it proclaimed the two blocks to prohibit alienation of the land to private interests for six months. Issued under section 363 of the Native Land Act 1909, the order was renewed for a further six months in April 1919. This restriction prevented the owners not only from selling and leasing their land but also from raising mortgages or leasing the rights to cut timber. According to Clayworth, it was most probably the timber that interested the Crown.\(^{146}\)

In June 1924, both blocks were still in Māori ownership. When some of the owners of Waimarino F wanted to sell to a European, the Crown renewed its prohibition on the blocks and then offered to purchase them. On 5 December 1924, meetings were held at Kākahi for the assembled owners of each block to vote on the offer. The meeting for Waimarino 8 was adjourned when fewer than the quorum of five owners attended. Three owners, including Inia Ranginui and Parewairere Te Heuheu, came for Waimarino F meeting, and they had in their possession proxies for 11 of the 30-odd owners in the block. The meeting proceeded, and voted to reject the Crown's offer.\(^{147}\)

This rejection might have signalled to the Crown that if it wanted to purchase the land, it should engage with the owners to achieve their consent. Instead, in May 1925 the Crown renewed the proclamations on Waimarino F and 8 for a further 18 months.\(^{148}\)

(b) **Minority votes in favour of sale:** When the owners had been unable to deal with private purchasers or gain an income from their land for another six months, the Crown again advanced its offer to purchase at a meeting of assembled owners gathered at Tokaanu on 14 October 1925. This time, 14 of the owners of Waimarino 8 were present or represented, and they voted unanimously to sell the block to the Crown for £420, or £7 per acre.

A much smaller minority of owners voted to sell Waimarino F: they comprised 11 or possibly 12 of the estimated 133 owners, and, together with proxies, they represented 34 of the 420 shares in the block. After some debate, including a suggestion from one owner that they hold out for a better price, the meeting resolved unanimously to sell the block to the Crown for £9 per acre or £3,780 in total.\(^{149}\)

(c) **The mana of Ngāti Waewae:** The alienation of Waimarino F by fewer than 10 per cent of its owners remains a source of mana (pain) for some of those whose tupuna had shares in the block. Daniel Winiata Paranihi and Tūroa Andrew Karatea, both of Ngāti Waewae, expressed outrage that shares in the land handed down by their tupuna to their grandmother, fathers, and aunts could be sold without the consent of the majority of owners.\(^{150}\) They recalled Ngāti Waewae’s long tradition of resisting land sales, and knew that the expectation of their tupuna was ‘that their lands would pass down to their children and their children and so on.’\(^{151}\)

For Mr Karatea, the loss was the more bitter because his aunts Iwa and Maikura, and his father Haami, were children when their shares were sold. The Native Trustee held the shares on their behalf, and yet ‘these children lost their whenua before they were old enough to stand on their own feet.’\(^{152}\) Moreover, Ngāti Waewae as a whole lost their connection with Waimarino. Mr Paranihi concluded his statement to the Tribunal by saying that the Crown’s purchase of Waimarino F meant that ‘we don’t seem to exist in the Waimarino region and I don’t feel there is any legal recognition of our whakapapa to those lands.’\(^{153}\)

### 20.3.4 Private purchasing

Although the Crown acquired a good chunk of the land remaining to Waimarino Māori between 1911 and 1930, private buyers purchased the greater part of Māori land alienated there in this period. According to Clayworth, private buyers acquired 28,200 acres of the sellers’ reserves and non-sellers’ blocks between 1911 and 1930.\(^{154}\) This constituted 71 per cent of the land alienated during these years, and 38 per cent of the original area of the Māori
blocks. The private purchasers bought all but eight acres of the 4,060-acre Waimarino E block; 4,172 acres or 92 per cent of the 4,540-acre Waimarino CD; and 3,285 acres or 90 per cent of the 3,640-acre Waimarino 2. Private buyers also secured parts of Waimarino 3, 5, 6, and A. In Waimarino 3, this amounted to 7,261 acres, or 40 per cent; in Waimarino 6 the area alienated was 533 acres, or 39 per cent; in Waimarino A the figure was 4,842 out of 14,850 acres, which was 32 per cent; and in Waimarino 5 private buyers acquired 3,303 out of 13,200 acres, or 25 per cent.

Included in the blocks in which private buyers made significant purchases were three blocks where Stout and Ngata had recommended that land be set aside for ‘Māori occupation and farming’: Waimarino 3, Waimarino A, and Waimarino E. It is unclear whether the land privately purchased in Waimarino A and Waimarino 3 encroached upon the 4,000 and 8,600 acres respectively that the Commissioners had recommended for owner retention and use. The situation was clearer in Waimarino E, where private purchases consumed virtually the entire block, precluding any possibility of its Māori owners using and developing it.

(1) Why Waimarino Māori sold their remaining land
How did private purchasers buy so much of the remaining Māori land in Waimarino between 1911 and 1930? Sellers’ reserves and non-sellers’ blocks alike were defined as freehold native land, owned by individual shareholders who were able to sell their geographically-undefined interests at will. Then, too, the provisions of the Native Land Act 1909 further facilitated the private purchase of Waimarino reserve land. Like the Crown, private purchasers made use of meetings of assembled owners at which a minority of owners could decide to sell substantial blocks. Waimarino land that private buyers purchased in this way included all of Waimarino 2 (apart from the 355 acres that the Crown took for a scenic reserve); Waimarino 5B3 (1,258 acres); Waimarino A12 (1,205 acres); and Waimarino CD2 (1,413 acres).

Like holders of Māori land across late-nineteenth and early-twentieth-century New Zealand, the owners of shares in the Waimarino blocks often found it easier to alienate their interests than to try to occupy and use them. Living on and developing individual interests necessitated a partition, which could prove costly and contentious. Partitions of most of these Waimarino blocks usually saw the sale soon after of quite a bit of the land partitioned.

Another issue for the owners of the Waimarino sellers’ reserves and non-sellers’ blocks was the land itself. Broken, bush covered, and with poor soil quality, most of the remaining Māori land in Waimarino had only limited agricultural potential. Certainly, some who had interests in more than one block might be in a position to sell their shares in one to raise the finance to develop land – perhaps better quality land – in another. It is clear that owners like the Ngāti Uenuku people of Manganui-a-te-ao with interests in Waimarino 3 did invest the considerable effort required to subdivide and develop their lands. However, it was more common for owners to lack the resources and social cohesion necessary to take it on. For the many who held undefined individual shares in undeveloped and unproductive land that was insufficient to sustain them, receiving a cash sum for their interest was simply the easier and more realistic option. Poverty was another motivator. With few if any other assets, and little or no access to other funds, shareholders were often moved to sell their interests in times of economic adversity to pay for food, clothing, and medicine or to pay off debt.

Rating and survey charges also played their part. Matiu Haitana (claimant for Wai 1072 and co-claimant for Wai 1197) told us that the accrual of rates arrears and survey charges was the ‘primary reason’ why people living in Manganui-a-te-ao valley sold their shares in subdivisions of Waimarino 3. We discuss this in more detail below.

(2) Waimarino 3
Of the reserves reported on by Stout and Ngata, it was Waimarino 3 that showed the most promise for development. Ngāti Uenuku, the owners of ‘the greater part of Waimarino 3’, told the commissioners that they wished to have the reserve partitioned as soon as possible so that they could begin to farm the portion of the block that
belonged to them. In submitting their application for partition, the lawyer for the resident owners of Waimarino 3 indicated that the block was heavily rated and that the owners could not develop the land until it was divided.

In 1907, the 50 owners of Waimarino 3 agreed – after a hui that lasted three days – to divide the block into 19 sections. The partition was not, however, surveyed until 1910 and 1911 due to the Native Appellate Court’s delay in resolving an appeal against the proposed boundary between Waimarino 3D and 3C.

Once the block was partitioned, a spate of sales ensued: 40 per cent of the 18,350 acre block was sold between 1910 and 1930. According to Clayworth, a significant factor in this was the owners’ aspiration ‘to gain some income off land that was difficult to farm and distant from communication and transport routes.’ For example, Te Mare Tauteka sold the 331-acre Waimarino 3E3 in 1922 to obtain funds to pay off a £963 debt she and her son owed to Robert Jones of Tokaanu for goods purchased from his Hotel, General Store and Bakery. Raina Whitia, who was ‘very old and feeble’ when she sold the 714-acre Waimarino 3G in 1919, drew upon the purchase money to support her and her daughter’s family, who were taking care of her. In 1929, Te Rehina Ngātāpapa and Toroa Ngātāpapa sold their shares in Waimarino 3L3C in order to purchase better land elsewhere, and because they needed money for food, clothing, and medicine.

The imperative to obtain income from economically unproductive land was accentuated when owners were levied for rates or survey charges. Matiu Haitana told the Tribunal that rate liens were imposed on Waimarino 3A in 1915, 1916, and 1918, and consolidated in 1922 to £151 12s 1d. Then in 1930, a survey charge of £51 11s 6d was also placed upon the block, after application by the chief surveyor.

According to Haitana, rates liens and survey charges were also imposed on Waimarino 3F (£187 1s 5d in 1922 and £42 in 1930) and Waimarino 3J (£233 5s 3d in 1922 and £20 14s 8d in 1930).

While this evidence does not prove a causal link with ensuing land sales in the three subdivisions, Haitana argued that the ‘very high amounts’ charged on ‘all the Waimarino partitions’ were the main reason people sold their land or moved away to work for money.

(3) Waimarino A

Waimarino A was another of the blocks from which Stout and Ngata recommended land be set aside for development by the Māori owners. Like Waimarino 3, Waimarino A was partitioned in 1907. The subsequent 21 subdivisions do not, however, appear to have been surveyed until 1919. From then until 1930 more than 30 per cent of the reserve’s original 14,850 area was sold to private interests.

Waimarino A12 (1,025 acres) was sold to Elizabeth Beckett after just two owners attended a meeting of assembled owners in Wanganui in September 1918. Te Iho Wiari represented his own and 10 other owners’ shares – 433 1/3 in total – and voted to accept Beckett’s offer of £2,406. Honoria Maraea was the other attendee. She represented her own and four others’ shareholdings – 200 in total – and voted to reject the deal. There were at least 35 owners of Waimarino A12, and 1,225 shares. The five who voted against the transaction eventually withdrew their opposition to the sale.

The meetings of assembled owners rule under the Native Land Act 1909 again enabled a purchaser to proceed with a purchase that had the agreement, initially at least, of less than a third of the owners representing no more than 35 per cent of the total shares.

(4) Waimarino E

The Native Land Court partitioned Waimarino E (4,060 acres) in 1907. Once again, the partition was followed by wholesale alienation of the newly created subdivisions. By 1925, the entire block was sold. The purchaser of most of this land was sawmiller David Gardner, who, with members of his family, bought sections E1B, E2A, E3A, E4A, E4B, E5B, E6A, E6B, E7A, E7B, E8, E9, E10, E11, and E12. The sawmilling company McLeod and Gardner purchased sections E5A1, E5A2, and E14.

The available evidence does not explain why the owners of Waimarino E sold so much of their land so quickly. When Stout and Ngata recommended that the whole
block be set aside for farming by its Māori owners, they reported that ‘some of the owners’ were hoping to have the land subdivided so that they could farm the various portions. They also noted that the block was relatively advantageously placed ‘on the route of the North Island Main Trunk Railway’ and ‘also served by the Waimarino-Taumarunui road’.174

Yet, just over a decade after the surveying of the subdivisions, the land was all sold. Clayworth noted only that Te Keepa Puataata, one of those who sold interests in Waimarino E3, used his share of the purchase money to pay off the debts he owed to Robert Jones, the storekeeper in Tokaanu.175

(5) Waimarino CD
The Native Land Court merged the sellers’ reserves Waimarino C and D in 1912, following a petition to Parliament complaining that some of the kainga meant for the owners of Waimarino C had been put into Waimarino D. The owners of the composite CD reserve immediately partitioned it into Waimarino CD1, CD2, and CD3.176 Waimarino CD2 (1,413 acres) was sold almost straight away when nine of the section’s 70 owners voted to sell it at a meeting of assembled owners that was attended by 11 owners or trustees.177

The partitioning of Waimarino CD1 and CD3 was followed by the rapid alienation of all or almost all of their subdivisions. All eight sections of Waimarino CD3 were sold to private buyers between 1913 and 1919.178 By 1921, all but two of the seven sections of Waimarino CD1 were sold.179 Of the remaining two, most of CD1G was sold by 1925.180

Again, Clayworth found little evidence on why the owners of Waimarino CD sold so much so quickly. Waimarino CD1G was the only subdivision that was well documented, and owners there sold their shares to pay off debts or to obtain money to invest in other ventures.181

(6) Waimarino 2
Waimarino 2A was another case where a minority voting at a meeting of assembled owners resolved to sell. In August 1912, only one owner, Hekenui Whakarake, seems to have been physically present at a meeting where he represented six owners owing just over a tenth of the block’s eight shares. He used the proxies to vote to lease all of Waimarino 2, apart from the 355 acres that the Crown had already taken for a scenic reserve.182

On 30 April 1926, another meeting of assembled owners voted to sell Waimarino 2 for £4,774. Five members attended the meeting in person, and cast proxy votes for another four. Forty-six owners neither attended the meeting nor cast a vote. Although representing a small minority of the total number of owners, the nine whose interests were represented did in fact own a slight majority of the shares in the block: a little over four and a half of the eight shares.183

(7) Waimarino 5
Private purchasers bought 3,300 acres, or about 25 per cent, of Waimarino 5 between 1910 and 1930. Six owners representing shares equivalent to 616 acres in the 1,258-acre Waimarino 5B3 made the decision to sell. At the time, Te Kapeiti Te Kahutuanui, one of the block’s 11 official owners and owner of 25 per cent of the section’s shares, had recently passed away and his successors were yet to be appointed.

Waimarino 5B6B (1,259 acres) was sold in two transactions in 1916 and 1917. Initially, nine of the block’s 10 owners sold their shares for £1 15s shillings an acre, then the remaining owner alienated his interest in the final 83 acres for £3 5s an acre.184

(8) Waimarino 6
Waimarino 6 was another non-seller block where alienation followed hard on the heels of partition. In 1910, the court partitioned the block into six subdivisions that were surveyed in 1912. The sole owner of Waimarino 6D (89 acres) was the first to sell, in 1913. Sole owner Maata Tūao sold Waimarino 6B (426 acres) in 1915. She intended to use the £1,791 she made from the transaction to add four rooms to her house in Taumarunui. In 1926, she sold another section, the 18-acre Waimarino 6F2A.185
20.4 The Cases of Tawatā and Kaitieke

20.4.1 Introduction
Between 1910 and 1930, more than half of the land left to Māori following the Waimarino purchase was alienated either to the Crown or to private interests. In the same period, something much less common happened: the Crown transferred into Māori ownership two relatively small pieces of land under Acts passed for the purpose in 1904 and 1908. The legislation saw the family and followers of the tohunga and prophet Te Kere Ngātaiērua become owners of a reserve of 1,500 acres at Tawatā, and one of 800 acres near Kaitieke. The list of owners was not confirmed until 1922, when the Native Land Court awarded Tawatā to 31 individuals, and Kaitieke, which it partitioned into two lots, to 39 and 11 individuals respectively.

20.4.2 Tawatā
We recounted Te Kere Ngātaiērua’s protests against the Crown’s purchase of Waimarino in chapter 13. In 1892, after several years of trekking around the central and lower North Island, Te Kere and his followers settled at Tawatā on the left bank of the Whanganui River, just above its confluence with the Rētāruke River. Described by one European observer as ‘beautiful flat land’, Tawatā was part of the 417,500 acres of Waimarino that the Native Land Court awarded to the Crown in April 1887. Although Te Kere and his people were squatting on Crown land, their community flourished. It grew to ‘upwards of 1,000’ people, which decided Crown officials against any attempt at forcible removal. Instead, Chief Land Purchase Officer Patrick Sheridan visited Te Kere at Tawatā and offered to set aside 1,500 acres of Crown land so that the community could live there legally. Te Kere, an outspoken opponent of the Crown’s purchase of Waimarino, countered by asking the Government to restore to Māori the land on both sides of the river all the way from Taumarunui to Pipiriki.

Te Kere died before accepting Sheridan’s offer. In 1902, however, a delegation from Tawatā travelled to Wellington to ask the Government to provide them with the promised 1,500 acres. The Māori Land Claims Adjustment and Laws Amendment Act 1904 followed, reserving the land for the use and occupation of such of the Natives as the [Native] Minister may after due inquiry decide, and who are and have been for several years past residing thereon, and are more or less landless.

It was nearly 20 years later, in 1922, that the Native Land Court determined who the owners were. The community was ravaged in the intervening years by a series of measles and influenza epidemics, so that by the 1920s, the population had shrunk to around 100. Through these hard times Te Kere’s daughter Karanga remained at Tawatā with her family, continuing her father’s traditions of healing, and petitioning the Government to carry through its commitment to establish the owners of the reserve.

(1) The process of determining ownership of the reserve
Karanga’s efforts began to bear fruit in 1918. Section 9 of The Native Land Amendment and Native Land Claims Adjustment Act of that year directed the Native Land Court to ‘ascertain and determine’ the owners of the 1,500 acres, as well as the size of the share to which each owner was entitled. In May 1921 and January 1922, the court finally heard the numerous claims to a share in the reserve. The 1918 legislation reiterated the 1904 Act’s stipulation that the land had been set aside, at the Native Minister’s discretion, for those who either were or had been living at Tawatā for several years. After a file note that Sheridan wrote in February 1908, the court decided that ownership should be restricted to Te Kere’s son and daughter, and those followers whose names had been left out of the Waimarino deed in 1887, and who were living at Tawatā at the time of the prophet’s death. The court refused to consider claims based on ancestral connections or earlier occupation, ruling that the Waimarino purchase had extinguished these rights. These criteria enabled the court to reject most claims.

