THE
WAIRARAPA KI TARARUA
REPORT
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REPORT

Volume II: The Struggle for Control

WAI 863

WAITANGI TRIBUNAL REPORT 2010

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The cover incorporates details from a design by Cliff Whiting invoking the signing of the Treaty of Waitangi and the consequent interwoven development of Māori and Pākehā history in New Zealand as it continuously unfolds in a pattern not yet completely known.

The cover illustration, reproduced courtesy of Mary-Ann Stuart, shows the Ngātuere whānau on the verandah outside their homestead, Te Uru o Tāne. The photographer is unknown.
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<td>itq</td>
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‘Wai’ is a prefix used with Waitangi Tribunal claim numbers. Unless otherwise stated, endnote references to claims, documents, papers, transcripts, and statements are to the Wai 863 record of inquiry, an extract of which is reproduced in appendix iv and a full copy of which is available on request from the Waitangi Tribunal.
CHAPTER 4

THE NATIVE LAND COURT AND
LAND PURCHASING, 1865–1900

[T]he teeth of these laws . . . are voracious in consuming people and land. It is because we the Maori people have seen the fault of decision making of this entity, the court, a stranger who owns the land, deciding in favour of the person who speaks falsehoods . . . We are not agreeable to these laws.

Paora Pōtangaroa and others to the editor of Te Wananga

4.1 Our Inquiry in this Chapter

In this chapter, we consider the operations of the Native Land Court in the Wairarapa ki Tararua district, along with issues pertaining to land dealings in the period between 1865 and 1900. We heard two opposing interpretations of what happened when the Native Land Court began operating in Wairarapa ki Tararua; what the Government’s intention was; and how Māori responded.

We begin by outlining the claimants’ and Crown’s cases, in effect laying out the competing arguments and signalling the issues. We explain that in our inquiry into the Native Land Court, we focus on ascertaining whether there are unique features in this district that would lead us to differ from the approach of previous Tribunals. We note our main sources of evidence, and then show how our discussion of the material is divided into six sections, followed by our findings and recommendations.

4.1.1 What the claimants say

The claimants based their case on a view of the Native Land Court as a Crown-imposed and alien institution, in which Māori had no substantive role.

They say that the type of title made available through the land court regime undermined the capacity of Māori communities in Wairarapa ki Tararua to retain and utilise the land remaining to them after the Crown’s extensive purchases pre-1865. Neither did the introduction of the court bring with it the protections that were needed to shield their
remaining landholdings from further purchasing. Māori communities in our inquiry district were not consulted about the court and the radical tenurial reform it brought, and nor was the concept of individualisation of title and its consequences ever explained. This was unreasonable, both because Māori throughout the North Island had been seeking mechanisms to give them more control over their lands and resources, and because the court was not a ‘take it or leave it’ option for Māori. They had to engage with it, or risk missing out altogether as others claimed exclusive title in areas of overlapping interest. If they were going to do anything modern with their land, they needed to get a title acceptable to settlers and recognised by the courts. Submitting lands for investigation by the court was also seen as a mark of loyalty and friendship to the Crown, which increased the pressure to follow such a course.

(1) Loss of community control
When Māori took lands to the court, its system of tenure conversion either dispossessed right holders, or resulted ultimately in an individualised, fractionated title that was commercially unusable except as a transferable paper interest. The result was the loss of community control over the land.

Counsel for Ngā Hapū Karanga told us that the introduction of the Native Land Court had a profound impact on customary practices and the deconstruction of traditional tribal structures. Ultimately, the court came to usurp the traditional role of communities in allocating lands according to tikanga:

Dealings in land required a Crown grant, but the decision to determine ownership no longer required the consent of traditional leadership. Anyone either dissatisfied with the decision of their own community or wanting to have ownership interests identified or determined in order to deal with their lands could make an application to the Native Land Court . . .

The Crown’s continued focus on individual rather than communal land interests through the introduction of the Native Land Court deliberately and inevitably undermined . . . chiefly and tribal authority . . . Although the Crown was well aware that any attempt at individualisation was both artificial and inconsistent with customary title, the individualisation of title was one of the central planks in the Native Land Court system.

The effect of individualising titles was exacerbated by a land purchase system that enabled undivided individual interests to be acquired piecemeal without reference to the remaining owners, and often without even the knowledge of the wider community. At the same time, lands held under multiple title suffered under commercial liabilities, which disadvantaged Māori in their engagement with the modern economy.

It was put to us that all this took place in spite of repeated requests from Māori communities, both within our inquiry district and nationally, to be given greater powers to determine their own land titles, and to manage their lands more effectively. This could have been done by empowering owners to make collective decisions about their lands. Self-government and rangatiratanga required, too, that Māori could withhold their lands from the operation of the court if they so wished.

(2) Crown purchasing practice in the land court era
The individualisation of rights to Māori land meant that Crown purchasing efforts now focused on individual owners. This, counsel for Ngā Hapū Karanga told us, was ‘in clear breach of the Crown’s obligation to recognise tino rangatiratanga, or the customary authority of Wairarapa ki Tararua Māori over their lands as guaranteed under Article 2 of the Treaty.’ Land purchase agents picked off individual owners rather than seeking community consensus, meaning blocks became fragmented as they were purchased piecemeal over a long period. Agents received commissions, and effectively determined who held legal interests in land before the court determined title, thus usurping the court’s role.
The 1865 Native Lands Act removed the Crown’s monopoly in land purchasing, and this increased competition. Crown purchase agents used advance payments to fend off private purchasers, for whom it was illegal to advance funds before title was determined. Advance payments undermined the open market, and made transactions less subject to scrutiny.

In this district, Crown purchase agents used ‘bounty hunters’ to collect signatures on a deed of sale. Karaitiana Te Korou was deployed in this way. However, this tactic was not considered in detail in the evidence.

