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Ministry of Justice
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D. A. Armstrong and E. Subasic, *Northern Land and Politics, 1860-1910* (Wai 1040 #A12). Response to Memorandum of Counsel (Moana Tuwhare), June 25 2013, 'Appendix A'.

1. This question relates to our summary of a more detailed discussion of events relating to the pre-1865 Okaihau Crown purchase, which can be found at pages 391-397 of our main report. In 1868 and 1869 Pera Paka, Neri Taruhia and Hone Tareha complained that they had not been paid, a reserve had not been set aside, or that their interests had been ignored by Crown purchase agent H. T. Kemp. Because Maori title had ostensibly been extinguished by the Crown purchase, the Native Land Court had no jurisdiction to inquire into these claims, and they were referred to Bay of Islands Resident Magistrate E. M. Williams for investigation. Williams dismissed the claims of Pera Paka and Neri Taruhia, largely on the basis that their exclusion was sufficient evidence that they possessed no rights. Tareha had sought a 140 acre reserve. In his absence the block, including his reserve, was purchased by Kemp. Williams recommended that Tareha be given a small area of land as compensation because he had been 'deserted by his friends'. Tareha, unlike Paka and Taruhia, had acted with more decorum during the investigation, which seems to have prompted Williams to be a little more generous in his case.

The approach taken by Williams appears to be that it was up to the vendors to compensate non-sellers, or those who happened to be absent at the time of the transaction, and if they did not do so the Crown had no responsibility in the matter. We suggest that it was incumbent on Crown purchase agents to identify all right-holders, and ensure that their interests were recognised. We speculate as to what might have happened if Williams' approach - that the rights and interests of non-sellers should properly be determined by the selling party, or that exclusion or non-participation in tamana payments or pre-Court negotiations was proof that rights did not exist - had been adopted by the Native Land Court.

We have seen no evidence of this approach being adopted by the Native Land Court. We have seen no obvious examples of the Court recognising only those owners involved in Crown purchase negotiations when non-sellers interests were evident. Judge Maning was adamant that tamana payments would have no bearing on his

decisions, but Judge Monro was said to have awarded Hokianga land in virtually every case to those who had received tamana (702-703). If so this is remarkable, given the speed and scale of Crown land purchase at this time, and scores of complaints by Maori throughout the north that such payments were made to the wrong people. As we note (704), 'if Monro had not colluded in achieving this highly convenient outcome the land purchase agents were clearly either very lucky or extraordinarily skilled - especially given the speed of the transactions, the very large areas involved, and the complex range of overlapping customary rights and interests'.

There is, on the other hand, some evidence that in order to expedite sales Crown purchase agents had begun to deal with (and make tamana payments to) a more limited number of chiefs, presumably deemed to be representative owners, in the expectation that they would be awarded the land by the Court and a sale could be efficiently effected. Maning seems to have opposed this, as in his view it was *ultra vires* the Native Land Act 1873 (which required all owners to be named in Certificates of Title) and signalled a return to something akin to the ten owner rule. In addition, recognition of any form of chiefly authority was anathema to Maning. As he noted in a letter to Webster, Monro had been 'led by the nose' by Crown purchase agents and had 'wittingly and deliberately ignored the rights of nine-tenths of the owners of almost every case he had to do with and left men at the mercy of rangatira sharks' (704). Given Maning's strong opposition to these practices, it may be that Monro had been specifically sent to Hokianga in 1874-1875 to deal with these cases because Maning would not cooperate. If so, it would seem that this somewhat irregular proceeding was officially sanctioned by Native Minister Donald McLean. Such an approach may have been welcomed by the Hokianga chiefs (for as long as it lasted), as it may have reflected at least some form of chiefly or tribal control which they sought, and may have reduced survey and other costs.

3. E. M. Williams was the eldest son of Archdeacon Henry Williams, who was involved in a number of old land claims.

5. The Maori economy during the 1860-1870 period is discussed more fully in various places in the main body of our report. The passage referred to (p41) in counsel's memorandum is a brief summary. Perhaps the main cause of economic stagnation

during this period was a lack of communications infrastructure and lack of access to markets. This also discouraged European settlement, with the result that trading opportunities closer to home were further stymied. Crown promises made during the pre-emption period, that land sales would encourage settlement and its 'collateral advantages', including the roads and bridges - an essential prerequisite for northern economic advancement - had not been realised.

6-7. The draft briefing paper was located in Donald McLean's papers. It is reproduced at p1:300 of our supporting documents. It identifies the need for a Council of Maori chiefs to meet annually and consider subjects 'effecting their interests as a people'. This was almost certainly submitted to Governor Browne (perhaps in a more complete or final form which we have been unable to locate) for his consideration, given that he subsequently supported McLean's proposals. As we understand it McLean was suggesting that such a Maori Council would provide an opportunity for the chiefs to raise issues of concern to them within the current system of Crown administration and would, at least to some extent, provide them with a voice in the governing councils of the colony. It would, as McLean observed, provide Maori with an opportunity to participate 'in those institutions by which they must in the process of colonisation be governed' (127).