For example, it rejected the claim of Parāone Rōpiha and some other Tūhua people who were also landless; were related to Te Kere; and whose names had been not included in the list of 921 owners of Waimarino accepted by the court in March 1886. Rōpiha’s father was a supporter of Te Kere, was buried at Tawatā, and had named
his son after the prophet. However, the criterion that Rōpiha did not fulfil was residence: he had never actually lived on the reserve, and this was apparently why his claim was refused. Also rejected were the claims of followers of Te Kere who moved away from Tawatā before he died; people who were landless and lived on the reserve but did not explicitly identify with Te Kere; groups who claimed through Te Kere’s sister; and those who claimed ancestral
The Crown took eight acres for a road across the block, leaving 1,492 acres. The court awarded the 1,492 shares to the three groups and 31 individuals that it judged as having rights to Tawatā. It awarded Te Kere's family 1,327 shares, with 590 of those going to Karanga te Kere to recognise her pivotal role in getting the Government to complete the reserve. Kingi Poni and six other followers of Te Kere associated with Ngāti Tūwharetoa received a total of 145 shares, and Kii Keepa and his brother were awarded 10 shares each.196

(2) Karanga Te Kere resists sale of Tawatā interests
In contrast to the Waimarino reserves created at the end of the nineteenth century, large-scale alienation did not happen at Tawatā. Credit for this should go to Karanga Te Kere, who was determined to honour her father's injunction to protect land from sale. Not that the land was immune from incursion. In 1924, for instance, the Native Department authorised Tawatā for Government land purchasing – even though the reserve was explicitly created for people who were landless.197 Karanga and her fellow owners repulsed efforts to buy their land, however. In 1955, they again resisted the Department of Lands and Survey's enthusiasm for acquiring 1,414 acres at Tawatā as an 'addition to the scenic reserves already in existence along the Whanganui River'.198

The reserve was partitioned into three sections in 1926. Tawatā 1 (½ acre) was the site of the urūpa where Te Kere was buried. It was formally set aside as a Māori reservation in 1977, and remains so today. Tawatā 2 (104 acres) was allocated to six owners. In 1941 and 1955, the Crown took a total of just under seven acres from this block for a school site. Most, but not all, of this land was returned in 1998, and formally set apart as a marae site. Tawatā 3 (1,387 acres) was allocated to 25 owners and remains Māori freehold land to this day.199

20.4.3 Kaitieke
The other place in the Waimarino block where Te Kere's followers settled on Crown land was Kaitieke. In 1894, Te Kere sent part of his community to establish a settlement along the banks of the Upper Rētāruke River, not far from Kaitieke. According to David Young, the group dispatched were affiliated to Ngāti Tūwharetoa, and joined families from the same iwi who were already cultivating the land there.200

(1) Te Kere's people living on land slated for settlement
The presence of this community in the upper Rētāruke was problematic because, on 26 February 1896, the Government declared most of the Kaitieke Survey District open for sale or selection – including the land where Te Kere's people were living and cultivating their crops.201

In March 1897, surveyor P A Dalziell reported to the Chief Surveyor that four families had settled in the Rētāruke Valley. He said he had warned them that they were trespassing on Crown land and would have to leave once their crops were out of the ground, but the people made it clear that they had no intention of leaving. A sketch map enclosed with Dalziell's report depicted the community's kāinga and multiple cultivations on flat land between the Upper Rētāruke River and the planned Rētāruke Road.202 Te Kere's followers stayed put, despite more than one warning that they were trespassers and stood to lose 'any whares or clearings'.203

In April 1899 another surveyor, James R Strachan, reported that 'a small number of natives belonging to the Ngati Tuwharetoa Hapu' were still living 'around at the Pa on the Retaruke River'.204

In May 1902, the Government advertised for lease 23 'small grazing' runs, six of which were located on the eastern slopes of the Rētāruke Valley.205 In October of the following year it readvertised the remaining unsurveyed land, including most of the western side of the Upper Rētāruke.206 Included in the land offered by the Crown for sale and lease, and taken up by European farmers, were sections containing some of Te Kere's followers' cultivations. Sections 3 and 4 of block IX, and section 43 of block X of the Kaitieke Survey District, were each selected by European settlers in 1904.207

The community's kāinga and its largest cultivations at Paitenehau were located in what the Department of Lands
and Survey defined as section 2, block IX, of the Kaitieke survey district. Running down the western slopes of the Rētāruke Valley, across the river to the Rētāruke Road, the 1,125-acre subdivision was reserved by Parliament as an endowment for primary education in 1896.\(^{208}\) When he was marking out the boundaries of the education reserve in 1899, Strachan called the attention of J W A Marchand, the Chief Surveyor, to ‘the Māori Pa’ located ‘in one corner’ of the designated area. Strachan inquired whether he should include the settlement within the boundaries of the education reserve.\(^{209}\) Marchand instructed that Māori settlement should be included within the boundaries of the ‘prescribed area’.\(^{210}\) The survey plan of the northern portion of the Kaitieke Survey District completed in 1903 showed the area of the education reserve as 1,130 acres rather than the 1,125 proclaimed in the Gazette, and depicted a kāinga of ‘six whare, one wharepuna, [and] 2 pātaka’.\(^{211}\)

By a process that is not captured in any records that we have seen, Te Kere’s followers relocated from Paitenehau, where they had constructed their community, to two nearby small grazing runs. These were the two 400-acre subdivisions that the Crown reserved for them on the hills overlooking the Upper Rētāruke River. Hilly and bush-covered, the two sections were estimated to have no more than 21 acres of ‘flat or nearly flat land’ between them.\(^{212}\) Sections 39 and 41 of block X of the Kaitieke Survey District were formally set aside for Māori in November 1908.\(^{213}\) However, as at Tawatā, it was not until 1922 that the Native Land Court determined their owners. Following
an out-of-court arrangement, it awarded section 39 to the Ngāti Tūwharetoa members of the Rētāruke community, and section 41 to Karanga Te Kere and other descendants of Te Kere Ngātaieua.\(^{214}\)

\(2\) Mix-up at Paitenehau

Not reconciled to the loss of their kāinga and urupā at Paitenehau, the Rētāruke community appealed to the Government to reserve for them 10 or 15 acres from section 2, block IX.\(^{215}\) In May 1910, WS Te Rangi wrote to the Lands and Survey Department to ask whether ‘a Pa Reserve’ had been cut out of the education reserve. Noting the difference between the gazetted acreage of the endowment and the area surveyed, commissioner of Crown lands James McKenzie suggested that a five-acre reserve be defined to include the community’s kāinga and burial ground.\(^{216}\) The Under-Secretary of Crown Lands agreed, and in September 1910 the Chief Surveyor ordered the survey of a five-acre pā and burial reserve.\(^{217}\)

Unfortunately for the members of the Rētāruke community, the Crown’s internal communication failed. It was a classic case of the right hand not knowing what the left hand was doing. While the Commissioner and Under-Secretary of Crown Lands were moving along a path towards cutting out a five-acre section for Te Kere’s followers from the education reserve, on 24 January 1911 the District Land Registrar issued a certificate of title for section 2, block IX, to the School Commissioners for the Wellington Provincial District. The title comprised the 1,130 acres in the official survey, not the 1,125 acres gazetted. The School Commissioners now owned the whole block, including the five acres intended for Te Kere’s followers. On 25 March, the School Commissioners leased all of it to Charles Algernon Leicester for a term of 21 years with right of renewal.\(^{218}\)

Meanwhile, the surveyor carried out his instructions to survey the five-acre section for the Māori community there in June 1912.\(^{219}\) Under the impression that the land would soon be theirs, a party led by Kingi Poni set about fencing it off.\(^{220}\) The leaseholder’s response was to issue a trespass notice.\(^{221}\)

\(3\) The Crown reneges on the five-acre reserve

Once he learned that the School Commissioners owned the title for the whole 1,130 acres and a Pākehā leaseholder was resident there, the commissioner of Crown lands revised his opinion. He remained of the view that the urupā should be protected, but balked at the prospect of ‘native occupations with their uncontrolled vagrant dogs’ so close to the leaseholder’s homestead and stockyards. He ordered Crown Lands Ranger H Lundius to report on ‘the best arrangement to meet the purposes of preserving the burial ground and preventing occupation which will annoy Mr Leicester’.\(^{222}\) Lundius concurred that five acres was indeed ‘far too large an area to be set apart for a wahi tapu’, and suggested instead a reserve comprising the existing fenced burial plot of 20 by 12 metres and an unfenced right of way for access. The urupā of 240 square metres would constitute an area one-hundredth the size of the five-acre lot the Rētāruke community had been promised.\(^{223}\)

Even then, and despite being approved for a taking under the Public Works Act, nothing happened to carry Lundius’s proposal into effect.\(^{224}\) In November 1922, Tūreiti Te Rangi wrote to the Native Minister to seek his help finally to establish the reserve at Paitenehau.\(^{225}\) In response, the Government revived the Lundius plan. The Rētāruke community, however, continued to insist upon five acres,\(^{226}\) but the European leaseholder remained opposed, so Crown officials elected to take no further action.\(^{227}\)

In June 1931, the 21-year lease on section 2, block IX, expired. After Leicester chose not to renew, the Wellington Land Board (which administered the land on behalf of the Crown) was unable to find another suitable long-term tenant.\(^{228}\)

In 1946, the commissioner of Crown lands had the section subdivided into seven lots. Excluded from the subdivision were the five acres at Paitenehau that were marked out as a Māori reserve in 1912. The reserve was now depicted on the survey plan of the subdivision as ‘Paitenehau Kainga’.\(^{229}\) In the following two decades, all seven section 2, block IX, subdivisions were sold to
European farmers. By the middle of 1966, the five acres at Paitenehau were the only remaining Crown land.230

(4) The fate of the Paitenehau reserve
In April 1986, the status of the kāinga at Paitenehau was again raised with the Crown when Brian Herlihy, a Māori land consultant and agent working on behalf of an unidentified client, wrote to the Chief Surveyor at the Department of Lands and Survey to inquire about the five acres. Herlihy noted that while Paitenehau kāinga was listed in the Māori Land Court index, ‘no trace of the block could be found in the title binders or the block order files’.231 In reply, Chief Surveyor P J Wiley remarked that, as the rest of the original primary education reserve was no longer in Crown ownership, he could find no reason why the five acres should not be returned to its Māori owners. Wiley proposed to have the land made into a Māori reservation under section 439 of the Māori Affairs Act 1953.232

It is unclear whether the Chief Surveyor’s proposal was ever acted upon. We were unable to find any reference in Māori Land Court records to a five-acre reserve at Paitenehau. We did locate the five acres (or 2.04 hectares) on Quickmap (a computer system which matches a geographical information system with a ‘comprehensive database’ to map New Zealand property holdings), but found no information as to the land’s title or ownership.233 Robin Kētū (daughter of Wai 1605 claimant Maxine Kētū) told the Tribunal that she is not sure who owns the land. Her koro, Albert Kētū, took possession of the five acres after a confrontation with the Pākehā owner of the adjacent lot and constructed a shed on it to show that it was occupied. According to Ms Kētū, her family’s status as kaitiaki of Paitenehau has never been contested by subsequent owners of the neighbouring land.234

As a result of the Crown’s subdivision and settlement of the Kaitieke Survey District, Te Kere’s community in the Rētāruke Valley had to give up all of the flat land where it constructed its kāinga and planted its cultigations. As Robin Ketū noted in her submission, this prime land became instead the preserve of European farmers.235

Despite subsequent partitions, all of both section 39 and section 41 remain in Māori ownership today.236 The community did not stay there, though. According to Ms Kētū, Albert Ketū found the Rētāruke Valley ‘empty’ of Māori people when he returned from the Second World War.237 Representatives of Ngā Hapū o Ngāti Tūwharetoa told us that land awarded to its members at Kaitieke was insufficient to sustain a tribal presence, and as a result Ngāti Tūwharetoa lost their tūrangawaewae in Whanganui.238

20.4.4 Conclusion
When the Crown established reserves at Tawatā (1,500 acres) and at Kaitieke (800 acres) for Te Kere’s family and followers, it went a small way towards ameliorating their situation. The reserves did not, however, address the broader problem of the groups who were either under-represented in or entirely left off the ownership lists for seller reserves and non-seller blocks following the Waimarino purchase. Particularly precarious was the situation of the people of southern Tūhua (mainly Ngāti Hāua) who – like Te Kere – opposed the Crown’s purchase of Waimarino, and were absent from the subsequent Native Land Court hearings. In letters and petitions, the Tūhua people called for their land in the northern portion of the Waimarino block to be removed from the Crown’s purchase. When that failed, they appealed to the Government to create a large reserve incorporating their kāinga and the land where they grazed stock. The Government also rejected these entreaties, so many followed Te Kere’s example and simply occupied the Crown’s land, felling trees and building houses.239

The Government’s decision to grant title to Te Kere’s family and followers at Tawatā and Kaitieke, while continuing to reject the claims of others in similar situations, unsurprisingly provoked protest. In a letter to the Native Minister in 1902, Wharawhara Tōpīne of Ngāti Hāua claimed that Tawatā was their papakāinga and should be returned to them: other land should be found for Te Kere and his people. Sheridan took the view that the Waimarino purchase had extinguished all ‘lawful’ claims to the land: it was Crown land to be disposed of as the Crown wished.240
What happened at Kaitieke graphically illustrates how the Crown prioritised the interests of Pākehā settlers, and Pākehā settlement, over those of Māori. The Crown surveyors put the flat land inhabited and cultivated by Te Kere’s people into subdivisions that were then sold or leased to European settlers, and the Māori community had to make do with two small ‘grazing runs’ on hilly, bush-clad land that could not be expected to support them. Even when the Department of Lands and Survey agreed to reserve five acres for their kāinga and urupā in the place they originally occupied, it quickly reversed its position after learning that an administrative blunder had resulted in the land being leased to a Pākehā farmer who did not want a Māori reserve there. The current status of this land is unknown.

20.5 Whakapapa Island (Moutere)

20.5.1 Introduction
Situated on the northeastern edge of the Waimarino block, where the Whakapapa River divides in two just before its confluence with the Whanganui, Whakapapa Island
was another point of contention between the Crown and ‘landless’ local Māori. Ngāti Hikairo and Ngāti Manunui insisted that the 151-acre island belonged to them, was outside the boundaries of the Waimarino block, and was never sold to the Crown. They continued to use it throughout most of the twentieth century as a source of food and timber, and they camped there with their stock. The Crown, however, maintained that Whakapapa Island was part of the Waimarino purchase and was Crown Land. In 1931, it proclaimed it a scenic reserve.

In their submissions to this Tribunal, Ngāti Hikairo and Ngāti Hikairo ki Tongariro argued that the Crown improperly acquired Whakapapa Island through a flawed survey process which led to confusion as to whether the island was or was not part of the Waimarino block. Its alienation had a particularly prejudicial impact upon Ngāti Hikairo, because the Native Land Court had already stripped it of its customary rights within Waimarino. As a result, the iwi found itself virtually landless in its customary rohe.

Ngāti Manunui, meanwhile, lamented the Crown’s failure to adhere to proper or due process as regards the island. According to John Manunui, Ngāti Manunui did not learn that the island had been proclaimed a scenic reserve until more than 30 years after the fact, when a sign was nailed to a tree.

For its part, the Crown made no submissions on Whakapapa Island.