Counsel for Ngāi Tūmapuhia-ā-Rangi told us that private purchasers often used debt as a means of applying pressure on Māori to sell their land: ‘Specifically, for the very many Maori that relied on credit to feed their families, to obtain further funds they had to pay their existing debts somehow, and land was frequently the only asset they had.’

As to the prices the Crown paid, there was apparently no formula. The practice adopted from the outset seems to have continued: ‘to seek to obtain as much land for as little as possible.’

Peter McBurney’s evidence included tables setting out data on land purchases. Counsel for Rangitāne told us that, in Tāmaki-nui-ā-Rua, these tables confirm that up to 1900 the Crown was easily the largest purchaser of Māori land. The Crown denied that its policy was ‘to acquire all Māori land between Hawkes Bay and Wellington by 1900’, but Rangitāne counsel contended that:

At the very least the Crown wished to acquire large amounts of land in both the Tamaki nui a Rua and Wairarapa districts. Locke had admitted that to the Waipawa hui on 6 September 1870. McLean had indicated in the Wairarapa context that the Crown intended to acquire virtually all of the district and certainly the best agricultural land in the Wairarapa valley. By 1871 the Crown had acquired approximately 75% of the Wairarapa district, most of the east coast and half of the bush blocks. Whilst their policy may not have been to ‘acquire all of the land between Hawkes Bay and Wellington’ in reality by the 19th century that is exactly what the Crown had achieved.

(3) Court costs and survey charges
In order to get determination of ownership and a commercial title, Māori had to pay fees and expenses that contributed to their indebtedness. The claimants identified debt as one of the major inhibitors to Māori in this inquiry district developing the land they retained. It also directly contributed to the need to sell land. This was Te Kooti Tango Whenua, the land-taking court.

Survey was a significant expense. Counsel accepted that a survey was a necessary part of title determination and that the accurate recording of land was required to bring it within a western tenure system. Also Māori would benefit from knowing exactly what land had been alienated and what was retained, and whether this would be sufficient for their present and future requirements. But the Crown needed this information too, certainly in order for it to be able to actively protect Māori in the retention of sufficient land, and also – when it was purchasing – to properly define its own title. So should not the Crown have borne the cost of survey? Should Māori have had to pay at all simply for confirmation of their title to land?

Counsel for Ngāti Hinewaka submitted that:

the imposition of survey costs in relation to the originating investigation of title of Maori customary land is in breach of the Treaty. . . . The effect of the Native Land Court regime was to require Maori to put their lands through an expensive Native Land Court process in order to confirm title to land which had already been guaranteed to Maori. Where Maori were simply seeking to have their title confirmed by the Native Land Court, without any intention of on-selling . . . the Crown could not justify imposing survey costs, as that invariably led to the loss of land. The practical effect of that system was that Maori were required to sacrifice land in order to perfect the guarantee of title to land.
provided under the Treaty. This is completely incongruous with the Treaty.\(^9\)

Counsel for Ngā Hapū Karanga argued that although it is impossible now to calculate how much survey costs contributed to the alienation of land, they *did* cause detriment: 'Surveys were variable in quality and cost, sometimes had to be repeated and could require Māori to mortgage or charge their lands where they had no other means of payment.'\(^{10}\)

Counsel for Ngāi Tūmaphia-ā-Rangi drew attention, in particular, to the Crown’s capacity to sell land to recoup survey charges from 1894 onwards and argues that this 'When coupled with its power to exclude private alienations and mortgages . . . gave the Crown a formidable arsenal in its purchasing activities.'\(^{11}\)

Rangitāne counsel made detailed submissions on the complications of survey at Mangatainoka/Kaihinu and the problems that had resulted for Nireaha Tamaki as a consequence. He concluded:

Quite clearly the legislation passed by the Crown whilst lawful was hardly fair to Nireaha Tamaki and any other Māori who found themselves in the same situation. The genesis of this dispute was due to inaccurate survey. In taking the proceedings Nireaha Tamaki did no more than what he was legally entitled to do. He took a case which went to the highest echelons of our judicial system. The Privy Council found that he was entitled to bring his case in the Supreme Court. He never got to test his case as the government legislatively intervened.\(^{12}\)

Counsel argued that Māori could have expected accurate surveys and that the Native Land Court let Nireaha Tamaki ‘badly down’. He was then denied his day in court because of legislative intervention. ‘In so acting the Crown acted unfairly, unjustly and in breach of the duty on it to act honourably and with the utmost good faith.’\(^{13}\)

(4) *Two patterns of title history*

The claimants described two distinctive patterns of title history.

In the first, prevalent in the Wairarapa-Cape Palliser area, the first blocks to be brought through the court were relatively small with relatively well-defined rights and boundaries. The larger Ngā Waka ā Kupe block was investigated much later (in the 1890s), and was an exception to this pattern. Purchasers of the land in this part of our inquiry district were mostly private individuals – pastoralists (often lessees), speculators, and local entrepreneurs.

The second pattern of title histories prevailed in the Tāmaki-nui-ā-Rua district, where the blocks that went through the court were much larger. Here, the Crown monopolised the land purchase market, and passed legislation to advance its position as purchaser. Crown agents in this area pressed Māori to take lands to the court. Once the court named the owners in a block, the Crown relentlessly pursued individuals for their signatures to sell block after block, including land initially reserved for present and future Māori requirements. This activity, the claimants argued, distorted ownership and undermined Māori capacity to retain sufficient lands for their long-term development.