8. A 'Hundred' was a European administrative term referring to an area or district. In this case each 'Hundred' would be represented by a Runanga, which would in turn send representatives to a District Runanga comprising a number of 'Hundreds'.

9. We reference the contents of the circular as it was published (in English) in the *Daily Southern Cross* newspaper. We have not seen a copy of the circular itself, or a te reo version.

10-11. Two Assessors, Hemi Ngatete and One Te Pae had apparently made the award of four horses to their friend and relative Hemi Kahoe, described by White as a person of bad character. The two Assessors had not brought the case before the full bench of Assessors for confirmation, as directed by White, and he doubted that such a judgment would have been given if his instructions had been followed. White saw this as a some sort of artifice designed to secure horses for Hemi Kahoe, who

subsequently formed his own Runanga, called 'Runanga Kei Waho'. A further Assessor named Ruinga, who was not apparently involved in the adultery case, had, according to White, also acted in a 'disrespectful' manner and expressed an intention not to uphold the law in cases of theft and the sale of liquor. Ruinga was dismissed, and Hemi Ngatete and One Te Pae were suspended without pay for six months. It appears that the decision to dismiss or suspend Assessors was made by the Native Minister. White's April 11, 1864 memorandum, where the facts (at least as he saw them) were set out, was addressed to the Native Minister.

13. A man named Ruhe was a member of the Bay of Islands Runanga. He may or may not be the same Ruhe present at the Hokianga Runanga in March 1865. In any event, we do not refer to Ruhe as being a 'member' of the Hokianga Runanga. He rather appears to have gate-crashed proceedings. There was no doubt a good deal of interaction between members of the Runanga representing 'Hundreds', particularly when a District Runanga was convened and they all met together.

14. The Native Land Court which operated under the 1862 Act was mainly confined to Kaipara. We are not aware of how many 'tribal titles' were issued under the Act, or which lands were involved or which iwi or hapu. In the Kaipara a number of small blocks were awarded to representative chiefs, and were then transferred to local European settlers in conformity with tribal preferences and agreements already made with the settlers. The need to determine tribal titles was therefore apparently dispensed with in many cases, as under these circumstances there was no need for such a determination. In this sense it could perhaps be said that all titles issued under the 1862 Act were 'tribal titles'.

15. Footnote 428 on page 291 is incorrect. Thank you for pointing that out. Footnote 428 should appear at the end of our discussion of Clendon's report on page 292. The correct reference is: J. Clendon. 'Report of a Meeting of Natives at Waima Hokianga Called on the 8th September 1863'. BBIW 4808 26. ANZ, Auckland. Docs 1:739.

16. The reports available to us, written by Clendon and Clarke, do not include whakapapa tables or boundary descriptions.

17. There were no other such hui described in the sources available to us. That is not to say that none took place. They may have, but we have seen no evidence.

18. The missing word is *title*.

19. We have not located McLean's reply to Monro.

20. Yes, we are referring to s17 of the 1867 Act, as outlined on page 313. We do not know which blocks were affected in this hearing district.

21. Maning does not name these blocks.

22. Maning does not name the 56,000 acre block.

23. The blocks being discussed are not named.

24. No, we do not have any plans. This may be the same land as described by Berghan (Vol. 7, page 105).

25. We cannot confirm whether Maning followed Fenton's direction.

26. We meant to say that Barstow sometimes refrained from issuing summonses in cases between Europeans and Maori.

27. We meant to say *too*, rather than two.

28. The scene of this incident was Te Ti Mangonui.

29. It should be *from*.

30. The sources (see footnotes on page 474) variously describe this man as Hami Te Hira, Hami Te Haia, Hami Te Hara and Hemi Te Hara. We have inadvertently added other variations. We cannot ascertain the correct spelling.

31. Paora Tuhaere asked the local hapu to hand over the culprit.

32. Some words are missing. What we probably meant to say was that the decision to pay constables only while on active duty was upheld. However, the source we rely on (fn 892) was not able to be copied and is therefore not included in our supporting documents. The original source (held at Archives New Zealand, Auckland) will need to be checked to confirm this.

33. We have not been able to locate a copy Mohi Tawhai's 'Code of Laws'.

34. Mohi Tawhai asked McLean (at a December 1869 meeting) for gaols and the other things he had earlier described in his 1868 petition.

35. We have not been able to locate this petition.

36. We have not discovered any reply from Fenton.

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July 3, 2013