20.5.2 Whakapapa Island and its original owners
Whakapapa Island is formed where the Whakapapa River forks into two distinct, eastern and western, streams. The eastern stream merges with the Whanganui River before recombining with the western stream approximately one
kilometre further down river.\textsuperscript{247} According to the oral histories of Ngāti Manunui, Whakapapa Island (variously known as Moutere, Mōtere, Ruarangi, and Ōruarangi) was created by an enormous lahar that descended from Mount Ruapehu’s Crater Lake during the time of Te Heuheu Iwikau (who died in 1862). From the time of its first occupation by Te Aue (a Ngāti Hikairo rangatira) and his wife Te Peehi (daughter of Te Heuheu Manunui), Whakapapa Island was considered to be the customary land of both Ngāti Hikairo and Ngāti Manunui.\textsuperscript{248}

According to the respective oral and traditional history reports for Ngāti Manunui and Ngāti Hikairo ki Tongariro, Whakapapa Island was a rich source of food. The island’s soil, enriched by nutrients brought down by flood waters, sustained excellent māra (gardens), and its trees were a source of kai manu (birds).\textsuperscript{249} Particularly prized was the lagoon in the centre of the island, which provided a bounty of tuna (eels) and kōura (freshwater crayfish).\textsuperscript{250}

\textbf{(1) Ngāti Hikairo and Ngāti Manunui customary interests} Ngāti Hikairo’s and Ngāti Manunui’s shared interests in Whakapapa Island complemented their customary rights in much of the surrounding country. Although not claiming absolute or exclusive ownership, Ngāti Hikairo enjoyed access to large parts of what became the Waimarino block. The iwi ranged widely, taking advantage of many mahi-nga kai (food-gathering places).\textsuperscript{251} The Native Land Court took no account of these fluid customary interests when it defined the owners of the Waimarino block.\textsuperscript{252} Some among their number were included under Ngāti Tama-kana, but most Ngāti Hikairo people found themselves excluded from the ownership list.\textsuperscript{253} Unrecognised as owners of Waimarino as a whole, Ngāti Hikairo were also excluded from the sellers’ reserves and non-sellers’ blocks that resulted from the Crown’s purchase of the block.\textsuperscript{254}

Ngāti Hikairo and Ngāti Manunui both had rights to land outside Waimarino, east of the Whakapapa and north of the Whanganui Rivers. Ngāti Hikairo, for example, had interests (along with other groups) in the Taurewa and Ōkahukura blocks, while Ngāti Manunui had rights to land in Puketapu, Waituhi Kuratau and Ōhura South, and elsewhere.\textsuperscript{255} By 1900, however, this land, too, had been through the Native Land Court, and much of it had been sold to the Crown.\textsuperscript{256} Most of what remained, including virtually all of what was left of the Taurewa block, was alienated in the first half of the twentieth century.\textsuperscript{257}

\textbf{(2) The importance of Whakapapa Island} This context of large-scale land loss and extinguishment of customary rights (both within the Whanganui inquiry district and beyond) rendered the case of Whakapapa Island particularly significant for claimants. According to Te Ngae o Te Rangi Ranginui Wanikau, in 2006 Ngāti Hikairo Tongariro had only 30 hectares (74 acres) remaining out of its ‘entire pre-Crown contact hapu estate,’\textsuperscript{258} and ‘no legally recognised land interests’ in the Whanganui Inquiry District.\textsuperscript{259}

\textbf{20.5.3 Whakapapa Island and the Crown} As we saw in chapter 13, the Whakapapa and Whanganui Rivers defined the eastern and northern boundaries of the Waimarino block. Whakapapa Island, located at the confluence of these awa (rivers), was not mentioned in the application accepted by the Native Land Court for investigation of title to the block.\textsuperscript{260} Nor was it named in the description of the boundaries set out in the Kāhiti published on 12 January 1886 giving notice of the upcoming court hearing to determine title.\textsuperscript{261} Neither was Whakapapa Island shown on the sketch map presented to the Court at the 1886 hearing.\textsuperscript{262} It was also missing from the much more detailed survey plan of the Waimarino block approved by the Chief Surveyor in January 1887.\textsuperscript{263}

The 1887 survey plan depicted the eastern boundary of the Waimarino block following a distinct and unbroken line along the western (left) bank of the Whakapapa River until it reached the Whanganui. It did not show the river splitting into two distinct streams flowing down each side of an island with an area certainly large enough to have been marked on a plan with a scale of two miles to an inch.\textsuperscript{264} At the time of the Waimarino purchase, therefore, Whakapapa Island was cartographically invisible and legally undefined. As far as the Crown and Native Land Court were concerned, it did not exist.
(1) The island’s owners
Unmentioned by the land purchase officers who purchased the Waimarino block, and undepicted by those whom the Crown charged to survey the block, Whakapapa Island appears to have first come to official attention in 1910. In November of that year, the commissioner of Crown lands secured an injunction from the Native Land Court against ‘Wiripo Tohi Raukura and others,’ who were cutting totara posts on the island. According to the Commissioner, Whakapapa Island was ‘undoubtedly’ part of the Waimarino block.265 Raukura, however, believed the island to be Māori land, which is why he was there cutting posts.266

In July 1914, Crown Lands Ranger W J Price reported that Īnia Ranginui (who was apparently acting on behalf of Ngāti Hikairo) was cutting fence posts and battens on Whakapapa Island. Like Raukura, Ranginui considered it to be Māori land. He claimed that Dr Māui Pōmare decided the question of Whakapapa’s ownership during the previous session of Parliament.267 The commissioner of Crown lands, however, ordered the seizure and branding of the posts and battens because they were ‘cut by an unlicensed person’ on Crown land.268

The Crown’s action drew an emphatic response from Pikihuia Pākau. Addressing the Crown Lands Ranger Price and his ‘master’ the commissioner of Crown lands, Pākau described himself as the chief and owner of Whakapapa Island. Inia Ranginui, he said, had cut the confiscated posts and battens on his orders. Although ‘known as papatupu’ because the Native Land Court had still to give the island a formal title, Pākau maintained that it was ‘well and widely known that we and our parents and our children are the absolute owners.’ He notified the Crown officials that he and the other owners would ‘continue to cut posts for fencing material’ on the island because the land was theirs, and would be confirmed as such once the Native Land Court undertook the formality of an investigation of title.269

Pikihuia Pākau derived his belief that Whakapapa Island was not Crown land but a papatupu or customary Māori land from his understanding of the outcome of a petition Te Maari Matuaahu sent to Parliament following the injunction issued against Wiripo Tohi Raukura in 1910. Pākau claimed that Parliament had found that ‘the land lying between the Whakapapa and Wanganui Rivers’ were Papatupu.270 Crown officials, however, could find no trace of such a decision. Neither the original petition nor evidence of its treatment by Parliament were presented to this Tribunal.271

(2) Ownership contested
The dispute over the island’s ownership continued into 1915, with Īnia Ranginui taking more wood and the commissioner of Crown lands recommending his prosecution.272 In June of 1916, Te Maari Matuaahu – apparently responding to the Crown’s decision to offer the seized wood for tender – wrote to Crown Lands Ranger Price asking him not to give anyone the right to take or cut timber on Whakapapa Island as she could prove the island belonged to her.273

In 1919, Wiremu Höhepa and 18 others petitioned Parliament to inquire into the ownership of Whakapapa Island or, as they called it, Ruarangi Motu. Like the other Māori who contested the Crown’s right to the land, the petitioners believed the island to be papatupu.274 Admitting that there were was some doubt ‘as to the correct boundaries of the Waimarino block,’ the Under-Secretary of Lands asked the Commissioner of Lands to investigate the petitioners’ claim.275

(3) The Crown investigates
Contradicting the Crown’s long-held view that Whakapapa Island was Crown land, the Commissioner initially found in the petitioners’ favour. Reasoning that the boundary of the Waimarino block followed the western branch of the Whakapapa River, while that of the adjacent Taurewa block corresponded with its eastern stream, he deduced that the island in between must be uninvestigated customary Māori land.276 Six weeks later, however, the Commissioner reversed his position. Having consulted the surveyor’s field book, he concluded that the original surveyed boundary of the Waimarino block (as opposed to the 1886 sketch plan that preceded the completion of the survey) in fact followed the eastern stream

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of the Whakapapa River and thus included Whakapapa Island. Unfortunately, neither commissioned researchers nor Tribunal staff were able to locate the field book to which the Commissioner referred.

Now armed with the commissioner of Crown lands's advice that the island was Crown Land, Parliament's Native Affairs Committee made no recommendation on the petition. In 1924, Inia Ranginui, Pikihuia Pākau and other members of the Pākau whānau presented another petition to Parliament. Still certain that the island was not part of the Waimarino block, the petitioners asked to see the sketch plan of the block that was presented to the Native Land Court in 1886. They warned that they would 'not cease to agitate in regard to this land' until they saw the plan.

(4) Wrong advice
The Native Affairs Committee referred the petitioners' request to the Under-Secretary of the Native Department. After what must have been the most cursory of investigations, the Under-Secretary concluded that as the original plan had been drawn on a scale of two miles to the inch it 'obviously would not contain any reference to the Island'. Apparently not having seen fit to contact either his colleagues in the Land Department or the petitioners themselves, the Under-Secretary blandly noted that 'ordinarily a title bounded by a river bank' extended 'to the middle of the stream', while any island 'cut off by a sudden change in the course of the river' remained 'part of the land' from which it had been severed.

The Under-Secretary was mistaken on all counts. More than two kilometres in length and 800 metres (half a mile) at its widest point, Whakapapa Island was in fact large enough to be represented on a scale of two miles to an inch. Furthermore, as anyone with local knowledge would have been able to point out, the Whakapapa River split into two streams at Whakapapa Island, and the depiction of the land as cut off by a sudden change in the course of the river misrepresented an island of about 150 acres that predated by some years the drawing of the Waimarino block's boundaries.

(5) Whakapapa Island becomes a scenic reserve
Following the Under-Secretary's report, the Native Affairs Committee dismissed the 1924 petition with no recommendation. On 1 August 1931, the Crown proclaimed Whakapapa Island as a scenic reserve on the recommendation of the Scenery Preservation Board.

Despite the Crown's proclamation, Ngāti Hikairo ki Tongariro and Ngāti Manunui continued to use the island if it was theirs. Maata (Merle) Ormsby, Tiaho Mary Pillot and Daniel Ormsby described to the Tribunal how their Koro Tohi constructed a bach on the island in the late 1930s. The island was particularly valuable when moving stock across the river. In times of flood the family would camp there until the river had receded sufficiently to enable them to take their animals across. Whetūmārama Te Tawhi Pāteta and Kea Te Tawhi Pāteta also told the Tribunal how their whānau visited the island for many years to catch eels. According to the oral history prepared by Ngāti Manunui, they went to Whakapapa Island for kai manu and kai ika throughout the 1950s and 1960s, and members of the hapū also hunted feral deer and goats.

Claimants contended that they only learned that Whakapapa Island was a scenic reserve in 1964–65, when a sign was nailed to a tōtara tree. Following the advice of their elders, the claimants and their families continued to use the island into the 1970s.

20.5.4 Conclusion
Unmentioned in the boundary descriptions presented to the Native Land Court, published in the Kāhiti, and shown in neither the sketch map or survey plan, the relationship of Whakapapa Island to the Waimarino block remains unclear. Matters might have been clarified if we had been able to consult the surveyor's field book that the commissioner of Crown lands referred to in 1920, but it has not been found.

What is clear is the conviction of Ngāti Hikairo and Ngāti Manunui that Whakapapa Island belonged to them and was never sold to the Crown. Tangata whenua expressed this conviction in their letters and petitions,
and their continued use and occupation of the island, for much of the twentieth century. Crown officials took a hard line, rejecting the groups’ claims of ownership and threatening those who cut wood on the island with both a prosecution for trespass and destruction and the confiscation of the timber.

In response to petitions in 1919 and 1924, the Lands and Native Departments consulted their files, without discussing matters with the petitioners. The internal investigations appear to have been inadequate and partial. There could have been a thorough and independent review of the ownership of Whakapapa Island. In 1905, for example, a Royal Commission consisting of Native Land Court Chief Judge George Boutflower Davy, Native Land Court Judge David Scannell, and Apirana Ngata investigated the claims of 21 groups who petitioned for redress after what they considered to be faulty or unjust adjudications by the Native Land Court. Something along these lines would have been suitable for Whakapapa Island.

20.6 A Lull in Land Purchasing, 1930–50

Following two decades of considerable land alienation, the 20 years from 1930 to 1950 was a period when there was less purchasing of remaining Māori land in the Waimarino block. Clayworth told us that the figure was 1,113 acres. More than half of this (639 acres) came from the landholding of Reimana Tuatini, a returned soldier to whom the Crown gave a mortgage to develop his land. In 1922, Tuatini was already the owner of Waimarino A1B (268½ acres) when he purchased A1C (268½ acres) and A1D (98 acres), along with two-thirds of A1A (four acres). Unable to service his debt during the Depression, Tuatini saw his mortgage foreclosed in 1930, with the Crown gaining ownership of his land.

Other land alienated between 1930 and 1950 was Waimarino A13C (270 acres), which Rupert Symes purchased in three distinct sections in 1930, 1931, and 1938; and Waimarino A2 (147 acres), which the Mākōtuku Timber Company bought in 1942. Smaller sections of 20 and seven acres were purchased out of the subdivisions of Waimarino 6F, and Waimarino 3L3C was also bought, comprising 230 acres.

The Depression hit the Whanganui hill country particularly hard, forcing many struggling farmers, European and Māori, off the land. It was certainly a factor in the decline in land purchasing during this period. Also significant was the fact that so much of the Māori land in Waimarino was already sold. By 1930, the whole of Waimarino 2, 7, 8, e, and f had passed out of Māori hands, as had virtually all of Waimarino b, c, and d. Of the original six seller and seven non-seller reserves, Māori retained significant areas of only Waimarino 3, 4, 5, 6, and A.

20.6.1 Remaining land less attractive to purchasers

Much of the remaining land was remote and difficult to access. In 1929, access to the land south of the Manganui-a-te-ao River – including parts of Waimarino 3 and A – was still by pack horse over bush tracks. The Manganiu-o-te-ao Road, which was supposed to follow the course of the River connecting Waimarino 3 to the railway and main road, appears never to have been formed. In May 1942 the Government abandoned the upkeep of the Mangatītī Road which provided the sole link for much of Waimarino 5 to the outside world. The Government’s decision followed damaging floods in 1940 and 1941. By 1945, road access to the upper Mangatītī Valley was largely cut off.

The abandonment of the Mangatītī Road and the subsequent cutting off of the area from road access made Waimarino 5 much less attractive to European farmers who might otherwise have been interested in purchasing. One such farmer was WJ West, who in the early 1940s took over the leases to parts of Waimarino 5A and 5B. Following the Department of Public Works’s announcement that it would no longer guarantee the integrity of the Mangatītī Road after 31 January 1943, West applied to abandon his leases on the grounds that the blocks in question were no longer accessible. The commissioner of Crown lands accepted West’s application, and the land reverted to its Māori owners.

The remoteness of Waimarino 5, exacerbated by the
discontinuation of public road access, is probably the main reason why so much of it is Māori land today. Of all the original seller and non-seller blocks, Waimarino 5 is the one that has the highest proportion of its original area still in Māori hands. Just over 60 per cent of it was in Māori freehold title in 2004, according to Clayworth’s calculations.297

20.6.2 Problems with access
(1) Remoteness causes difficulties for owners
The lack of road access might have safeguarded Māori land from purchase, but it also made it very difficult for the owners to develop it.298

Speaking about the Patupatu block, situated in the original Waimarino 3 reserve (2½ kilometres upstream from the Manganui-a-te-ao’s confluence with the Whanganui River), Roberta Rose Williams described access to the land as ‘all very steep’. ‘Any development on or to the land would be difficult,’ she told us, as it would require passage ‘through private land or . . . over the river.’ The descendants of Uenuku Tūwharetoa nevertheless remained in occupation at Patupatu for much of the twentieth century, although the population dwindled as people ‘came out and settled in Raetihi’. Aggie Taurerewa and her husband Des Delaney stayed on at the kāinga until 1975, but it has been uninhabited since.299
(2) The struggle to access Waimarino 6A

Problems of access could also pose problems for less remote Māori-owned subdivisions. Only a few kilometres from Taumarunui, and adjacent to the main trunk railway line and what today is State Highway 4, Waimarino 6 was far nearer to town than either Waimarino 3 or Waimarino 5. The 1,350-acre block was originally awarded to three Ngāti Hāua rangatira: brothers Tānoa Te Uhi and Taituha Te Uhi, and their cousin Tūao. In 1910, Waimarino 6 was partitioned into six. The interests of the descendants of Tānoa were in Waimarino 6A, in the back third of the original block facing Piriaka and the road and railway. After a further subdivision, the three children of Tānoa – Ringi, Tānga, and Tiwha Tānoa – set their hands to dairy farming.300

In December 1914, however, the Māori owner of Waimarino 6B, in the middle third of the original block, sold the subdivision to European farmers. So long as it had remained in Māori hands, the Tānoa family had been allowed to use the former tram route through the middle of 6B in order to reach Piriaka and the main road. The new European owner, however, was much less accommodating and, in 1923, the Tānoa whānau applied to the Native Land Court under section 13(2) of the Native Land Amendment Act 1922 and section 49 of the Native Land Act 1913 to have the former tram route declared a road.301 Designed to
provide road access to sections of Māori land cut off when the land around them was subdivided or sold, these provisions allowed the Native Land Court to order the laying out of a road or right of way across European land purchased from Māori after 15 December 1913. At the hearing of the case in Piriaka in January 1924, the court was told that, since being denied access to the track across 6B, Ringi Tānoa (one of the owners of 6A) had been obliged to ‘practically give up dairying on her section’ because it was ‘too far to cart the cream by a roundabout way’.

The European farmer strongly opposed the Tānoas’ application, so the court ruled that the whānau should pay for the construction of a new, less direct route to their land along the northern edge of 6B. The court found that the Pākehā owner of 6B was ‘not in any way to blame for the fact that there is no access to the top portions of 6A1, 6A2 and 6A3’. Rather, the Māori owners had only ‘themselves to blame’ for not having alerted the court to the issue when Waimarino 6 was partitioned. The Tānoa family had to pay compensation of £20 per acre for the land taken out of the northern edge of 6B for the construction of their new access route, and three-quarters of the estimated £300 cost of forming the new track. The other quarter was paid by the Pākehā lessee of Crown land adjacent to Waimarino 6A1. In addition, the owners of 6A and the Pākehā lessee agreed to share the costs of constructing a new fence along the route.

Even with the new right of way, the owners of Waimarino 6A1, 2, and 3 continued to experience difficulties in getting their produce to market. According to Maurice Henry Tānoa, ‘being so far from the road’ continued to be a ‘huge disadvantage’ for Ringi Tānoa’s farm into the 1940s and 1950s. Access, he remembered, was from Tānga Road across another farm. Cream from Ringi’s farm had to be pulled by a horse-drawn sledge two or three kilometres through potholes. If a truck was used, ‘it would sometimes get stuck in winter’ and they would have ask Archie Harvey, the only neighbouring farmer who owned a tractor, to pull it out.