(5) *Issues raised*

The claimants raised the following issues that apply across the inquiry district:

- the Crown’s failure to consult with Wairarapa ki Tāmaki-nui-ā-Rua Māori prior to introducing the land court to the district, and in advance of subsequent important changes in the land laws;
- the inability of Māori communities to keep their lands out of the court if they so chose;
- the failure to provide for any form of viable title that allowed ongoing communal management and control of lands awarded through the court;
- the costs (social and economic) involved in obtaining surveys and defining title, and the extent to which
these crippled Māori endeavour and contributed to further land losses;⁴
➤ the extent to which the legislative framework furthered the interests of the Crown and settlers at the expense of Māori;
➤ the impact of partition, succession, and fractionation rules on Māori tenure and future economic development; and
➤ the failure of the protective mechanisms that the Crown instituted to prevent excessive or inequitable land alienations.

(6) Communal title
It was submitted that the question of whether communal title was available to Wairarapa Māori through native land legislation raises a key question: what is communal title? Counsel submitted that communal title in this context can be defined as a title owned by a community in a manner consistent with tikanga Māori (traditional rules and practices). Even though titles offered under the Native Land Court ultimately recognised all those individuals with ownership interests, these interests were still owned individually, and could be enforced against a wider community through partition and transfer to a third party.⁵

(7) Prejudice
Both Ngāti Kahungunu and Rangitāne claim that they were adversely affected by land laws that dispossessed many, besides undermining their collectivity and the authority of their leaders and tribal institutions. They share concerns, in particular, about the prejudicial effect of the ‘io-owner rule,’⁶ the failure of Crown protections, and the landlessness that resulted by the end of the nineteenth century.

4.1.2 What the Crown says
The Crown’s interpretation of the Native Land Court and its effects was quite different. The Native Land Court’s importance as a catalyst for social change and land purchase in this district has, the Crown says, been exaggerated. It was a necessary institution that Māori desired and accepted. It was not alien, and Māori were fully involved in court decisions regarding title. Insofar as title was ‘individualised’ this was in accordance with Māori wishes, and Crown agents were conscientious about implementing legislated protections. These were increasingly unnecessary as the century progressed and Māori title became Europeanised. It was thus appropriate that Māori should be able to deal with their lands as they saw fit; this was what Māori of this inquiry district wanted. The Crown denied that it engaged in improper purchase activity during, or as result of, the tenure conversion process.

The Crown raised the issue too of whether the examples cited in the various claimant reports filed with us were not exceptional instances, rather than reflecting more general patterns of title adjudication and land alienation. In other words, have the notorious been privileged over more representative examples? Crown counsel also questioned whether the political objections to the Native Land Court and land dealings detailed in claimant evidence could be fairly seen to reflect all Māori opinion in Wairarapa ki Tāmaki-nui-ā-Rua.

(1) Native Land Court client-driven?
As we know, the Crown conceded its failure to ensure that, by the end of the nineteenth century, Māori retained sufficient land in this district. But it asked what could reasonably have been expected of it in the relevant period, and questioned the extent to which the Native Land Court was itself a major cause of land loss. It acknowledged that it failed to provide a tight corporate title that would have inhibited partitioning out of interests, but doubted that this was what Māori in the district wanted. The Crown required us to consider whether the Native Land Court was in fact a client-driven institution.

The Crown said that chiefs and communities of this district may have wanted this kind of court and forms of title because, according to historian Paul Goldstone’s
evidence, Māori land ownership probably 'resided at the level of small communities'. Early experience of the settlers and a longheld desire to obtain Crown grants for reserved lands would easily have translated into an interest in obtaining legal titles, particularly if this facilitated commercial dealings with settlers. The evidence suggests that between 1868 and 1870, claims brought to the Native Land Court in the district were rarely contested. This, the Crown submitted, demonstrated relatively clear-cut associations with the land, and showed that hui (meetings) held prior to the court sittings enabled agreements to be reached. When contests did occur during hearings, they were often settled out of court.  

(2) The 10-owner rule
The Crown agreed that a salient feature of the experience of the court in this inquiry district was the preponderance of blocks awarded to 10 or fewer owners under section 23 of the Native Lands Act 1865. Crown counsel accepted in a general sense that prejudice resulted from this, but at the same time questioned the extent to which ‘actual prejudice’ occurred. A mitigating factor may well have been that ownership rested with ‘small descent groups’, possibly no larger than whānau (family) groups living in little communities. This meant that ‘occasions when the number of acknowledged owners exceeded the permitted maximum may not have been numerous’. In addition, while under the 1873 Act, Māori had the option of putting any number of owners in a memorial of ownership, most blocks in this district still had 10 owners or less; ‘This pattern tends to confirm that there was a low ratio of owners to blocks’.  

(3) Engagement with modernity
A theme of the Crown’s case was that Māori society generally was in a process of transition in the 1860s and 1870s. The process of colonisation had introduced new ideas into Māori society, including the idea of individual rights. The mana of chiefs had already diminished, and the will of the community was no longer an imperative. Moreover, Māori recognised the need to transform traditional tenure in order to engage with the new economy, and this required an external adjudicator, such as the Native Land Court. The trend was towards embracing the new, rather than clinging to the old.

In this light, Crown counsel noted that there were opportunities for Māori of this district to obtain Crown grants under a form of communal title, and that the legislation provided for land to be held ‘corporately . . . that is, by a community of owners who wished to act collectively and continue to act collectively’. The implication is that Māori preferred to hold interests as individuals.

Crown counsel also pointed to the relatively small number of applications under the Native Equitable Owners Act 1886, which sought to ameliorate some of the worst aspects of the 10-owner rule. Counsel rightly noted, however, that caution is needed in drawing conclusions from this evidence, as the Act was applicable only to land not already alienated, which excluded many Wairarapa blocks.

On the restrictions on alienation in force between 1865 and 1909, and the ease with which they might be removed, Crown counsel argued that it was never intended that these restrictions would mean that the land could never be dealt with. ‘Rather the regime should be seen as an integral part of the Crown’s system intended to protect Māori in the retention of their lands for as long as they wanted to do so.’ It was envisaged at the time that Māori ‘by dint of education and habituation, would become competent to manage their economic and other affairs in the new milieu without the need for such intervention.’