In spite of these problems, and the consequent difficulties in maintaining a viable dairy operation, the three Tānoa whānau farms on Waimarino 6A remained the centre of a vibrant community life into the 1940s. The homesteads hosted wānanga and dances, while the gardens and orchards provided fruit and vegetables for the extended whānau. Meat and milk was also freely available. As Pōkaitara Tānoa told the Tribunal, ‘we got whatever we wanted from the farms. It wasn’t a problem.’ Members of the extended whānau also lived and worked on the farms, milking the cows and helping with haymaking. From the late 1940s, however, the Tānoa farms fell into decline as a new generation struggled with the managerial and financial challenges of maintaining the farms as going concerns. One after another, the dairy operations declined, the farms fell into disrepair, and they were eventually sold. (See the sidebar on pages 1074 and 1075.)

20.7 Second Wave of Land Alienation, 1951–75

20.7.1 Introduction

After a two-decade lull, the purchase of Māori land in Waimarino picked up again during the postwar years. According to Clayworth, between 1951 and 1975 a total of 9,395 acres of Māori land was purchased. Most of this land – 8,231 acres – went during the prosperous 1960s and early 1970s, when European farmers had capital to invest. In all, private buyers acquired 7,224 acres between 1961 and 1975. During the period as a whole, private buying accounted for 8,388 acres and represented 89 per cent of all purchases. The Crown purchased a total of 1,007 acres: Waimarino 4A1, 4A2, and 4A4 in 1961; and Waimarino 4A3 in 1967.

In addition to the 9,395 acres sold during these years, a further 2,943 acres of Māori freehold land was compulsorily converted to general freehold title through the procedure known as ‘Europeanisation’. Part I of the Māori Affairs Amendment Act 1967 provided for ‘the compulsory conversion of land with fewer than five Māori owners from Māori freehold title to general freehold title’. Following legislative changes in the 1970s, the owners of seven subdivisions (1,544 acres) that were compulsorily ‘Europeanised’ succeeded in having the procedure revoked so that their land was put back into Māori freehold title.
20.7.2 The Crown buys Waimarino 4A1, 4A2, 4A3, 4A4

The Crown's purchases of Waimarino 4A1, 4A2, 4A3, and 4A4 (1,007 acres) were for the operations of the nearby Waikune Prison camp. As it had in its earlier purchases of Waimarino reserve land, the Crown secured ownership through meetings of assembled owners. Under the Māori Affairs Act 1953, a meeting of assembled owners required the attendance of no more than 'three individuals entitled to vote'.³¹⁴ This was an even smaller quorum than under the 1909 Act, although proxy votes were no longer allowed.³¹⁵ In the cases of Waimarino 4A1, 4A2, and 4A4, meetings attended by four owners took the decision to sell subdivisions that were owned by 30, 15 and 10 owners respectively.³¹⁶

(1) The Crown tries to purchase land in Waimarino 4A

The Justice Department first expressed interest in purchasing the Waimarino 4A subdivisions in 1954, when the Under Secretary of Justice noted that milling of the native timber on the land would provide alternative employment for inmates who were no longer required for highway construction. Replying to the Department's inquiries, the Secretary of Māori Affairs cautioned that the Māori owners were unlikely to be willing to sell.³¹⁷ Although initially deterred, the Department revived its purchase plans in 1958. The following year, meetings of the assembled owners of the four subdivisions were held to consider the Crown's offer to buy the land. Each of the four meetings voted against the proposed purchase.³¹⁸

Not put off, the Departments of Justice and Lands and Survey continued to pursue the purchase of Waimarino 4A1–4. To avoid another 'no' vote, Crown officials made sure that the next round of assembled owners meetings were called at a time when Te Pōkaiaua Te Kurukaanga, the most important owner in favour of selling the subdivisions, could be there.³¹⁹

On 6 August 1960, the owners of Waimarino 4A1, 4A2 and 4A4 met in Raetihi to consider the future of their sections again. The meetings were not well attended, with only four owners present at each. This time, the owners in all three meetings voted to sell to the Crown, with Mr Te Kurukaanga moving the motion to sell in the meetings for Waimarino 4A2 and 4A4. In none of the meetings did those present constitute a majority of owners. Nor, in the case of Waimarino 4A1 and 4A2, did they represent a majority of shares. In Waimarino 4A1, the owners present represented 2.6735 out of eight shares. In Waimarino 4A2, the four sellers represented 56.25 out of 265 shares, with Te Pōkaiaua Te Kurukaanga 'holding or representing by proxy' 50. Only in Waimarino 4A4 did the minority of owners who agreed to the Crown's offer actually represent a majority of shares, holding 236 out of a total of 360, with Mr Te Kurukaanga controlling 180.³²⁰

(2) The owners of Waimarino 4A3 hold out

With three of the Waimarino 4A subdivisions secured, Department of Justice officials continued to pursue the purchase of Waimarino 4A3. From what we could tell from little evidence, it appeared that a significant proportion of owners remained opposed to selling the land. In October 1964, the Commissioner of Crown lands noted that one family of owners in particular was opposing sale. In February 1965, the Commissioner advised against calling a meeting of the owners of the block until a majority could be assured.³²¹

By this time, however, the owners of 4A3 were running out of options. The sale of the other three sections left their block effectively landlocked, with access only through Department of Justice land.³²² Furthermore, with the Department intent on acquiring the land for Waikune Prison, there was the distinct possibility that the Government might decide to purchase the land compulsorily under Public Works legislation.³²³ These considerations, plus an increase in the Government's valuation of the subdivision and its timber from £1352 to £1941, appear to have swung the majority in favour of sale.³²⁴

Even so, a meeting of assembled owners of Waimarino 4A3 in November 1965 again voted against selling, apparently because most of the owners objected to the manner in which Te Pōkaiaua Te Kurukaanga had come to own 25 per cent of the shares in the block.³²⁵ As he had with Waimarino 4A2 and 4A4, Mr Te Kurukaanga advocated sale to the Crown. Twelve months later, at a meeting attended by seven owners, including Mr Kurukaanga,
Farming in Waimarino in the 1940s

The Tānoa brothers and their cousins Tahuri Te Ruruku and Irene Harvey were among the last generation to live on Waimarino 6, one of the Waimarino reserves, next to the village of Piriaka. At the Tribunal’s hearings in the district in 2009, they recounted memories of growing up at Matuakore Marae and homestead, and working on the three whānau dairy farms in the 1940s. Cedric Tānoa recalled:

I grew up at our Marae, Matua Kore, on the hill above Piriaka. . . .

On Waimarino 6 there were three large dairy farms. The two farms at the front were side-by-side. I understand that the farm at the very front was owned by Tanga Taitua. The farm behind that was owned by Tiraha. . . . The middle block . . . was owned by Pakeha, and then Rīngi Tānoa’s farm was at the back. The farms all supplied milk to the dairy factory.

The farms all had homesteads on them. Tanga’s homestead was big – it had about six or seven bedrooms, . . . When we were very young, we used to go between the farms about once a month for big wananga. There was more room at these homesteads than at the Marae. People from Te Koura Marae used to come to these wananga, and they would last from Friday afternoon to Sunday night. The people would talk about stories from the olden days.

The homesteads were also great places for socialising and fundraising. The dining room was like a big hall, with pianos and instruments, and dances would be held there. Everyone from the community used to come – Pakeha as well – and from as far away as Taumarunui. . . .

Tanga’s farms also had huge stables and an implement shed. There was also a big hayloft on this farm, and an orchard.

All of the farms had huge gardens . . . As I remember, these gardens were used to sustain the people on the farms. . . .

My brothers and I would go to work on Tanga’s farm, and also Kevin Amohia’s farm across the River – it depended which farm wanted a hand. We would get cans of cream for helping out on these farms. All the other families would come across the river. We would help with milking and haymaking.

Pokaitara Tānoa remembered:

I was born on the hill above Piriaka, in the homestead next door to our wharepuna Matua Kore. . . .

We used to get most of our kai from Tanga Taitua’s land up on top of Tanga Hill . . .

We got whatever we wanted from the farms. . . . If mum and dad wanted something, they would go and get it – it was there for the extended whānau. . . .

Looking back, we did work hard when we were growing up, but it didn’t feel like it at the time . . .

I don’t remember the farms ever having electricity when I was staying there. They used kerosene lamps, and we used to milk by motor – once I almost had an accident doing this! . . . They were all quite big farms, and it was beautiful land . . .

I also used to go and stay on the Amohias’ dairy farm across the River. I would help with milking there, and we could get kai from there because we considered them to be whanaunga [kin] as well. . . .

Around the late 1940s people stopped doing dairy work and the farms went downhill. When the farms stopped running, all the gardens and orchards that were on the farms reverted to grass.

After Ringi Tānoa retired from the farm at the back, she moved into Piriaka. My older brother Tim took over the farm when he returned from serving in World War II. I think the farm deteriorated when he fell ill, and his children were too young to take over. Later on, I wished I’d taken over the farm, but I didn’t have the experience back then.
The Tānoa homestead, Piriaka, next door to the wharepuni Matua Kore, 2008. In spite of problems with access and the consequent difficulty of maintaining a viable dairy operation, the three Tānoa whānau farms on Waimarino 6A remained the centre of a vibrant community life into the 1940s. In the following years, however, the farms fell into disrepair and were eventually sold. Today, the Tānoa whānau are landless, apart from a two-acre urupā.

Matua Kore Marae
with two more represented by proxy, the assembled owners finally agreed to sell Waimarino 4A3 to the Crown for the price of £2000. Confirmed by the Māori Land Court in February 1967, the purchase went through, and the subdivision became part of the Waikune Prison grounds.

(3) The Crown’s purchase of Waimarino 4A
The Crown bought land for Waikune Prison in an era when it felt no obligation to foster the retention of Māori land in Māori hands. Crown officials did not seem to have any regard for the fact that the land they were purchasing was the last remnants set aside in the 1880s for non-sellers, whose landholdings had already been considerably reduced by compulsory purchases in 1911 and 1912. Officials had no compunction about pursuing even reluctant vendors of Māori land, and setting up meetings in a way that maximised their chances of getting a ‘yes’ vote – and of course the legislation of the day assisted them in their purchase efforts. The Crown purchased the first three Waimarino 4A sections through meetings of assembled owners at which only a minority of owners and shares were represented. In the case of Waimarino 4A1, only four out of 30 owners voted at the decisive meeting, representing just 2.6735 out of eight shares. Thus 13 per cent of the subdivision’s owners, holding one third of the shares, were able to take the decision to sell on behalf of the other 87 per cent who owned two-thirds of the shares in the block.

With the Crown's purchases of Waimarino 4A1, 4A2, 4A3, and 4A4, the Māori land in the original 3450-acre non-seller block was reduced to slightly more than 824½ acres. The Crown now owned almost two-thirds of the land that made up Waimarino 4 in 1887.

20.7.4 Why Māori owners sold, 1950–75
Although it was the private buyer that predominated in purchasing Māori land in Waimarino in the quarter century leading up to 1975, the reasons for selling were pretty much the same as when owners sold to the Crown. Claimants said that the main reason was that the land the Crown granted was insufficient for owners' support and maintenance, and this was even more the case as descendants of the original owners multiplied over the course of the twentieth century. Matters, the claimants say, were greatly exacerbated by the fact that Māori freehold land was vested in lists of individual owners and could be readily divided into ever-smaller subdivisions.

(1) The system facilitated sale
According to Michael John Le Gros, the system of individual ownership and serial partitioning that the Crown set up and the Native/Māori Land Court administered made it much harder for Māori communities to hold on to their land. The vesting of community land in individuals ‘broke up the whanaungatanga', while the division of the land into ever smaller, individually-owned pieces made it ‘harder to show manaaki'. As communal connections to the land diminished, the system that the Māori Land...
Court ran also ‘made it easier for the land to be cut off and then sold off’. Referring specifically to Waimarino 6A, the subdivisions of which were all sold between 1956 and 1970 until only a two-acre urupā remained in Māori ownership, Le Gros concluded that: ‘if the land couldn’t be broken up or succeeded to by individuals we would still hold that land’.

By the 1950s and 1960s, partitioning and the proliferation of individual owners had profoundly changed Māori land-holding in Waimarino. Between 1900 and 1970, Waimarino 3 (18,350 acres) was divided into 60 separate sections. In the same period, neighbouring Waimarino A (14,850 acres) was cut into 36 distinct pieces, while the much smaller Waimarino 6 (1,350 acres) was partitioned into 19. Most of the Māori land sold during the postwar period had passed through at least two rounds of partitioning. Some, like Waimarino 6A2C, 6A3B, 5A2B, and 3E2A, were the products of three successive partitions, while a few such as Waimarino 3H3C1, 3L1A2, and 3L3C1 were the result of four rounds of partitioning.

(2) Partitions reduced viability
While usually decreasing the number of owners in a particular subdivision, partitions also reduced the size and usually the viability of a particular piece of land. This was particularly so in Waimarino 3, where the subdivisions tended to run in narrow strips from the Manganui-te-ao up the steep hills that lined the river on each side. As Turuhia Edmonds remarked in his submission, such pieces of land were often not ‘capable of standing alone as sustainable blocks’. As we saw with Waimarino 6A and 6B, and Waimarino 4A1 to 4A4, successive partitions could affect access, cutting off subdivisions from access to the road.

(3) Fractionation
The serial subdivision of much of the remaining Māori land was accompanied by a proliferation in the number of individual owners in some of the blocks. Most striking in this regard was the 566-acre Waimarino A6, created in 1907 with 12 owners. In February 1970, six months before it was sold, the block had 134 owners. Other subdivisions with many owners – particularly in relation to the size and quality of the land – were Waimarino 5A2B, 425¾ acres and 70 owners; Waimarino 4B2, 824½ acres and 90 owners; and Waimarino A20, 684 acres and 42 owners.

Arising primarily from the succession of multiple heirs to a single owner’s interest, the proliferation of owners in a particular block meant that many owned a very small share. Originally the property of Ringi Tānoa in a single share, in the year before its alienation Waimarino 6A3B had 26 owners whose interests ranged from 0.25 (in one case) to 0.02083 and 0.00255. Two years before it was sold, the Māori Land Court showed Waimarino A19B (469 acres) as having 32 owners with 475 shares between them. A few held 25 or 50 shares, but most had shareholdings that amounted to 7.4404, 3.3333, 2.480, or 1.8601 shares.

For those who owned marginal land in common with 20, 30, 40 or occasionally even more owners, selling the land frequently offered the only means of securing even a minimal return for the majority of shareholders.

(4) The law changes in 1967
With the exception of two Waimarino 6A subdivisions, and the remaining 825 acres of Waimarino 4B2, we received little information regarding the process by which Waimarino Māori land was alienated to private purchasers in the postwar period.

As had been the case since 1909, votes at meetings of assembled owners were the primary mechanism through which private purchasers acquired Māori-owned land. However, in 1967, section 4 of the Māori Purposes Act increased the quorum to ‘ten owners or one-quarter of the total number of owners (whichever is the less)’, representing ‘not less than one-quarter of the beneficial freehold interest’ in the land for which the meeting had been called. But unlike the 1953 legislation, the 1967 Act allowed this quorum to be made up of owners attending either in person or ‘by proxy’. Thus, although the Māori Purposes Act stipulated that more owners, or a higher proportion of owners, were represented at meetings, it was still possible for Māori land to be alienated by a minority of owners, representing potentially no more than one quarter of
interests in a block. In a worst-case scenario, a ‘meeting’ attended by just one owner representing him or herself and nine proxies could decide to sell a parcel of Māori land with many owners, so long as the 10 owners together accounted for at least 25 per cent of the shares. According to Clayworth, 13 Waimarino subdivisions containing a total of 4,399 acres were purchased by private interests following the passage of the Māori Purposes Act in November 1967.

(5) A majority quorum stipulated in 1974
Enacted in the Native Land Act 1909, and reenacted through the century, provision for the sale of Māori land by meetings of assembled owners where only a minority of owners and shares were represented endured until 1974. Section 36 of the Māori Affairs Amendment Act of that year introduced the requirement for meetings of owners to comprise a quorum of ‘owners together owning at least 75 per cent of the beneficial interest in the land’ to vote to sell. Significantly, Clayworth records that no Māori land was purchased in Waimarino after the new quorum requirement came in, and Te Ture Whenua Māori Act 1993 continued the legislative trend away from facilitating alienation of Māori land.

(6) The case of Waimarino 6A3B
So it was that, right up to 1974, it remained relatively easy for an individual’s interest in a particular piece of Māori land to be alienated without that owner being represented at, or even necessarily knowing about, the meeting at which the decision to sell was taken. Something like this appears to have occurred with the sale of Waimarino 6A3B.

Ringi Tānoa owned Waimarino 6A3B (146 acres), one of the three Tānoa whānau farms that sustained rural community life near Piriaka into the 1940s and 1950s. In March 1968, following Ringi Tānoa’s death, the land was vested in 26 owners including Cedric, Dorothy, Maurice, and Pōkaitara Martin Tānoa, who each received a 56th share. In June of 1969, a number of shares in Waimarino 6A3B, including those of Cedric and Dorothy Tānoa (Michael Le Gros’s mother), were sold to A T Harvey Farms Limited. The next year, the remaining shares in the block, including those of Pōkaitara Tānoa, were also sold.

Neither Cedric nor Maurice Tānoa remembered receiving notice of the sale of the land they referred to as ‘Ringi’s farm’. Maurice told the Tribunal that the land ‘had been sold for five or six years’ before he found out about it. For Cedric (who was a minor in 1969), learning that his share had been sold without his knowledge was like ‘getting kicked in the guts’. Pōkaitara Tānoa was living in the South Island in 1970 when he received ‘two or three documents from a farmer called Archie Harvey’ seeking his agreement to sell his share in Ringi’s farm. Not wanting to see the land sold, but not ‘knowing what the process was for saying no’, Pōkaitara took no action. Sometime later, he received ‘a cheque for about $300’ for his share in the land he had not wanted to sell.

According to Māori Land Court minutes submitted by Michael Le Gros, the Court had allowed counsel for the successors of Ringi Tānoa 14 days to object to the decision to sell the land. When no objection was forthcoming, the Court confirmed the sale of the shares. Claimants argued that the Court failed to ‘ascertain the actual wishes of the owners’; ‘ensure that there was an agreement from owners to sell their shares’; and ‘ensure the owners had sufficient lands remaining for their present and future needs’.

(7) The legislation disempowered communities
The root of the problem, however, extended well beyond the Māori Land Court to a statutory system that, until 1974 at least, was designed to facilitate the alienation of Māori land rather than foster its retention. The vesting of land in ever-increasing numbers of individual interest holders, with shares that diminished in value as they were passed on to multiple successors, disempowered communities as well as individual owners who sought to retain the land. Successive partitions often led to subdivisions that were not viable because of their size and location, again making alienation more likely. The mechanism for alienation through meetings of assembled owners looked on the surface as though it was endorsing the right of owners to decide collectively what should happen to their multiply-owned land. But actually, ‘assembled owners’
could comprise a small minority who could determine the fate of the land without reference to the unrepresented majority.

Thus, twentieth-century legislation facilitated processes and outcomes that were in many cases quite the opposite of guaranteeing te tino rangatiratanga of Waimarino Māori. The Crown created a system that made it easy for private interests and the Crown to buy Māori land in Waimarino between 1951 and 1975. This led inevitably to the current situation, in which most of the Māori people of the Waimarino block today have few land interests there, and the significant holdings that remain are located mainly in subdivisions that are remote, rugged and often inaccessible by road.

20.7.5 The ‘Europeanisation’ of Māori freehold land
We have mentioned already that Māori land in Waimarino was also converted from Māori freehold to general title by a process called ‘Europeanisation’. Instituted by the Māori Affairs Amendment Act 1967, compulsory ‘Europeanisation’ involved Māori freehold land that was owned by ‘not more than four persons’ and had been judged, upon investigation by the Registrar of the Māori Land Court, to be ‘suitable for effective use and occupation’. Such land was, upon declaration by the Registrar, to ‘cease to be Māori land’. No allowance was to be made for the opinion or wishes of the land’s owners who – as it quickly became clear – often wanted their land interests to remain as they were.

According to Clayworth, 2,943 acres of Māori freehold land in Waimarino was Europeanised between January 1968 and December 1972. It happened mainly in Waimarino 3, where 10 subdivisions comprising 1,957 acres were converted to general freehold title under the 1967 Act. The subdivisions ranged in size from the 550-acre Waimarino 3J3B2B to the 36-acre Waimarino 3J3B2A. Five other Waimarino subdivisions were Europeanised, including three in Waimarino 6 (6C2A, 6C2B1, and 6F2C1A), and one each in Waimarino 5 (5B5), and Waimarino CD (CD3). The most substantial piece of land converted to general title was the 803-acre Waimarino 5B5.

Compulsory Europeanisation was not popular with Māori owners, and the newly-elected Labour Government repealed it in 1973. Section 68 of the Māori Affairs Amendment Act 1974 allowed Māori owners to apply to have the process reversed. Owners of seven of the 10 Europeanised subdivisions within Waimarino 3 subsequently applied successfully to have their land returned to Māori freehold title. The seven subdivisions concerned comprised 1,544 acres, leaving 1,399 acres of Europeanised land in Waimarino.

All seven of the subdivisions where the owners applied to reverse the Europeanisation were still in Māori hands in 2004 when Clayworth completed his report. The eight blocks that remained in general title were a different story: four of them, comprising 1,170 acres, were sold. The land sold included the largest of the Europeanised subdivisions, Waimarino 5B5.

20.8 Māori Land in Waimarino Today

20.8.1 The amount of Māori land left
Today only a remnant of the land originally awarded to the Waimarino sellers and non-sellers remains in Māori ownership, although the exact acreage is unclear. In the summary to his report Clayworth put the total area still under Māori title at 22,630 acres, or 31 per cent of the original area of the sellers’ reserves and non-sellers’ blocks. In their report on land loss in the Whanganui and National Park inquiry districts, James Mitchell and Craig Innes came up with a slightly higher tally: 23,271.7 acres. Claimants, in closing submissions, put the figure at 21,079 acres, which they derived from Clayworth’s full report. The Crown did not get into numbers, noting simply that as ‘the majority’ of the Waimarino block was purchased in 1886 and 1887, ‘it would be unrealistic to expect that any substantial portion of it would still be in Māori ownership.

The evidential reports explain that calculating aggregates of area across a large number of subdivisions is necessarily an inexact science, because totals are derived from sources that are complicated, incomplete, and sometimes contradictory. We think it would be unproductive to choose between the three figures presented to us.
Clayworth captured the position when he said that the figures 'do not match up exactly', but the overall picture is consistent. Today, Whanganui Māori own between 28 and 31 per cent of the area of the Waimarino sellers’ reserves and non-sellers’ blocks, or just 5 per cent of area of the original Waimarino block.

The land owned by tangata whenua in Waimarino today is not distributed evenly across the block, or even
throughout the original sellers’ reserves and non-sellers’ blocks. Instead, it is concentrated in Waimarino A, and Waimarino 3 and 5 – in the rugged, remote, and often inaccessible southern and southwestern portions of the original 1886 block. More than one third of all of the Māori land remaining in Waimarino – 8,215 acres – is located in 11 subdivisions of Waimarino 5. Most of this land was cut off from road access when the Government stopped maintaining the Mangatītī Road in the 1940s. It is no doubt thanks to this that Waimarino 5 is the only one of the original sellers’ reserves and non-sellers’ blocks that is still mostly Māori land: 62 per cent of it, in 2003.

Much of the rest of the Māori land in Waimarino is in neighbouring Waimarino 3 and Waimarino A. In Waimarino A, there are 6,342 acres of Māori land in 17 subdivisions. In Waimarino 3, the picture is less clear. Clayworth identifies 5,460 acres held in 26 sections; counsel for Wai 1072 and Wai 1197 (Ngāti Ruakōpiri and Ngāti Tūmānuka) argue that only 23 sections of Waimarino 3, covering 4,821 acres, remain in Māori ownership. Either way, Waimarino A and Waimarino 3 together account for around half of the land still in Māori hands in Waimarino.

The only other block where the level of Māori ownership is more than negligible is Waimarino 6, where 6.2 per cent of the block’s original 1,350-acre area (278 acres) is Māori land.

The other areas awarded to Whanganui Māori following the Crown’s purchase of Waimarino contain little or no Māori land today. Of the non-seller blocks, Waimarino 2, 7, and 8 have been completely alienated, while the tiny urupā site Waimarino 4A1B is the only Waimarino 4 land still in Māori title. The Pēhi whānau has managed to retain 824 acres of what was once Waimarino 4B2, but as general rather than Māori land. Of the land reserved for the sellers, Waimarino E and F contain no Māori land, while Waimarino CD has one small block of fewer
than five acres (Waimarino CD3H2). Two subdivisions of Waimarino B (Waimarino B2 and B3A) remain as Māori land. Together they make up 703 acres or just under 8 per cent of Waimarino B’s original area.378

20.8.2 The land and people today: ongoing frustrations
Claimants who still owned land in Waimarino recounted to us their frustrations about how hard it was to maintain a relationship with, and derive a living from, pieces of land that were often difficult to access, and too small to generate an income.

(1) The Pēhi whānau and Waimarino 4B2
Problems of access have frustrated the Pēhi whānau’s efforts to develop their land at National Park. In 1968, Te Mataara and Sonny Pēhi purchased from the other 90 owners the last 824 acres of Māori land in Waimarino 4B2.379 Without the whānau’s knowledge, the land was converted from Māori to general land in 1969, but they were still determined to live there and make something of it.380 Te Mataara Pēhi told us how the Crown’s compulsory acquisition of much of Waimarino 4B2 meant that her whānau’s land is now ‘landlocked’.381 Without access, they have really struggled. They lost four houses trying to transport them across the railway and Crown-owned defence lands. After three small former Tūrangi village houses were finally brought in by bulldozer, the whānau carried the furniture in on their backs.382 Attempts to convert to forestry were also impeded because vehicles could not get in: the whānau had to drag on to the land the ‘pine trees and tools for planting’. They could not develop a bed and breakfast or homestay business because there was no vehicle access from National Park village and the main road.383

(2) Poor access frustrates other owners
Several owners of land in Waimarino 3 spoke of their access problems. Roberta Rose Williams described how, in order to reach their land at Papatupu (including Waimarino 3A1A) in the Manganui-a-te-ao Valley, she and other members of Uenuku Tūwharetoa had to cross private and leased land on foot, bike or horse.384 Matiu Haitana spoke of the expenses incurred by his whānau in maintaining access to Waimarino 3F5 where his mother lived. With the local council providing ‘almost no maintenance at all’ for the ‘small winding goat track’ that led to her mother’s house, members of the Haitana whānau had been obliged to provide the material needed to keep the route open. They also paid $25,000 for a stretch of road to connect their family’s land to the public right of way.385 Poor road access also prevented owners in Waimarino 5 from developing their land.386

(3) Too many owners
For the owners of the remaining Māori land in Waimarino 6, the problem was small pieces of land with ‘too many owners.’387 Tahuri Te Ruruku shared with us his frustrations with Waimarino 6C2B2, a 31-hectare (76.6 acre) section with 24 owners. In September 2008, when Mr Te Ruruku submitted his statement to the Tribunal, the land was being leased to a neighbouring farmer for $3,600 a year. Divided amongst 24 owners, $3,600 ‘doesn’t go very far’, and Mr Te Ruruku suggested that they would be better off running ‘a few sheep and cattle’ on the land themselves. While not enough ‘to make a living off’, and ‘definitely not enough to support all the owners on the ownership list’, such an enterprise would at least ‘provide food for tangi, hui, or for whānau members who are struggling’. Unfortunately, the Māori Trustee had recently renewed the lease on the land – apparently without first consulting the owners – meaning that the land will not come free until 2020.388

Mr Te Ruruku described an even more frustrating situation on Waimarino 6F2C2. With more owners than acres (24 owners and 17 acres) it ‘was not really viable to do anything with the land’. Owners received ‘hardly any return’ when it was leased out, and the land was too small and had too many owners ‘to even supply them with a mutton every year’.389

(4) Ahi kā
With the land still in Māori ownership sufficient to support so few owners, most have been obliged to make their living in other places. This has placed a great strain
on those who have remained. Eva Tūtemahurangi, for example, told the Tribunal of the ‘immense’ burden on the ‘very few’ still at Kākahi to maintain ahi kā, and to manaaki (provide hospitality to) ‘all the manuhiri who must be welcomed and looked after on our Marae’. 

Worse still was the situation described by Michael Le Gros on behalf of the descendants of Tānoa. With only a two acre urupā still in their possession, the Tānoa whānau are today ‘pretty much landless’. According to Mr Le Gros, the almost complete loss of their land has been accompanied by a loss of identity. ‘We lost the whakapapa when we lost the land’, he told the Tribunal, ‘we lost the whakapapa to where we belonged’.

20.9 Findings

20.9.1 Proposals for partnership, 1900–10

The quantity, quality, and location of the blocks the Crown chose, and the court awarded to the sellers and non-sellers of Waimarino, meant that it was always going to be difficult for communities to sustain themselves on the land. As Stout and Ngata made clear in their report on ‘Native Lands in the Whanganui District’, for Whanganui Māori to prosper on the land remaining to them in Waimarino, the Crown needed to engage with them in partnership. The commissioners envisaged a partnership in which the Crown would take steps to ensure that owners who wished to farm their land would be supported to do so. This involved their retaining sufficient land, and Stout and Ngata also called upon the Crown to assist with the necessary resources and expertise. It was apparent that the Ngāti Uenuku people of Manganui-a-te-ao who owned interests in Waimarino 3A shared this vision when they addressed the Native Minister in 1907. They called upon the Government to engage with them as it engaged with non-Māori farmers, giving them access to loans for land development from the Loans to Settlers fund. This would enable them to succeed ‘as ordinary farmers’ by taking on the ‘present day methods’ of farming their land.

Rather than grasping these possibilities, and taking active steps to enable the Māori landowners of Waimarino to maintain and develop their lands, the Crown chose a radically different option. Over the next seven decades, it facilitated, and participated in, the alienation of between 51,510 and 53,046 acres of the remaining Māori land in Waimarino. This was something like 70 per cent of the original area of the seller reserves and non-seller blocks.

This failure on the part of the Crown to engage in partnership with Māori landowners in Waimarino represented more than just a missed opportunity or a historical road not taken. It constituted a breach of the Treaty.

20.9.2 A failure of active protection, 1911–30

Between 1911 and 1930 the Crown actively participated in or facilitated the alienation of 39,451 acres of Māori land within Waimarino. This constituted more than half of the entire original area of the sellers’ reserves and non-sellers’ blocks combined. Such a wholesale alienation of what was already a much-reduced resource was to have serious consequences for the viability of many Māori communities.

Particularly egregious in Treaty terms was the Crown’s compulsory taking of more than 2,000 acres under public works legislation for roading, railway, defence, and scenic purposes. Most of this land was taken prior to 1920, and more than half was taken from one subdivision: Waimarino 4B2. Between the beginning of 1910 and the end of 1912, the Crown took more than half of this sizeable block. It took 1,051 acres for defence purposes, as part of a Territorial Army training ground that was never commissioned. Even though the Crown never used it for the purpose for which it was taken, the land was never offered back to its original owners. The Crown took a further 128¼ acres of Waimarino 4B2 for a scenic reserve despite the written opposition of some of the owners.

The Crown’s compulsory acquisitions did not meet the Treaty standard of exceptional circumstances, where there was no alternative, and the national interest was at stake. From a process point of view, the legislation authorised the Crown to act in breach of its Treaty obligations to Māori, taking their land without proper notice, discussion, or negotiation. When the Crown engaged with owners over its intended taking for a scenic reserve, it did so in a manner that was arrogant, insensitive, and contrary to Treaty principles. When it calculated compensation, the
Crown made a narrow assessment of the monetary value of the land and its millable timber that took no account of the importance of the land to the livelihood, or cultural and spiritual wellbeing, of its Māori owners. Once it was apparent that the 1,051 acres it took for the territorial training ground were surplus to defence requirements, the Crown compounded the breach and prejudice that arose from the original compulsory acquisition by not returning the land to its former owners. Instead, and without discussion with them, it added 649 acres to the area of Tongariro National Park in 1922, and converted the balance to Crown land in 1940.

The prejudice occasioned by the Crown’s compulsory acquisitions of Waimarino land was exacerbated by the fact that the acres came from a corpus of Māori land already very much reduced by the original Waimarino purchase. This was especially so in the case of Waimarino 4B2, a subdivision allocated to families who opposed the 1886–87 alienation of Waimarino. For these people, the Crown’s compulsory taking of more than half of their land was especially painful, and a grievous Treaty breach.

As well as the more than 2,000 acres it acquired compulsorily between 1910 and 1930, the Crown also purchased by negotiation more than 8,000 acres of Māori land in the Waimarino seller and non-seller blocks. Under the Native Land Act 1909, the Crown was able to acquire the vast majority of this land without first securing the consent of a majority of its owners. Particularly striking in this regard was its March 1914 purchase of Waimarino B3B2 (6,915 acres), which it bought with the agreement of just six of the block’s 178 owners. It also purchased Waimarino F and 8 following meetings at which only a minority of owners were represented – and despite Stout and Ngata’s recommending that both blocks were set aside as papakāinga land for the ‘residence and cultivation’ of their owners and their descendants.

In pursuing the purchase of the remaining Māori land in Waimarino, the Crown placed the interests of settlement ahead of the needs of Treaty partners who had already seen most of their land alienated. In their drive to secure land for settlement, Crown officials sometimes acted unfairly and unscrupulously. This is certainly our finding with regard to the treatment of the descendants of Tūtemahurangi who, in order to obtain title to the land where their kāinga was located, were obliged to alienate all of their interests in Waimarino B3B2A, then pay an inflated price for three acres at Kākahi. By deliberately narrowing the options available to the Tūtemahurangi people and then cynically exploiting their lack of options, we find that Crown acted in bad faith and contrary to the Treaty principle of equal treatment.

Private buyers purchased most of the Māori land alienated from Waimarino between 1911 and 1930. Altogether, private interests acquired 28,200 acres of seller reserves and non-seller blocks during these years, comprising 38 per cent of the total area. We find that the Crown facilitated the large-scale private purchase of Māori land in the block by means of a statutory framework that systematically favoured sale rather than retention of Māori land. The Crown designated the Waimarino seller and non-seller blocks as Māori freehold land rather than land in trust or reserves with restrictions on alienation. Individual owners could consequently partition and alienate interests at will. Sale was further facilitated by the system of meetings of assembled owners, instituted under the Native Land Act 1909, that allowed votes by only a very small quorum of owners present or represented, and regardless of the size of the land or the number of owners, to carry the day. Through this mechanism, small minorities of owners were able to alienate to private buyers almost all of Waimarino 2 as well as substantial portions of Waimarino A, CD, and 5. Given the circumstances of its 1886–87 purchase, and the relatively small proportion of the original Waimarino block set aside for sellers and non-sellers alike, the Crown had a particular responsibility to ensure that Whanganui Māori were assisted in their retention of their remaining Waimarino land. In fact it did the opposite. By compulsorily acquiring more than 2,000 acres, including more than half of Waimarino 4B2; by purchasing a further 8,000 acres largely through meetings where only a minority of owners were represented; and by facilitating the purchase by private interests of a further 28,200 acres,
the Crown between 1911 and 1930 failed in its Treaty duty to actively protect the lands and resources of Whanganui Māori in Waimarino.