(4) Costs
The Crown submitted that taken as a whole, the available evidence did not demonstrate that obtaining title to a block tended to be an excessively costly or time-consuming exercise. The formal costs of the process such as court fees and survey charges were not high relative to the value of the blocks once they had been clothed in title. In addition, the court was reasonably accommodating about when and where it sat, and hearings were not unduly protracted.
Counsel acknowledged, however, that these comments applied only to the ‘period under review’ (1865–82) and conceded that: “The picture may well have been different in later decades and the exceptional cases with a history of prolonged dispute would obviously have been more costly affairs.’ Counsel described unrecorded costs such as food and accommodation as ‘harder to quantify,’ and said that these ‘would still have been incurred if the mechanism for fixing title was by committee rather than the court. If the objective was to be the acquisition of a guaranteed title, the cost of survey was unavoidable under either model.”

(5) The Nireaha Tāmaki case
The Crown says that the issue in this case was ‘whether 5,184 acres were intended to be included in Mangatainoka or in the Kahuinu 2 block which had been sold to the Crown and proclaimed for settlement’. By 1890, there was still no certificate of title for the parts of the Mangatainoka block retained by Māori, and this underlay the dispute, which came to light at a partition hearing.

The Crown’s submissions relate how ‘Nireaha Tamaki succeeded in the Privy Council in establishing his right to bring proceedings to argue that the disputed acres remained part of Mangatainoka or alternatively remained Māori customary land.” This led to the Crown settling with Tāmaki, and counsel contends that he must have been satisfied with the terms of the settlement since he and his counsel would have arranged it. The settlement comprised £4566 minus the court costs incurred by Nireaha Tāmaki in bringing the action, and extinguishment by legislation of the native title to the disputed land.

Addressing the question of whether the Crown breached the Treaty, counsel told us that the case turned on doubt about where the boundary of the Mangatainoka block lay, and therefore whether the Crown had already paid Nireaha Tāmaki and his co-owners for their land or not. The Crown’s submissions do not address an important fact: the Crown was litigating not primarily to argue that the customary Māori interest in this land had been extinguished, but to get a decision that the courts were precluded by law from inquiring into customary title at all. According to counsel’s analysis, whether pursuing the case breached the Treaty depends on whether the Crown’s belief about the location of the Kahuinu/Mangatainoka block boundary was reasonable:

The 1875 and 1885 proceedings before the Native Land Court are relevant in this respect. The decision of the Court of Appeal notes that the Crown had a defence to the proceedings grounded upon deeds of cession and orders of the Native Land Court but the Court of Appeal did not go into these matters.

The court cases do not illuminate the grounds for the Crown’s insistence that the land in question was within the Kahuinu block (and paid for already) or within Mangatainoka (and therefore unbought and wrongly offered for settlement). ‘In these circumstances,’ counsel submits, ‘the Crown does not consider that the evidential basis is sufficient to support an acknowledgement of Treaty breach.”

(6) The Crown’s purchasing practices
The Crown challenged interpretations suggesting serious failures to recognise and deal with all right holders in court investigations where the Crown was interested in purchasing. It acknowledged that purchases were started before investigations began in some cases, but noted that deeds of sale were ultimately signed by significant numbers of those found to be owners – who, in turn, represented others. Moreover, according to Crown counsel, there was a ‘spread’ of names in the ownership lists, including residents, on the title to a number of the blocks the Crown was interested in buying.

The Crown conceded that undue pressure was placed on some owners to complete the purchases. However, it rejected arguments that the practice of advance purchase payments was unfair. Crown counsel stated that any advance purchase payments made were properly accounted for, and the price paid was the subject of ‘robust negotiations.”
Crown counsel pointed to the retention of a number of blocks by their Māori owners for a considerable period after title awards as evidence that Māori of this district were indeed able to resist Crown land purchase efforts, and otherwise control the management and alienation of their lands.46

4.1.3 Previous Tribunals
Tribunals such as Tūtara, Hauraki, and central North Island stage 1, when reporting on the Native Land Court and related issues, criticised the Crown for introducing native land legislation without prior consultation, and with the primary intention of speeding up the acquisition of Māori land for settlement. They found that, in many cases, native land laws had a disastrous impact on Māori society for a range of reasons. Most notably, Māori communities were denied a proper role in determining the ownership of their own lands, and community control of lands and resources was undermined by the kind of title created. Earlier Tribunals condemned the legislation establishing the court for failing to provide for an effective form of corporate title for Māori lands that would have empowered hapū. They criticised the costs associated with the system of title investigation, and how its shortcomings led to litigation that increased the burden on Māori attempting to obtain a title cognisable in the courts.

Previous Tribunals also impugned the Crown’s failure to protect Māori from the full onslaught of the land market when it waived pre-emption. A particularly problematic area is the Crown’s own role in the system that grew up around the land court, especially paying purchase advances on undefined interests in blocks, often before title determination. Legislation advantaged the Crown as a purchaser of Māori land, and survey and court costs contributed significantly to the escalation of Māori debt.

4.1.4 Unique features in this district?
In this inquiry, we ask whether these same criticisms apply in our district, or are there unique features or compelling reasons to regard the court’s introduction and the impact of native land legislation differently here? This is possible: in the southern part of the district, land had already transferred out of Māori hands before the court was introduced, though there had been only limited alienation in the northern Bush area by this time. (To understand our use of the term ‘northern Bush’, see the maps in section 4.1.6. We are referring to the northernmost part of our district inquiry area.) When the court was getting under way, the Wairarapa-based rangatira (chiefs) were seen as some of the most commercially experienced Māori in the country. They had sold much of the natural grassland areas, and were left with what Crown agents argued were their really valuable lands. These rangatira often appeared eager to hold these areas under a Crown-derived title. We must consider the possibility that there was also an interest in obtaining some form of individualised title. Did this mean that the effects of tenure conversion were conceivably less adverse and less prejudicial to the iwi of this inquiry district than elsewhere?

Other factors that might tend towards a distinctive local experience include:
- The particular pattern of customary tenure in the lands that went through the court (such as the difference between small, well-defined, and intensively utilised lands as against larger areas conceivably claimed by a number of descent groups);
- The particular laws under which titles were issued and the kinds of protections that were in place at any one time;
- The efficacy of local officials in overseeing protections, and the success (or otherwise) of district rangatira and hapū in managing and developing their properties after title conversion.

We return to these points in our consideration of the evidence.
4.1.5 Evidence
A number of historical reports were filed that directly concerned Native Land Court issues in the nineteenth century. There is overlap, but they deal with different issues, regions and time periods. Key reports are volumes two and three of Bruce Stirling’s overview and his specific report on Ngāti Hinewaka lands; Peter McBurney’s work on Tāmaki-nui-ā-Rua; a report by James Mitchell, commissioned by the Waitangi Tribunal, on Native Land Court processes in the period 1880 to 1900; Donald Loveridge’s generic research on the origins of the Native Land Court (filed first in the Hauraki inquiry); Bob Hayes’s reports on a number of related issues (notably, the trust commissioners, and debt and survey costs), and Paul Goldstone’s analysis of the court’s operation in the Wairarapa district from 1865 to 1882. We also draw from the various block histories submitted to us where necessary.

Looking at the different historical reports, it is not always possible to compare ‘apples with apples’ because researchers have researched different parts of our inquiry district for different time periods. In much of the discussion of the Wairarapa valley area, for example, we rely on Goldstone’s data because he presents the more detailed analysis, especially in relation to the Ruamāhanga blocks that dominated the court’s early sittings. For the wider picture, however, we turn to Stirling, who draws from wider sources and covers a more comprehensive time period. Even so, Stirling does not deal with Tāmaki-nui-ā-Rua blocks that went through the court system in the late 1860s and 1870s, nor the Ngā Waka ā Kupe blocks in the 1890s. For detail here we turn to McBurney, Stephen Robertson, Paula Berghan, and Michael Batson. Mitchell provides further figures for the period not covered in Goldstone’s report (post-1880) but, unlike Goldstone, looks at the inquiry district as a whole.

Given this overlapping, competing, and sometimes incomplete evidence, our figures can only be considered indicative. However, we take as our starting point the calculations provided in the Tribunal-commissioned report of Fiona Small and Dougal Ellis (‘Maori Land Blocks in the Wairarapa ki Tararua District Inquiry: Acreage and Alienation Data from 1865’), since they use data drawn from the whole of the inquiry district that were accepted by all parties. The data show that approximately 1,045,000 acres were in Māori hands at 1865 (after Crown purchases totalling more than 1,526,000 acres). By 1900, another 754,512 acres had been sold, leaving 278,000 acres in Māori ownership. Of the land sold, 81,852 acres (or 16 percent) were purchased privately.

4.1.6 How this chapter is organised
The material on the Native Land Court is covered in sections like this:

(1) Section 2: The court comes in
In this section we consider the origins of the Native Land Court and the extent to which Wairarapa ki Tararua Māori were consulted prior to its introduction to their district. What might they have thought they were getting with the land court? We consider:

- Was the court’s introduction in accordance with the expressed wishes of Māori of this district, or did they know nothing of it at all?
- What interest did Ngāti Kahungunu and Rangitāne show in the idea of a court to decide ownership and to bring about an individualised title?
- What might they have reasonably expected as the result of early discussions and experiments in sorting out questions of ownership?

(2) Section 3: Māori land legislation, 1865–73
In this section we briefly outline the major features of early native land legislation most relevant to our district.

(3) Section 4: The court and land purchasing in the Wairarapa Valley, 1865–80
In this section, we look at the nature of early Native Land Court and purchasing activity in the Wairarapa/Ruamāhanga valley area from the time of the first hearings.
in the district in 1866 through to 1880. In this part of our inquiry district, there was an early and intense period of court activity involving numerous, relatively small blocks in the fertile valley area, followed by mainly private purchasing. Most of these blocks had title determined under 1865 legislation. This required 10 or fewer owners to be named in the title of blocks of no more than 5000 acres, regardless of the actual number of customary owners. After a lull in the court’s activity, a number of blocks were also later awarded under the new (1873 Act) title system that required all owners to be named. Even so, the evidence indicates that a limited number of owners were placed in the title of many of these blocks too.

We look at the contrasting interpretations of this early period of the court’s operations given by Goldstone and Stirling. We are left with two sets of questions:

- Were recorded problems and complaints the exceptions? Were protections within the Native Land Court system more effective in this district, and detriment to Māori less, than examples and case studies might suggest?
- Can the interpretations based on an examination of the evidence for one part of the region and for a limited time period be applied more widely? Can reaction to the Native Land Court be measured only by the activities undertaken within it?

(4) Section 5: The court and land purchasing in the northern and southern Bush areas, 1865–80

Here, we examine the operations of the Native Land Court and purchase activity in a different part of our district from the Wairarapa itself – the Seventy Mile Bush area, which comprised most of the Tāmaki-nui-ā-Rua or Tararua portion of our inquiry district (see maps right and over).

The court began operating here in the late 1860s and early 1870s, but different features were apparent in the two parts. We look first at the northern or Tāmaki-nui-ā-Rua part of the Seventy Mile Bush area (which we call the northern Bush, and which is widely known today as the Tararua district) and then at the southern part of the Seventy Mile Bush (which we call the southern Bush). The Crown did not file evidence on these areas, and we rely on the evidence of McBurney and Robertson, and the block histories of Berghan.