The Crown also failed to ensure that Whanganui Māori within the area retained sufficient land even for their subsistence. By providing 1,500 acres at Tawatā and 800 acres near Kaitieke to the whānau and followers of Te Kere Ngātaiaērua, the Crown did take a few minor steps to alleviate the problems of landlessness that some tangata whenua of Waimarino faced. The Crown’s distribution of 2,300 acres largely to the immediate family of Te Kere, however, did little to mitigate the impact of large-scale alienation of Māori land in the block. Nor was the land granted to the ‘landless’ followers of Te Kere necessarily sufficient or appropriate for their needs. Rather than allowing them to stay on the flat, fertile riverside land where they had constructed their kāinga and planted their gardens, the Crown put the Upper Rētāruke community near Kaitieke on two bush-covered hillside ‘small-grazing runs’. The land the community had formerly occupied was leased or sold to European farmers. This was a signal failure of the Crown’s duty of active protection.

20.9.3 Whakapapa Island
The Crown also failed properly to recognise and provide for the interests of Ngāti Hikairo and Ngāti Manunui in Whakapapa Island, and then failed to heed their legitimate protests.

The Crown omitted the island from its official survey plan of the Waimarino block. Then, once it became aware of the island’s existence, it initially refused to consider claims from tangata whenua that the land was not part of the Waimarino purchase, and still belonged to them. When Înia Ranginui asserted ownership rights over the island and cut timber there, he was threatened with prosecution and his wood was confiscated. When, in response to repeated petitions, the Crown finally inquired into whether it had legitimate title to Whakapapa Island, it limited itself to internal and informal investigations by the commissioner of Crown lands and Under-Secretary of the Native Department. Such investigations, apparently carried out without discussion with the the interested Māori groups, were inadequate and partial.

We find that the Crown failed in its Treaty obligation to inform itself as to, and to recognise, te tino rangatiratanga of Ngāti Hikairo and Ngāti Manunui in Whakapapa Island. The Crown wrongly annexed the island to its purchase of the Waimarino block, when it was not mentioned in the gazetted boundaries of the block, nor depicted in the 1886 sketch map or 1887 survey plan. The Crown did not give proper weight to the protests and petitions of Ngāti Hikairo and Ngāti Manunui. Unwilling to accept the groups’ claims to ownership of the island at face value, the Crown should have at least initiated an independent investigation of the sort carried out by the Royal Commission that in 1905 investigated 21 distinct claims against adjudications of the Native Land Court.

Finally, the Crown violated te tino rangatiratanga of Ngāti Hikairo and Ngāti Manunui, and failed to act in the spirit of Treaty partnership, when it declared Whakapapa Island to be a scenic reserve, without directly notifying or seeking the opinion of tangata whenua. We were alarmed and saddened by John Manunui’s testimony that Ngāti Manunui only learned of the island’s scenic reserve status when a sign was nailed to a tōtara tree in 1964 or 1965.

20.9.4 Fewer purchases but other problems, 1931–50
After two decades of wholesale alienation, the period from 1931 to 1950 saw relatively few purchases of Māori land. Over the two decades, 1,113 acres were sold, primarily to private purchasers. The lull did not result from positive action on the part of the Crown, but largely from the Great Depression. Private purchasers were also discouraged by the difficult access to much of the land that still remained in Māori hands. Indeed, it could be argued that the Crown’s most important contribution to continuing Māori land ownership in Waimarino during these years was its decision in 1942 to abandon its upkeep of the Mangatitī Road – the sole means of access to much of Waimarino 5.

Yet if no road access helped protect remote Māori-owned subdivisions from purchase, it also made it very
difficult for owners to develop this land, and for it to sustain more than a few occupants. This was the case for the rugged and remote areas of Waimarino A, 3, and 5. Problems of access also bedevilled Māori owners whose holdings had become ‘landlocked’ through the alienation of neighbouring lands. The experience of the owners of Waimarino 6A subdivisions demonstrated how resolving problems of access caused by landlocking could be time-consuming and expensive, and threaten the economic viability of the land involved.

As a Treaty partner, the Crown should have paid more attention to the need for Māori owners to have proper access to their lands, especially since it promoted the purchases and partitions that led to problems such as landlocking and lack of access. Access to the nation’s burgeoning road and rail network was crucial if Māori landowners were to have any chance of sharing equally in the fruits of a growing economy. We saw this in the case of the Tānoa family dairy farms on Waimarino 6A, where poor access threatened their ability to deliver their perishable produce to market.

20.9.5 Sales by meetings of assembled owners, 1951–75

The relative hiatus of the 1930s and 1950s notwithstanding, Crown policy remained very much weighted in favour of alienation rather than retention of Māori land. The Māori Affairs Act 1953 perpetuated the mechanism of alienation through meetings of assembled owners, reducing the minimum number of owners necessary to take a decision to sell from five to three. In the years that followed, both the Crown and private buyers made use of this mechanism to secure the ownership of land through the consent of a minority of owners. The Crown, for example, purchased Waimarino 4A1, 2, and 4 following the agreement of meetings attended by only four owners, even though the subdivisions were owned by 30, 15, and 10 owners respectively. We find this to be a breach of the Treaty. By engaging in this practice, the Crown denied the unrepresented majority of owners their Treaty right to hold on to their land for as long as they wanted. It also constituted a failure by the Crown to actively protect Māori in the ownership of their land and resources.

The vesting of land in lists of individual owners that proliferated from generation to generation, along with successive partitions, combined to make much of Waimarino’s remaining Māori land increasingly unviable as economic units and vulnerable to alienation.

Until 1974, the Crown continued to legislate various versions of ‘meeting of assembled owners’ mechanisms that allowed a minority of owners to alienate Māori land. Both the Crown and private purchasers (mostly private purchasers in this period) continued to purchase land from many Māori owners with the agreement of only a few. The decision to sell a particular piece of land could be taken without the agreement or even the knowledge of many owners, as was the case with Waimarino 6A3B. All of this was contrary to the Treaty.

20.9.6 General findings

Of the 74,140 acres originally set aside in seller reserves and non-seller blocks in Waimarino, somewhere between 23,272 and 21,079 acres remain as Māori land. The Pēhi whānau retains a further 824 acres as general land. This amounts to between 28 and 31 per cent of the area of the original seller reserves and non-seller blocks, and just 5 per cent of the 1886 Waimarino block as a whole. Much of this land is remote, rugged, and inaccessible. Other portions, such as Waimarino 6C2B2 and 6F2C2, are too small, with too many fragmented interests, to provide economic benefit to their owners.

It is clear that, over the course of the first three-quarters of the twentieth century, the Crown failed in its Treaty duty actively to protect the lands and resources of Whanganui Māori in Waimarino. This breached the Treaty of Waitangi. Instead of fostering and developing Māori ownership and use of their land, the Crown made the considered choice to facilitate its alienation. This too breached the Treaty. As a result, many Whanganui Māori were denied the option of living on and deriving a living from their lands, or even retaining a presence there for cultural purposes. Some became entirely or almost entirely landless. Spiritual, cultural and emotional harm has resulted, as whakapapa connections were lost and communities became disempowered and depopulated.
The magnitude of the Crown’s Treaty breach is rendered all the more striking if one remembers that the six blocks reserved for sellers and seven set aside for non-sellers were a relatively small remnant of the enormous Waimarino block that the Crown acquired in highly questionable circumstances in 1886 and 1887. Given this, and perhaps especially as regards those who explicitly stood apart from selling their land to the Crown in the Waimarino purchase, the Crown had a particular responsibility to ensure that the Māori could keep the land that remained to them until they explicitly and fairly resolved, as a group of owners, to sell it. Its compulsory acquisition of land for public works and scenery preservation was thus particularly reprehensible. We find that by participating in and enabling the wholesale alienation of what was left of Māori land in Waimarino, the Crown acted irresponsibly, arbitrarily, and in bad faith.

**20.10 Recommendations**

In addition to general redress for the breaches and prejudice recorded in our findings above, we recommend as follows.

**20.10.1 Land taken for defence purposes from Waimarino 4B2**

The National Park Tribunal has already recommended that the 401 acres of Waimarino 4B2 taken for defence purposes in 1911, and not incorporated into Tongariro National Park in 1922, should be returned to its beneficial owners. We make the same recommendation.

We also recommend that the Crown provides access for the Pēhi whānau to their property near National Park, which is currently ‘landlocked’ by Crown land.

**20.10.2 The five acres at Paitenehau**

We recommend that the Crown now acts on the chief surveyor’s 1986 recommendation that the five acres surveyed as ‘Paitenehau Kāinga’ should be designated as Māori freehold land. Its ownership and designation (as a reserve, for instance) should be the subject of discussion between the Crown and the descendants of the Rētāruke community displaced from Paitenehau when the five acres were incorrectly included in section 2, block 1X of the Kaitieke Survey District and leased to a European settler.

**20.10.3 Whakapapa Island (Moutere)**

We recommend that the Crown returns Whakapapa Island to the ownership of tangata whenua.

**Notes**

1. Document A66 (Mitchell and Innes), p A232; doc A55 (Clayworth), p 79
2. Document A55 (Clayworth), pp 76–78
4. Ibid, pp 61–62, 64, 67, 69
5. Ibid, p 75
6. Submission 3.3.144, pp 14–15
7. Document 11 (Le Gros), p 19
8. Submission 3.3.144, p 63; submission 3.3.56, pp 51, 52, 54, 57
9. Submission 3.3.73, pp 25–26
10. Submission 3.3.71, p 10
11. Submission 3.3.56, p 47
12. Ibid, p 57
13. Ibid, p 47
14. Submission 3.3.80, p 9
15. Submission 3.3.85, p 56
16. Submission 3.3.86, p 56
17. Submission 3.3.80, p 30
18. Ibid, p 23
19. Ibid, p 24
20. Ibid, p 25
22. Ibid, p 17
23. Ibid, pp 28–29
24. Submission 3.3.122, p 13
25. Ibid, pp 13, 14
26. Ibid, p 15
27. Ibid, p 13
28. Ibid
29. Submission 3.3.127, pp 14–15
30. Submission 3.3.126, pp 4–5
31. Ibid, p 6
32. Ibid, pp 7–9
33. Ibid, p 9
34. Ibid, p 10
35. Robert Stout and A T Ngata, ‘Native Lands in the Whanganui District (Interim Report on)’, AJHR, 1907, G-1A, p 6
36. Ibid
37. Ibid. The owners of Waimarino 3 did not appear as Ngāti Uenuku
on the original ownership list for Waimarino 3 passed by the court in 1886. Instead they were listed according to their hapū affiliations. Amongst the hapū included on the original Waimarino 3 list, Ngāti Ātāmira, Ngāti Kahukurapango, Ngāti Maringi, Ngāti Pare, Ngāti Ruakōpiri, Ngāti Tamakana all had affiliations with Ngāti Uenuku.

38. Ibid, p 16
39. Ibid
40. Ibid, p 17
41. Ibid, pp 8, 13
42. Ibid, pp 8, 17
43. Ibid, pp 7–8, 18
44. Ibid, p 6
45. Ibid, pp 7–8
46. Ibid, p 16
47. Document A55 (Clayworth), p 105
48. Ibid
49. Ibid
50. Ibid, p 106
51. Ibid, pp 61–62, 64, 67, 69
52. Ibid, pp 64, 69
54. Ibid, pp 61–62, 64
55. Ibid, pp 61–63, 64–65
56. Ibid, pp 77, 78
57. Ibid, 78
58. Ibid, pp 61–62, 64, 67, 69
59. Ibid, pp 63, 65
60. Ibid, pp 63, 66
61. Ibid, pp 96–97, 156–157, 161
62. ‘Land Taken for the Remaining Portion of the North Island Main Trunk Railway, from a Point at or near Marton to Te Awamutu, via Murimotu, Taumaranui, and the Ongarue River Valley – viz, Remaining Portions of Waimarino and Makaretu Sections’, 14 February 1910, New Zealand Gazette, 1910, no 15, pp 596–597
63. Document A55 (Clayworth), p 156
64. ‘Land Taken for Defence Training-grounds in Block IV, Manganui Survey District, Waimarino County’, 11 February 1911, New Zealand Gazette, 1911, no 13, p 616
65. ‘Revoking Part of a Proclamation taking Land for Defence Training-grounds in Block IV, Manganui Survey District, Waimarino County’, 23 December 1911, New Zealand Gazette, 1912, no 2, p 16
66. ‘Land Taken for Scenic Purposes in Block IV, Manganui Survey District’, 16 April 1912, New Zealand Gazette, 1912, no 38, pp 1393–1394
69. Document A55 (Clayworth), p 155
71. Document A55 (Clayworth), p 156
72. Submission 3.3.120, pp 29–30
75. Waitangi Tribunal, Wairarapa ki Tararu a Report, vol 2, p 794
76. Alex J Godley, ‘Defence Forces of New Zealand: Report of the General Officer Commanding the Forces for the Period from 7 December 1910 to 27th July 1911, AJHR, 1911, H-19, p 5; doc A55 (Clayworth), p 159
77. Document A55 (Clayworth), p 159
78. Document O17 (Parker), pp 10–12; Document A55 (Clayworth), pp 159–161
79. Document O17 (Parker), pp 11–12
80. Document A57 (Cleaver), p 103
81. Ibid, pp 105–106; doc A55 (Clayworth), p 163
82. Document A55 (Clayworth), p 164
83. Document A57 (Cleaver), p 107
84. Public Works Act 1908, s 91(a)
85. Whanganui Native Land Court, minute book 62, 19 March 1912, fols 86–89
86. Document A57 (Cleaver), p 112
87. Whanganui Native Land Court, minute book 62, 19 March 1912, fols 86–88
88. Document A57 (Cleaver), pp 108–112
89. Submission 3.3.126, pp 6–7
90. Ibid
91. Submission 3.3.126, p 7
92. Document O17 (Parker), pp 2–3
93. Submission 3.3.126, p 7
94. See succession order for Amiria Neha dated 4 February 1926, Aotea District Native Land Court, ownership schedule for Waimarino 4A2; Aotea District Native Land Court, certificate of title for Waimarino 4B2; Aotea District Native Land Court, ownership schedule for Waimarino 4B2
95. Document A57 (Cleaver), pp 105–106
96. Document H2 (Pēhi), p 9
98. Ibid, p 123
99. Ibid, pp 114, 123
100. Ibid, p 124
101. Ibid, pp 146–147
102. Ibid, p 183
103. Ibid; doc D23 (Paranihi), p 5
104. Native Land Act 1909, s 209(1)
105. Document A64 (Bassett and Kay), p 122; Native Land Act 1909, s 342(5)
107. Document A55 (Clayworth), p 82
108. Document A60 (Marr), pp 498–500
109. Document A55 (Clayworth), p 143
110. Ibid, pp 143–144
111. Ibid, pp 139–140
112. Ibid, pp 145–146
113. Ibid, p 147
114. Document H15 (Tūtemahurangi), p 10
115. Document A114 (Young and Belgrave), p 172
116. Ibid, p 174
117. Document H15 (Tūtemahurangi), p 10
118. Ibid
119. Document A114 (Young and Belgrave), pp 175, 182
120. Ibid
121. Takiwa to Pomare, 3 September 1913, ABWN 6095 W5021 22/1061 box 570, Archives New Zealand, Wellington; doc A114 (Young and Belgrave), p 182
122. Document A114 (Young and Belgrave), pp 181–182
123. Broderick to Strauchon, 21 October 1812, Broderick to MacKenzie, 24 June 1914, ABWN 6095 W5021 22/1061 box 570, Archives New Zealand, Wellington; doc A114 (Young and Belgrave), pp 182, 184–185
124. Document A114 (Young and Belgrave), p 182
125. Ibid, pp 184–185
126. Ibid, pp 185–186
127. Ibid, p 186
128. Ibid, pp 185–186
129. Ibid, p 187
130. Document A55 (Clayworth), pp 149–150
131. Document A114 (Young and Belgrave), p 187
132. Document A55 (Clayworth), p 150
133. Document A114 (Young and Belgrave), pp 187–188
134. Ibid, p 189
135. Ibid, p 190; doc A114(f), p [1]
136. Document A114 (Young and Belgrave), p 190
137. Ibid
138. Ibid
139. Ibid, p 191; doc A114(f), p [1]
140. Document A114 (Young and Belgrave), p 191
141. Document H14 (Tūtemahurangi), p 11
142. Stout and Ngata, ‘Native Lands in the Whanganui District’, p 7
143. Document A55 (Clayworth), p 50
144. Stout and Ngata, ‘Native Lands in the Whanganui District’, p 8; ‘Native Lands and Native-Land Tenure’, AJHR, 1907, G-1, p 10
146. Document A55 (Clayworth), pp 180–181
147. Ibid, p 182
148. Ibid, p 183
149. Ibid
150. Document D23 (Paranihi), pp 2, 5–8; doc D22 (Karatea), pp 10–12
151. Document D23 (Paranihi), pp 7–8
152. Document D22 (Karatea), p 12
153. Document D23 (Paranihi), p 9
155. Ibid, pp 64–65, 67, 69–70
156. Ibid, pp 61–62, 64, 67–68, 69
158. Document F8 (Haitana), p 14
159. Stout and Ngata, ‘Native Lands in the Whanganui District’, p 6
160. Document A55 (Clayworth), p 104
161. Ibid
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Map sources
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Map 20.2: Ibid, map 4
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M4.1 Introduction
We deal with issues around Waikune Prison through this matapihi because it was apparent to us in the course of our inquiry that it was, and at that time remained, a sore point in the relationship between the Crown and tangata whenua of this part of the district. Tangata whenua believed that the Crown treated them shabbily after it decided to close the prison and then, abruptly, to dispose of its land and buildings. They wanted to convert the site into a whare wānanga, and saw in the Crown’s actions a real determination to stand in their way. Ultimately – and in their eyes, needlessly – the Crown destroyed a place which, to them, had the potential to fulfil unmet needs in a part of the country short on resources for Māori wanting to learn more about their culture and language. We wanted to get to the bottom of how and why the Crown acted as it did, with a view to clearing the negative feelings that surrounded the fate of the prison.