Court hearings for these lands began in the late 1860s, but the most significant activity took place from the 1870s to the early 1880s. In Tāmaki-nui-ā-Rua (the northern Bush), which was a mahinga kai (traditional food gathering) area, rights were dispersed over a wide area. Fewer but much larger blocks were brought to the court. The 1865 legislation provided for the court to award blocks to a maximum of 10 owners, but this was intended to operate only where the blocks were 5000 or fewer acres. It was another thing entirely to apply the 10-owner rule to very large blocks, and then for non-residential chiefs to be among the 10 owners named.

We look into:

- the Crown’s role as purchaser, especially:
  - whether Crown agents encouraged the practice of naming non-resident chiefs on titles to undermine the position of resident hapū, because those hapū were less willing to sell;
  - how legislation privileged the Crown as purchaser;
  - how the Crown used the device of paying advances on undefined interests in blocks, sometimes prior to Native Land Court determination of title, and allegedly before communities had come to any decision regarding the disposal of their lands;
  - whether there was collusion between the court and Crown officials to favour those who had accepted advances;
  - whether the Crown was implicated in enticing Māori into debt, through advances on purchase and other means, and whether this was a deliberate ploy to reduce their options for dealing with their land;
  - the propriety of the Crown pursuing purchase of the Mangatainoka block, when Māori had
The area variously referred to in the nineteenth century as ‘Te Tapere-nui-ā-Whātonga’, ‘Forty Mile Bush’, ‘Wairarapa Bush’, and ‘southern Bush’. In this report, we refer to this area as the ‘southern Bush’.
The area variously referred to in the nineteenth century as 'Forty Mile Bush', 'the Tāmaki', 'Tāmaki-nui-ā-rua', and 'the northern Bush'. In this report, we call it the 'northern Bush', but for practical purposes this means that part of the northern Bush that lies within this inquiry district.
deliberately and consciously classed it as ‘not for sale’;
- whether entitled owners were excluded from the legal title not only because of the 10-owner rule, but also because they were known opponents of sale; and
- the adequacy of the court’s investigation of title, of the title options available, and of the title provided.

(§) Section 6: The court and land purchasing in Wairarapa ki Tararua, 1880–1900

Our focus in this section spans the whole district, and concerns the Native Land Court’s operations and land purchasing from the 1880s to around 1900. For many communities, the blocks subject to new and further court action during this time represented the last significant areas of land they had left. In many cases they were also subject to further court action and alienation under an altered legislative regime, including reforms as a result of criticism and concerns from Māori. We briefly consider the most relevant of the changes in native land legislation. We consider the Crown’s portrayal of the land court, overall, as a Māori-driven institution imposing no undue burden in terms of hearing duration, costs, and so forth. We rely here on the block histories of Batson and Berghan, and the general reports of Stirling and McBurney in particular.

We look into:
- the effect on Māori of the continued unavailability of a legal means of recognising corporate ownership of land;
- the implications of court processes such as partitions (how easy it was for individuals to initiate these without the consent of other owners); successions (how interests were becoming fractionated); and measures to secure survey debts against Māori land;
- court costs and other expenses (including surveys) associated with taking land through the court, and the role these played in growing Māori debt;
- historians’ differing views on whether protective mechanisms like trust commissioners and restrictions on alienation were effectual;
- the effectiveness of legislative attempts to remedy the impacts of the 10-owner rule;
- the Ngā Waka ā Kupe block’s passage through the court, and the issues raised in a case study of the experience of one owner, Niniwa-i-te-rangi, and her battle to hold on to her land in the face of mounting debt; and
- the Crown’s role as purchaser of blocks in the north of the district, and in particular its purchases of lands that Māori tried to reserve from purchase as tribal blocks (Mangatainoka) or by restricting alienation (Tāmaki, Pōpiri).

(§) Section 7: The response of Wairarapa ki Tāmaki-nui-ā-Rua Māori to the court

Section 10 considers Māori political responses to the court, land legislation, and purchasing in our district.

From 1874 to 1880, there was a long break in court activities in this district. The historians who gave evidence debated its significance: was it a hiatus (Goldstone), or a boycott that comprised only one of a range of strategies Māori employed to express their dissatisfaction with the court.

We look at the role of rangatira in our inquiry district in the important Māori political movements of the time: the ‘Repudiation movement’ in the 1870s, and the Kotahitanga movement beginning less than two decades later. Both movements sought reform of the court and land legislation to give greater powers of title determination and land management to Māori. We trace the emergence of Pāpāwai in the 1890s as an important site of Māori learning and politics, and see how Wairarapa men (Hāmuera Tamahau Mahupuku, known as Tamahau, and Tē Whatahoror Jury) led the moderates in the Kotahitanga. The Pāremata (a self-governing representative Māori political body) developed as a credible alternative to the New Zealand Parliament as a law-making institution for Māori, bringing to their tasks a blend of Māori and Pākehā methodology. Core demands to emerge included the empowerment of komiti (Māori councils) to undertake a meaningful role in title
Hāmuera Tamahau Mahupuku

Hāmuera Tamahau Mahupuku is mentioned many times in this chapter, and throughout the report (in his own time, he was known as Tamahau and this is what we tend to call him too). Born in the same year as the Treaty of Waitangi was signed, he was a leading figure in this inquiry district right up to his death at Pāpāwai on 14 January 1904.

Europeans of his day regarded Tamahau as one of the most progressive Māori. To the large Māori community at Pāpāwai, he was father and leader. His prominence is signified by the marble monument erected in his memory at Pāpāwai, which was unveiled in 1911.

Tamahau descended on his father’s side from Kahungunu and Tara, and his mother was of Ngāti Hikawera. Little is known of his early life. He was handsome, was known as a rather wild young man and mixed much with Pākehā. He had three wives; the marriages were concurrent. He had no natural children though, and his whāngai (adopted child) died young.

His second wife Raukura brought Tamahau into contact with Te Mānihera Te Rangitākaiwaho, who appointed him his heir in matters to do with the people. This appointment was one foundation of Tamahau’s leading position at the growing Māori centre at Pāpāwai; the other was the Mahupuku wealth. Tamahau was heir to the estate of his elder brother Wiremu Hikawera – known to his contemporaries as Wī – Mahupuku, including his extensive landholdings. He fought attempts by other rangatira to sell Ngā Waka ā Kupe, and worked in the Native Land Court as an assessor and agent. He was
credited with breaking the deadlock over Wairarapa Moana and Ōnoke, arranging for its ceremonial gifting to the Crown. After that, he was regarded as a personal friend of Seddon.

He underwrote many activities of the Kotahitanga, and sponsored the development of Pāpāwai as a new centre for Māori. He is said to have spent more than £40,000 on various projects from 1894–1904. At hui at Pāpāwai and Kehemane, he was host to thousands. A brass band he supported played at functions and accompanied him on his visits into town.

After his death, the glory of Pāpāwai faded. It was no longer the place where the Government and Kotahitanga met and discussed the issues of the day. No one replaced him; nor could others afford the huge manaakitanga (hospitality) of the past. The tōtara palisades at Pāpāwai gradually fell down, and at Kehemane on 31 December 1911, the whare Tākitimu burned to the ground. What Te Kooti had predicted at its opening now came to pass: only the wind blew there.

The Wairarapa Mounted Rifles, a Māori company funded by Tamahau whose members are seen here in hats with the brim raised on one side. In 1901, Tamahau offered to raise and finance a Māori force to fight in the Boer War. The British Government had decided to use only white troops and refused the offer.

The Hikurangi Brass Band

Māori group including mounted rifles
determination, land management, and community affairs. By the turn of the twentieth century, the Kotahitanga seemed to have won some important concessions from the Crown, although they proved ultimately to be less than they seemed.

(7) Section 8: Findings and recommendations
Finally, in section 8 we summarise the main issues and outline our findings and recommendations.

4.2 The Court Comes In
4.2.1 Consultation about a land court?
In this section we consider the origins of the Native Land Court and the extent to which Wairarapa ki Tararua Māori were consulted prior to its introduction to their district.

In order fully to understand the Native Land Court as it was introduced in 1865, we need to traverse briefly how Crown policies on land title determinations developed from 1860. In particular, we must inquire into how those policies were promoted to Māori in this inquiry district.

It was at the Kohimārama Conference, the hui of chiefs that the Government convened near Auckland in July and August 1860, that Governor Gore Browne and Donald McLean proposed to Māori a formal mechanism for adjudicating titles to land held under customary tenure. The matter was further taken up by Grey as part of his ‘new institutions’ in 1861–1862 (see sec 4.2.4). It was also discussed at hui with Ngāti Kahungunu in the context of settling disputes arising out of informal leases in the southern Hawke’s Bay in 1862. A key idea conveyed to rangatira by Crown officials on all these occasions was that Māori would themselves be empowered to play a key role in the title adjudication process, and would exercise substantial control over subsequent land alienations. The Native Lands Act 1862 also provided a significant opportunity for Māori involvement, even though Māori were not directly consulted before the Act was passed.

4.2.2 The Kohimārama conference, 1860
Over 200 chiefs attended the conference at Kohimārama in July 1860. The Governor’s intention was to isolate the Kingitanga (the Māori King movement founded in the 1850s, whose supporters were not in attendance), and to draw ‘loyal’ or wavering tribes into a closer relationship with the Crown. Wairarapa Māori were told, when they queried the invitation to attend, that Governor Gore Browne wished to institute a ‘new system in reference to their affairs’ which would ‘make matters clear and smooth for the future’. Many ‘non-Kingite’ Wairarapa chiefs attended. Governor Gore Browne’s opening address stressed the benign and protective elements of the Treaty of Waitangi, which would, he insisted, continue to be applied to those tribes who remained loyal and eschewed involvement with the Kingitanga.

Responding, the Wairarapa chiefs generally expressed their desire for peace and better unity with Europeans and the Crown. Rāniera Te Iho, for example, told the Governor that his words were good: ‘that the Pakeha and Maories [sic] should cleave to each other and live together, and work together, and that they should be of one mind. These words were spoken by the first Governor. They have remained down to the present time and are now spoken by you. Your words are all to the same effect: they all mean good’ (See sidebar right.)

Over succeeding days, a number of topics were canvassed. These included events in Taranaki and Waikato, a perceived inequality of the races under the law, the administration of justice, Māori participation in the governing councils of the colony – and the determination of land titles. The Governor saw the need for a mode of determining titles as especially critical in the wake of the Waitara debacle.

A few days into the conference, Native Secretary Donald McLean read out a second message from Governor Gore Browne to the assembled chiefs inviting them to consider how land disputes might be resolved. The Governor claimed that almost all the ‘feuds and wars’ between the
Rāniera Te Iho’s Letter to Governor Gore Browne, Kohimārama Hui, 14 July 1860

To the Governor,
Friend, Salutations to you! I have come into your presence to hear your words. The words I sought are those which you have spoken, that is, that the Pakehas and Maories should cleave to each other and live together, and work together, and that they should be of one mind. These words were spoken by the first Governors. They have remained down to the present time and are now spoken by you. Your words are all to the same effect, they all mean good. Friend, I must say to you concerning this word, that our union is nominal – that our bodies are united, while our hearts are divided, that is to say, the hearts of the Pakehas and of the Maories. The cause of the separation is this: some Pakehas, both low people and gentlemen, have said that we, the Maories, are dogs in your estimation. These words are not of today, but from the time of the first arrivals of the Pakehas to this island these words have been used. There is only one word that is true, and that is the word of God. These words of men are of two kinds, good and evil. These words have a tendency to separate us.