M4.1.1 Background
The Crown established Waikune Prison in 1921 on 79 acres that it acquired when it purchased the Waimarino 1 block in 1886–1887. Situated next to what is now State Highway 4, just south of National Park, it shared a boundary with Waimarino 4, a 3,450-acre block of Māori freehold land whose owners were among those who did not sell their land interests in the Waimarino block to the Crown in the nineteenth century.

Originally, the prison was intended as a camp for convicts building roads. Then in the 1960s, the Crown increased its area, purchasing 1007 acres from four subdivisions of Waimarino 4 (4A1, 4A2, 4A3, and 4A4).

The Government closed Waikune Prison in 1986. The Whanganui Whare Wānanga Trust (the Wānanga Trust) proposed using its grounds and facilities for a place of higher learning in the indigenous culture of the Upper Whanganui. It should be noted that the isolated rural location made the prison and grounds an unlikely place to start many ventures. Nevertheless, tangata whenua could not interest the Crown in their idea. The Wānanga Trust engaged in discussions with the Department of Justice (which effectively owned the site) and the Department of Māori Affairs to no avail. The stumbling block appeared to be that the Department of Justice was charged with securing the best possible return for the Crown on its surplus property. In fact, what happened delivered no kind of benefit to anyone. In November 1988, the Department of Justice ordered the removal or demolition of Waikune prison’s buildings. Work to clear the prison commenced on
The Waikune Prison complex. To the west is State Highway 4 and the North Island main trunk railway, and to the east is the Waimarino Stream.
21 November 1988, provoking criticism from the Minister of Māori Affairs and protest and legal action from Whanganui Māori. Although the High Court issued an injunction to halt the demolition, most of the prison’s buildings were damaged beyond repair.

In 2002, after nearly 17 years of agitation and negotiation on the part of Whanganui Māori, the Crown finally agreed to include what was left of Waikune Prison in a land bank for possible transfer to Whanganui Māori as part of the Treaty settlement process. Pending final settlement, the Government leased the main prison site, three houses that remained on site, and some of the surrounding land to the Whanganui River Māori Trust Board (the Trust Board).

M4.1.2 What the claimants said
The claimants said that the Crown did not act in good faith when it disposed of Waikune Prison. Determined to obtain the best possible price for the prison’s assets, Crown officials rejected proposals to convert the site to a whare wānanga. They also mismanaged the offer-back process under section 40 of the Public Works Act 1981, focusing on finding reasons under section 40 to exempt the prison’s grounds from offer back to the Māori owners from whom the Crown compulsorily acquired them in the 1960s.

The claimants were particularly distressed by the Department of Justice’s sudden and unilateral decision in November 1988 to demolish or remove the prison’s buildings and infrastructure. They described the department’s actions as ‘legalized vandalism’, and suggested that they were intended to prevent Māori from using the empty prison as a whare wānanga. The department proceeded to demolish the prison while officials and the Minister of Māori Affairs were negotiating with Whanganui Māori over the future of the site. The Crown’s destruction of Waikune Prison had a ‘devastating effect’ upon tangata whenua. Although the property was eventually placed in a land bank for future settlement negotiations, the site was already degraded and is now so dilapidated that it is unlikely that it will ever be suitable for use as a wānanga. The claimants noted that, although the Crown finally set aside the former prison site for possible return to them in a Treaty settlement, it took them 17 years to persuade the Crown to take this action. 17 years was unreasonably long.

M4.1.3 What the Crown said
The Crown stated that it did not breach the principles of the Treaty when disposing of Waikune Prison. The prison’s buildings were removed not to prevent the establishment of the proposed whare wānanga, but rather because of the site’s ‘very high’ security and maintenance costs. After the High Court issued an injunction halting the prison’s demolition, Crown officials held meetings with the claimants to attempt ‘to restore the situation’.

M4.2 The Life and Land of Waikune Prison
M4.2.1 The expansion of the prison
When Waikune Prison was established in 1921, it was part of the Crown’s programme to use prison labour to build and upgrade roads in the central North Island. It was initially a temporary camp, to be closed once road works in the area were complete.

Waikune Prison in fact remained in commission for 65 years. During this time, its area was first reduced and then expanded, as the Government changed its focus from road-building to farming and forestry.

In 1939, the Crown added on the 112 acres of Waimarino 4A5, which it purchased from the Waimarino Development Company. The company bought the block from a Pākehā farming family that purchased it in May 1920 from three Māori owners.

In the 1960s, more land was needed when the prison became a timber-milling operation, and for this purpose the Crown acquired four blocks of Māori land: Waimarino 4A1 (219 acres); 4A2 (262½ acres); 4A3 (175 acres); and 4A4 (350 acres). This was a huge expansion: the four blocks comprised 1007 acres, which was ninety per cent of the prison’s area in 1986.

The Crown also used land surrounding the prison in a hotchpotch of formal lease agreements and informal use agreements. For example, before the Crown bought Waimarino 4A5 in 1939, the prison used it as its garden.
and to graze its dairy herd, and if it paid rent, it was nominal. Road closures or railway re-alignments added more than 21 acres to the prison during the 1960s and 1970s. Around 10.5 acres of prison land were put into roads.

M4.2.2 How did the prison affect tangata whenua?
The claimants contended that the patchwork of Crown, General, and Māori land that surrounded – and was eventually absorbed into – Waikune Prison created a situation where ‘prison staff were fairly blasé about where the Crown land stopped and Māori land began’. Aidan Gilbert, witness for Ngāti Maringi, told us that the Crown milled timber on Waimarino 4A1 while it was still in Māori ownership, and helped itself to gravel. Owners sought compensation from the Crown, but prison officials denied that timber had been taken, even though the prison had a history of taking liberties when milling timber on neighbouring blocks. We received no evidence about the gravel takings, and we do not know how, or whether, these matters were resolved.

Mr Gilbert also said that the Crown’s use of prison labour for road building and milling timber on Crown land took work that might have otherwise provided employment for tangata whenua. In one case, the prison was contracted to work on 21 miles of road between Ōhākune and Waimarino township. The task was expected to employ 80 to 100 people, and Mr Gilbert wondered how the lives of local Māori might have been improved if these opportunities had been made available to them.

M4.3 The Closure of Waikune Prison
M4.3.1 The closure of the prison in 1986
The Government closed Waikune Prison in 1986. Explaining the decision to close the prison, the Minister of Justice cited a falling prison population, the unsuitability...
of the Waikune site for upgrading to medium or maximum security, and the unsuitability of its remote location for housing remand prisoners.

Economic considerations were also at play. The Crown viewed Waikune Prison as an under-utilised asset. Close to recreation and tourism attractions, it sat on many acres, and comprised many buildings. Could the surplus prison not be sold for a considerable sum? Officials predicted sale proceeds amounting to $2.85 million: $2.35 million for the complex and $500,000 for forest land and timber.

The Crown declared the Waikune Prison complex surplus to needs in August 1986, making it available for offer-back or disposal. The inventory undertaken in November 1986 confirms the claimants’ view that the site had been the subject of considerable investment. The complex covered 450.2 hectares (1112 acres), and included 25 or 26 houses for prison warders; a 91-room cell block; single staff accommodation for 11; a chapel; recreation and television rooms; a classroom and workshop; laundry and ablution blocks; kitchen and dining area; an administration block; and sawmill. It was all serviced by its own, self-contained, water supply and sewerage system.

When the prison closed, it was the responsibility of the commissioner of Crown lands to dispose of the site on behalf of the Department of Justice. From mid-1987, the responsibility shifted to Landcorp. However, it was the job of the Department of Public Works to investigate whether the offer-back provisions of the Public Works Act 1981 applied to any part of the complex. Although none of the prison land was compulsorily acquired, it fell under the offer-back provisions – under which the Crown had to offer to sell public works land to its former owners before otherwise disposing of it – because although not taken for a public work, it was used for a public work.

The Department of Justice’s decision to close Waikune Prison came as a surprise to many of those who worked
there. According to Mr Gilbert, the closure of the prison meant unemployment and departure from the district for its staff. Some of them were tangata whenua.

**M4.3.2 The aspirations of the tangata whenua**

Whanganui Māori lamented the loss of employment at the prison, but were soon thinking about the possible upside. The closure could be instrumental in realising goals for cultural revitalisation, at the same time resolving treaty claims lodged with the Waitangi Tribunal.

Established in the early 1980s and incorporated in 1984, the Whanganui Whare Wānanga Trust was planning for a school of indigenous Māori culture. The prison closure presented an opportunity. Could the wānanga be located there? In June 1986, the Wānanga Trust expressed an interest in the former prison and its facilities as headquarters for the whare wānanga, and for other educational and economic programmes for Whanganui youth. The claimants told us that, throughout the negotiations that ensued, they had a strong expectation that the site would somehow come back to them.

The Wānanga Trust’s plans for a wānanga at Waikune were endorsed in a report completed by the University of Waikato’s Centre for Māori Studies and Research in December 1986. Praising the ‘intense and creative’ efforts of those behind the project, the report suggested that the first programme for youth at risk could be running at Waikune within months.

**M4.3.3 Negotiations with the Crown**

When the proposal was put to him, the Secretary for Justice, David Oughton, agreed that a whare wānanga was a good idea in principle, but explained that his priority was to obtain the best possible price for the prison complex. ‘My first concern’, he wrote in April 1987 was to ensure:

that my department’s vote is reimbursed at a ‘market’ value for these assets so that I am able not only to meet my revenue targets but also to receive future capital provision for other fixed assets to the same value.

In May 1987, the Department of Māori Affairs began negotiations for the prison on behalf of Whanganui Māori. It sought Cabinet approval to purchase the prison complex for a whare wānanga with Government funds. Māori Affairs saw it as a win-win: the Department of Justice would receive the $2.35 million it was looking for from the sale of the prison plus money to cover the cost of the disposal process, and Whanganui Māori would manage the site in partnership with the Department of Māori Affairs. Cabinet, however, rejected the proposal.

It seems that this and other proposals put forward in the years following the prison closure failed because they required considerable investment from the Crown at a time when any additional expenditure was frowned upon. It will be recalled that this was the era of Rogernomics, Government cut backs, privatisation, and user-pays. The University of Waikato’s report estimated it would be three years before the whare wānanga covered its own expenses and, until then, the Crown would need to contribute $2 million each year to support its operations, plus $2.35 million to purchase the site. A project calling for this level of Government funding met a stone wall in a period of recession and retrenchment.

In August 1987, the Minister of Māori Affairs, Koro Wētere (who was also the Minister of Lands), suggested another way that the Waikune Prison could be transferred to Whanganui Māori. He wrote to the Minister of Justice, suggesting that the complex could be transferred to the Whanganui River Maori Trust Board as ‘part compensation due to the Whanganui people for metal extracted from the Whanganui River’ from about 1903. Landcorp, responsible for the prison site, supported the Minister’s proposal because it would result in the early transfer of the purchase price to the Department of Justice, and end the ongoing costs for security and maintenance of the prison complex. Mr Wētere also stressed the importance of the Department of Justice and the Department of Māori Affairs to be singing from the same song book:

I am concerned that while initiatives are under way to transfer the property to the Māori people, likewise Landcorp
as agent for the Department of Justice is initiating disposal action.

Mr Wētere asked the Minister of Justice to put the prison’s disposal on hold until a decision was reached on his proposal.32

Replying on 27 October 1987, Associate Minister of Justice Philip Woolaston assured the Minister of Māori Affairs that his concerns regarding the disposal of Waikune Prison were unfounded. Landcorp, the Associate Minister wrote, was not in the process of disposing of the prison’s land and buildings as ‘a number of issues’ remained to be resolved. To assist in ‘determining the best disposal option’, the state-owned enterprise had, however, advertised for expressions of interest from those who might wish to purchase or develop the site.33 Wānanga Trust Secretary Patrick O’Sullivan received the same reply to his letter to the Prime Minister asking him to halt any moves to dispose of the complex until the Waitangi Tribunal had investigated the Waimarino purchase and the Crown’s acquisition of Waimarino 4.34

M4.3.4 The first offer-back process, 1986–88

While the Department of Māori Affairs was working with Whanganui Māori to establish a wānanga at Waikune, the Department of Justice, the commissioner of Crown lands and (from 1987) Landcorp were striving on the Crown’s behalf to sell the former prison site for the maximum return. This proved to be a more difficult task than Crown officials anticipated. Section 40 of the Public Works Act 1981 obliged the Crown to offer to sell to its former owners (or their successors) land that was no longer required for public purposes, unless, however, it would be ‘impracticable, unreasonable or unfair’ to do so. A 1982 amendment to the Act further provided that the Crown was not obliged to offer land back if the land had undergone ‘significant change’ while it was in public ownership.35 The legislation did not define ‘significant change’ or ‘impracticable, unreasonable or unfair’.

The Ministry of Works and Development carried out the Crown’s responsibility to determine which parts of Waikune Prison should be offered to its former owners. Its task was complicated by the irregular and incremental way in which the Crown acquired the prison land, and by doubts about who its former owners were.

At the recommendation of the Ministry of Works and Development the Crown in December 1986 and January 1987 exempted five sections of the prison land from offer-back on the grounds that they had undergone ‘significant change’ through the construction of buildings or infrastructure. For instance, the Ministry declared that the Crown did not have to offer back the 112 acres that had once been Waimarino 4A5 because the main prison complex was located on them. In fact, as Ministry officials subsequently discovered, the land the complex was on had been part of Waimarino 1.36 Also flawed was the Ministry’s view that the land formerly known as Waimarino 4A2 block was ‘significantly changed’ because of the construction on it of the prison’s sewerage plant. Actually, that facility was located on three and a half acres of Ērua State Forest.37

These flaws came to light in a legal opinion prepared by Crown Law in December 1988, which criticised the Ministry of Works and Development’s advice as based on ‘cursory and insubstantial’ research and inaccurate information.38 Crown Law also questioned whether the buildings and infrastructure located on the land exempted were sufficient to constitute ‘significant change’. Another serious issue was properly identifying the former owners of the land, given the claims to the Waitangi Tribunal concerning the legitimacy of the Crown’s purchase of the Waimarino block. The Crown Law opinion recommended seeking representations from former owners or their successors.39

M4.4 The Demolition of Waikune Prison

Throughout 1988, the Crown agencies responsible for Waikune continued to be guided by the Government’s priority of disposing of ‘surplus’ assets for the maximum possible price at the minimum practicable expense. The single-minded pursuit of this goal, without consultation
with tangata whenua, or proper attention to their plans and aspirations for the former prison site, was to result in a serious breakdown of the Treaty relationship.

In early November, officials from the Department of Justice met to discuss the future of the prison complex. At the meeting, they decided to put the prison's houses up for tender and to remove all other buildings that could be moved. The buildings that remained were to be demolished or burnt, and the land leased for grazing. Although aware of the Wānanga Trust’s proposal to convert the former prison into a whāre wānanga, the officials did not discuss their plans for demolition with tangata whenua.

The demolition of Waikune Prison began on 21 November 1988, the same day Whanganui Māori learnt of the Department’s plans. Equally taken by surprise was the Minister of Māori Affairs who immediately protested the destruction of the prison complex. In a letter to the Minister of Justice, Mr Wētere noted that tangata whenua had ‘proposed good alternative uses’ for the site. He warned that the prison’s destruction might raise considerable anger and be seen as wasteful, given the Wānanga Trust’s proposed use of the complex.

The Minister was right. On 24 November the Whanganui River Māori Trust Board secured a High Court interim injunction stopping the demolition of Waikune Prison. By then, however, a great deal of damage had been done: roofs and windows had been destroyed; moveable fittings, furniture and the machinery plant removed; and the heating, lighting and water systems disabled.

M4.4.1 Why did the Crown demolish the prison and in such haste?
The claimants asked why the Crown proceeded so rapidly and unilaterally with the destruction or removal of the prison’s facilities when it knew that Whanganui Māori wanted to put the site to alternative use. Don Robinson questioned the Government’s motives:

It seems that the government simply did not want the place to get into Māori hands in any reasonable state. Why else were facilities removed, wires deliberately cut in many places, and roofs removed simply to let in all the elements?

In reply, the Crown maintained that the decision to remove the prison’s buildings was driven, not by any malicious intent, but rather by the very high costs the Government was incurring for security and maintenance of the prison site, combined with the rapid deterioration of the prison’s buildings.

Evidence supports the Crown’s submission that the Department of Justice and Landcorp were responding to financial pressures when they took the decision to destroy or remove the prison buildings. Government policy required the Department of Justice to dispose of the prison and the land it sat on as profitably and quickly as possible. Waikune Prison, which since its closure had cost the Department of Justice $473,600 for maintenance and security, was simply a liability.

The costs would continue for so long as the Crown remained the owner of the prison facility, so policy prescribed a quick and profitable sale. But by November 1988, it was apparent that this was unlikely. There was a raft of reasons why no one would want to buy the prison complex. The land was subject to a growing number of Waitangi Tribunal claims, and part of it might also be affected by the injunction that the New Zealand Māori Council had secured in other legal proceedings, which prevented the Crown from transferring Crown land to state-owned enterprises. Moreover, the prison site was rurally zoned. Because the Taumarunui County Council wanted to prevent urban-style or commercial development in such a scenic area, any attempt to change the zoning in order to maximise the price required the investment of large amounts of time and money. ‘The Department of Justice and Landcorp, therefore, arrived at what seemed to them the most practical option: attempt to sell off what they could, demolish the rest, and lease the property for grazing.’

M4.4.2 What was wrong with the Crown’s conduct?
The demolition of Waikune Prison seems to us to have been a classic case of people talking past each other. While one wing of the Crown – the Department of Māori Affairs – was sympathetic to, and engaged with, Māori aspirations for using and developing the prison
facilities as a wānanga, the Department of Justice was working with Landcorp to go down a track that had as its sole goal stopping the flow of money that was going to the upkeep of the prison. The Department of Justice and Landcorp seem to have barely registered what the Minister of Maori Affairs was doing – much less what tangata whenua were thinking and planning – and regarded it as unimportant, certainly compared with meeting its financial obligations. These officials were working to a Government preoccupied with minimising government and maximising economic returns.

This was the background against which Department of Justice officials precipitated sudden, unilateral, and destructive action to reduce the prison to a shell that they no longer needed to maintain – and all done at speed, presumably to ward off the possibility of protest. The Crown did not say this, though, when it went to court to defend the Trust Board’s injunction application. Granting the injunction, Chief Justice Eichelbaum said the Crown had put forward no convincing explanation ‘for what on the face of it seemed to have been a sudden decision to demolish the buildings after they had stood unoccupied since 1986, or why it was necessary to begin work by opening a number of buildings to the weather.”

However, it
seems very likely that Taumarunui Mayor Terry Podmore got it right when he surmised in his letter of protest to the Minister of State-Owned Enterprises that the Crown’s speed and secrecy was ‘to avoid the obvious concerns that would have been expressed by the community’. There seems no other explanation for Justice’s and Landcorp’s plan to break the prison down in 48 hours over a weekend.

Don Robinson told us that the wilful damage inflicted on the prison complex, and its inevitable dilapidation afterwards, ‘demoralised’ tangata whenua, and dealt a ‘huge blow’ to the whare wānanga movement in the region. Whanganui Māori did not abandon the idea of a whare wānanga, but Mr Robinson acknowledged that with the planned headquarters of their educational centre in ruins, energy and hope fell away.

Aidan Gilbert added:

Sadly as the years have rolled on in the past decade I have seen that optimism replaced with cynicism and disappointment as we have seen the initial discussions with the Whanganui River Trust Board dissipate and the empty promises of return of buildings at Waikune and Erua amount to nothing and a once vibrant community memory that I hold reduced to that of a ghost town where I am sure even the kehua [ghosts] fear to tread too often because of the health risks to us all by the asbestos that was used to build a lot of the homes there.

M4.5 Waikune Prison after the Demolition
M4.5.1 Unsuccessful negotiations, 1989–2000
The Crown’s sudden demolition of Waikune Prison created a new Treaty grievance for Whanganui Māori. It did not spell the end of negotiations between the Crown and tangata whenua over the site’s future, though.

Discussions continued on two tracks. The Wānanga Trust and the Crown continued to explore the possibility of establishing a whare wānanga on the site; and at the same time, the Crown kept on with the offer-back process under section 40 of the Public Works Act 1981. By 2000, no resolution was in sight.

The Wananga Trust saw establishing a wānanga at Waikune as a discrete issue to be sorted out with the Crown on its own merits, but Crown officials sought to tie it to a settlement of Treaty grievances for all of the Waimarino Block. In 1989, a series of meetings between representatives of Whanganui iwi and the Department of Justice resulted in a draft proposal for the prison site to be transferred to Whanganui Māori for five years for use as a whare wānanga or similar learning institution. At the end of that term, the tribal authority would have the option of acquiring the property outright at a token price, to be offset against Whanganui’s eventual Treaty settlement. This proposal fell apart after the Department of Lands pointed out that the offer-back process needed to be completed before any alternative disposal options could be considered. Whanganui Māori groups were in any case uneasy about the proposal. By now there were estimates that more than $3 million was needed to restore the site. They worried that if the whare wānanga failed, the site could become an expensive burden for their communities.

Negotiations between the Wānanga Trust and the Crown’s Treaty of Waitangi Policy Unit carried on unproductively in 1992 and 1994. A major sticking point was the Crown’s refusal to outlay funding either to restore the prison’s facilities, or to fund the wānanga. In March 1995, the Office of Treaty Settlements reported that negotiations were at a stalemate, and demanded that Whanganui Māori finalise all grievances related to the Waimarino block before further talks. The impasse continued until February 1998, when the Office of Treaty Settlements walked away from the negotiations on the grounds that ‘a lasting or robust settlement’ was not possible.

Negotiations over the offer-back of parts of the prison to the previous owners of the land and their successors were no more successful. Following Crown Law’s scathing critique of the Waikune offer-back process, the Crown reviewed how it had exempted land in the former prison from offer-back. In 1989, after more detailed research into the acquisition history of the site’s various components, the Justice Department decided to offer back to its former owners most of the prison’s area, including Waimarino 4A1, 4A2, 4A3 and 4A4. The department maintained its view that the main prison complex, as well as a small part
of Waimarino A5 upon which some houses had been sited, were exempt.

In May 1992, Crown officials met with the people who were identified as the former owners and successors of Waimarino 4A1, 4A2, 4A3 and 4A4, and offered to sell the land back to them for $333,030. The owners responded that although they wanted the land back, the price was far more than they could afford. They made a counter offer: the Crown could sell the site back to them for one dollar, on the condition that they would immediately offer it to the Whanganui whare wānanga group. Then, the wānanga group would reimburse the Government with yearly payments equivalent to one-twentieth the cost of the prison plus interest. In the meantime, the wānanga would not have to pay rent to the owners. When the debt was paid off, the land would revert to the owners.  

The Crown rejected this proposal, saying it had no power to make counter offers. The only deal on the table was the Crown’s original proposal. It saw the owners’ response as rejecting its offer, and informed owners that its statutory obligations under the Public Works Act were therefore complete.

**M4.5.2 The 2002 agreement**

In September 2002, the Crown and Whanganui Māori finally came to an agreement over the Waikune Prison site. Under the agreement, the Office of Treaty Settlements purchased the entire prison site for $268,000 plus goods...
and services tax, and placed it in the Whanganui claim specific landbank. It then leased the main prison site, three houses, and some surrounding land to the Trust Board pending final settlement. The forestry right was meanwhile transferred to the Crown for a period of 35 years from December 2000.\footnote{65}

The effect of this agreement was to ensure that the prison site, and what remained of its facilities, would be available to Whanganui claimants as part of a comprehensive Treaty settlement. Meanwhile, the degraded prison facilities would continue to deteriorate, as they had been doing since the demolition of November 1988. Robert
‘Boy’ Cribb (one of the founders of the Wānanga Trust and a claimant in this inquiry), described Waikune Prison in 2005 as a ‘huge mess’, with demolished buildings lying in ‘big heaps’ of debris. This was what the Tribunal saw when we went there on a site visit. What was once a complex of buildings and services were in an advanced state of dilapidation, seemingly beyond repair.

In an attempt to reverse the prison’s decline, Mr Cribb and other ‘descendants of the original owners of the Waimarino 4 Block’ formed the Waikune Steering Committee in October 2006. Members of the committee and their whānau volunteered their time to carry out vital maintenance on the site, secure buildings against theft and vandalism, mow the extensive lawns to prevent fires, and pull down unsafe buildings. The committee also paid the annual rates bill of around $3,800.00. The committee’s work was not easy. In the process of clearing up, some of the volunteers were exposed to asbestos from the debris of the demolished buildings. The claimants reported that the current state of the buildings makes any use of them in their present condition impossible.

M4.6 CONCLUSION
At the outset, Waikune Prison occupied only 79 acres of Waimarino 1 that the Crown acquired in its vast purchase of land in the block in 1886 and 1887. When the Crown later significantly increased the prison’s area, the land came from Waimarino 4, one of the blocks set aside for owners of the Waimarino block who declined to sell their land to the Crown in 1887. In fact, between 1910 and 1967, the Crown compulsorily acquired or purchased 2391 acres of Waimarino 4 – more than two thirds of the block’s original area. Of that land, 1,119 acres went into the prison. In this inquiry, the Crown acknowledged that its acquisition of the Waimarino block breached the Treaty of Waitangi, and significantly prejudiced its owners. By the time the Crown had finished its nineteenth-century purchases, only a small proportion of a very large area remained in Māori hands. Then, in the 1960s, the Crown purchased and put into Waikune Prison a sizeable proportion of what was left.

After it declared the prison site surplus to Crown requirements in 1986, the Crown could have used the prison complex as a means of providing to Whanganui Māori some redress for its breaches concerning the Waimarino purchase. Tangata whenua really wanted it, inspired by the idea of setting up a centre for cultural education there. To them it seemed so fortunate that right on their doorstep, at the feet of their tupuna maunga (ancestral mountains), was a facility into which, over the years, the Crown had significantly invested. Now that the Crown had no further use for it, they could convert it into something valuable and unique to enrich their cultural and educational lives.

The Waikune Prison complex is one of only a few places where the Crown invested significantly in this part of the country. Tangata whenua here are generally not well off, good jobs are hard to come by, and people have less access than most to the modern-day manifestations of what we might call the benefits of settlement, because they live a long way distant from centres of population. For example, there are no tertiary educational institutes in the vicinity, and even to go to secondary school involves a journey in a bus for most. The location of the prison and its complicated history also meant that, realistically, the Crown would never sell it for anything like what it cost. This was a golden opportunity for the Crown to repair its Treaty relationship with tangata whenua, set up for local people a centre for self improvement and cultural enrichment, and to quit its liability to maintain and secure the prison facility.

The Crown, in the guise of the Department of Justice, squandered that opportunity. It focused myopically on minimising cost and maximising return. Internally, the right hand seems not to have known what the left hand was doing, as Māori Affairs climbed on board with the locals’ vision, and Justice maintained its focus only on the bottom line. Justice was so intent on its goal that it tried to hoodwink everybody, including Māori Affairs, and sneakingly sent the wreckers in without telling anybody. It was a generally unimpressive performance – especially as some of the Māori proposals, which officials from at least two departments supported, had real potential to enable the
Crown both to protect the taxpayer’s investment in the prison complex and act as a good Treaty partner.

Possibly the saddest thing, though, is that although the Crown ordered the destruction of the prison facility in order to get out of ongoing security and maintenance costs, in fact it did not even achieve this goal. Yes, the Justice Department quit its liability once the property transferred to the land bank, but that did not occur for 17 years, and what was at the outset an asset today looks much more like a liability. This is what is colloquially called a lose-lose situation.

**M4.7 FINDINGS**

**M4.7.1 The establishment and disestablishment of the prison**

Waikune Prison was established on Waimarino 1, land purchased by the Crown in 1886 and 1887 in ways and by methods that breached the Treaty of Waitangi and seriously prejudiced the Māori owners of the Waimarino block, whether or not they were included on the list of owners for the purposes of determining title.

Between 1960 and 1967, the Crown extended Waikune Prison to include Waimarino 4A1, 4A2, 4A3, and 4A4. As we found in chapter 20, the manner of the Crown’s purchase of these four blocks was contrary to Treaty principles.

The Crown did not discuss with affected Māori its plans for either the establishment or the disestablishment of the prison. Both events impacted negatively on tangata whenua.

**M4.7.2 The offer-back process**

The Public Works Act 1981, and its 1982 amendment, gave the Crown excessive discretionary power over the offer-back process. There was no obligation to take into account the special circumstances of Māori land under the Treaty, nor to consult with former owners and their successors on whether or how land would be offered back.

The offer-back process for Waikune Prison was poorly conducted, and in effect drawn out over 17 years. The Ministry of Works’s initial investigations and decisions were superficial and error-ridden. Crown officials did not engage with tangata whenua, even though they knew they sought the return of the former prison, and would be adversely affected by exemptions to the Crown’s obligation to offer the land back. Had the various components of the complex been offered back at a reasonable price or on reasonable terms – such as those that former Waimarino owners suggested in 1989 – a solution might have been achieved, and at less cost to the taxpayer.

**M4.7.3 The destruction of the prison**

The decision to raze or remove the prison’s buildings might have made sense in the narrow accounting terms of the Department of Justice, but there was no Crown-wide analysis to justify it. Nor did we find any good reason for the peremptory and unilateral manner in which officials made the decision to destroy parts of the prison, nor for how the demolition came to be carried out suddenly and without notice. When it deliberately excluded tangata whenua from playing any part (notwithstanding the earlier discussions, and their ongoing discussions with Māori Affairs), the Crown in the person of the Justice Department acted in a way that was disrespectful of their rights and interests, and violated the Treaty principles of active protection, good government, good faith, and the obligation to consult.

The removal or destruction of many of the prison’s buildings and much of its infrastructure prejudiced the Wānanga Trust, other local Māori who had been working to establish a whare wānanga, and tangata whenua generally, who stood to benefit from the establishment of a centre for cultural education and enrichment at Waikune.

**M4.8 Recommendations**

We have no means of properly assessing the viability of using what remains of the prison to fulfil the aspirations of tangata whenua for the establishment of a whare wānanga in their rohe. We leave to the Crown and the claimants the task of exploring the possibilities there, in the light of our findings, and make these recommendations:

- The Crown should include in its settlement package all
the former prison land, excluding areas now part of the North Island main trunk railway, State Highway 4, or Tongariro National Park.

- Because the Crown recently and flagrantly exacerbated its earlier serious breaches concerning the Waimarino Block by its mishandling of negotiations about the former prison site, it should – if the former owners of the areas where the Crown is legally bound to offer land back under Public Works legislation consent – return the land to tangata whenua as cultural redress.

- If tangata whenua still want it, and if an independent study funded by the Crown recommends that it is feasible on an ongoing basis, the Crown should work with tangata whenua to establish and help to fund an inclusive cultural and educational hub either at Waikune or at a preferred site locally.

- In any event, the Crown should fund the necessary work to clear the prison site of debris, including the safe extraction of asbestos hazards.

Notes
1. Submission 3.3.180, p 2; submission 3.3.85, p 97
2. Submission 3.3.85, pp 94–95
3. Document G5 (Robinson), p 5
4. Submission 3.3.88, p 5
5. Ibid, p 12
6. Submission 3.3.85, p 96
7. Submission 3.3.126, p 10
8. Ibid, p 11
10. Document A60 (Marr), pp 621, 623, 626
11. Ibid, pp 640–641
12. Submission 3.3.85, p 91, para 1.456
13. Document F14 (Gilbert), pp 3–4
14. Document A60 (Marr), p 619
15. Document F14 (Gilbert), pp 3–4; doc A60 (Marr), p 601
16. Document A60 (Marr), p 646
17. Ibid, p 647
18. Ibid, p 658
19. Ibid, p 646
20. Ibid, pp 658, 665
21. Ibid, p 658
22. Ibid, pp 652–654; Public Works Act 1981, s 40(1)
23. Document A60 (Marr), p 647
24. Document F14 (Gilbert), p 6, para 28
25. Submission 3.3.85, p 97
26. Document G25, p 38
27. Document G23, pp 11–12
30. Document A60 (Marr), p 669
31. Ibid, p 668
32. Document G23, p 53
33. Ibid, p 75
34. Document G25, pp 78, 80
35. Public Works Amendment Act 1982, s 2
36. Document A60 (Marr), pp 660–661
37. Ibid, p 629
38. Ibid, pp 663, 686
39. Ibid, pp 688–689
40. Document G23, pp 137–139
41. Document A60 (Marr), p 678; doc G23, p 150
42. Document A60 (Marr), p 679; doc G23, p 146
43. Document A60 (Marr), pp 678, 681
44. Submission 3.3.180, p 2
45. Document G5(a) (Robinson), p 9
46. Submission 3.3.126, pp 10–11
47. Submission, 3.3.88, p 7; doc A60 (Marr), p 659
48. Document A60 (Marr), p 676
49. Ibid, p 666
51. Ibid, pp 137–139
52. Document A60 (Marr) p 682
53. Document G23, p 147
54. Transcript 4.1.8, pp 73–4
55. Document F14 (Gilbert), p 6
56. Document A60 (Marr), pp 383–385
57. Document G25, pp 234, 324
58. Ibid, p 324
59. Document G25(a), p 18
60. Document A60 (Marr), pp 693–694
61. Ibid, p 694
62. Ibid, p 699
63. Document G2 (Cribb), p 5
64. Ibid, p 5; submission 3.3.85, p 97