Your word also about the protection of this island by the power of the Queen, which secures us from aggression by other nations, is correct. The island is preserved in safety by the name of the Queen. Your request that I should speak my thoughts, that you may hear them, is also right.

Friend, the Governor, – I gave my land whilst the sun was shining. The parts that were retained were named whilst the sun was shining. The portions that were returned by the Queen were named whilst the sun was shining. Nothing was done in the dark. These lands are not yet settled so that each man may have his own. This has caused other thoughts to spring up; the lands not being speedily settled. Friend, this is why some men have made themselves a King. In my opinion there is only one true King, even Jehovah in Heaven, and all people who dwell beneath the skies should serve him only.

Friend, the Governor, – I heard nothing good of the first Governor. Only one Governor has conferred on the Maories the good things of the spirit and of the body, and has taken notice of the Maori children.

Friend, the Governor, – these words that you have spoken will not come to pass because the evil has now become deep. Why did you not devise some mode of proceeding during the years that are now passed. Now that this island is in confusion through the King movement, and through fighting, do you for the first time take steps in the matter.

Friend, I will not say many more words to you, for this reason that I and my Pakeha friends are living together under one law.

This is all I have to say to you.

From Rāniera Te Iho-o-te-Rangi

tribes ‘originated in the uncertain tenure by which land is now held’. Therefore it was essential that ‘some general principles’ regulating the boundaries of land belonging to different tribes should be developed, for until the rights of property were clearly defined, ‘progress in civilisation must be both slow and uncertain’. Gore Browne suggested that land disputes might be referred to a ‘committee of disinterested and influential chiefs’, selected at a conference similar to the Kohimārama gathering. Another alternative was for arbitration by a panel of chiefs along the lines of a system adopted in India. The system to be adopted should:

see the chiefs and people of New Zealand in secure possession of land, which they can transmit to their children, and about which there can be no dispute. Some land might be held in common for tribal purposes, but he would like to see every chief and member of his tribe in possession of a Crown Grant, for as much land
Crown Grant for as much land as they could possibly desire to use. He invited the chiefs to consider the question, declaring that he would cooperate in any plan they might devise, 'provided it will really attain the desired end.'

McLean himself reiterated and emphasised the importance of defining tribal boundaries and subdividing land ‘among tribes, families and individuals’, as this would ‘secure to them their landed rights on a more certain foundation; and permit them to bequeath land to their descendants, whose possession would be secure and undisturbed.’ He argued that secure land titles were the essential prerequisite of wealth and advancement. Unless ‘doubtful’ Māori tenure were replaced, ‘no improvements would be made, and the country would still remain in a comparatively wild and unproductive state – without a numerous people to inhabit it – without law, without Government, without security of life and property and without wealth.’ Implicit in all the talk of secure tenure was the notion that customary titles to land would be replaced, at least to some extent, by some form of individual title.

McLean told the chiefs not to decide hurriedly on this most important matter, but to return to their homes and discuss the question with their people. The issue might then be addressed at a further conference to be held the following year. The Wairarapa chiefs attending appear to have taken McLean’s advice and decided not to speak until they had consulted their people. In their written replies to the Governor’s opening address they did, however, refer to uncertainties about the reserves made during the earlier round of Crown purchases. The immediate issue for the chiefs was not a lack of Māori law or supposedly unworkable customs, but rather uncertainty and conflict caused by Crown actions. About reserves, Rāniera Te Iho wrote ‘these lands are not yet settled so that each man may have his own’, and this had caused difficulties. Karaitiana Te Kōrou and Wiremu Wāka agreed, writing, ‘the portion of land set apart by the Governor for each individual is not clear, inasmuch as he has not received any document to confirm his title.’ Ngātuere Tāwhirimātea Tāwhao

as they could possibly desire or use. When a dispute arises about a Crown grant, the proprietor need neither go to war nor appeal to the Government: he can go at once to the proper Court, and, if he is right, the Judge will give him possession, and the law will protect him in it.

The essential goal, the Governor explained, was to see ‘every Chief and member of his tribe in possession of a
(known as Ngātuere) also welcomed any move to resolve the ‘confusion’ over reserves.63 Although McLean asserted that Māori custom law was unworkable and formed an impediment to the orderly settlement of land titles and boundary issues, he and the Governor projected optimism about finding a solution. And that solution would involve a high degree of Māori agency and control through some form of rūnanga (assembly).

The key points that McLean and Gore Browne made were that:

- a secure form of tenure was required;
- this would result in secure possession of land, under a tribal or individual title; and
- title and boundaries would be determined by ‘disinterested’ chiefs, or would be the subject of arbitration by a panel of chiefs.

Given that many Wairarapa Māori wanted to obtain secure titles so that they could engage fully with the developing settler economy, none of this was likely to have been objectionable to them – especially as the Governor was holding out the prospect of a Māori forum determining titles. Gore Browne had promised that the Kohimārama Conference would become an annual event and, had this occurred, Wairarapa and other Māori would no doubt have continued to develop their ideas on the best means of deciding land titles. Stirling relates how, in September 1861 (a little over a year later), Wairarapa Māori themselves sought the formation of a tribunal ‘for the settlement of their disputes about land’. This included disputes with settlers and with the Crown arising from poorly defined boundaries, and from the ways in which Crown land purchase commissioners were recognising, or failing to recognise, relative customary rights.64

But no further conferences were convened. Gore Browne’s successor, George Grey, had altogether different ideas about the participation of Māori in their own governance and the manner in which land titles were to be ascertained.

### 4.2.3 The Kingitanga

By the end of the 1850s, a number of Wairarapa Māori had turned to the Kingitanga in the wake of ongoing dissatisfaction over Crown land purchasing in the region and Crown actions in Taranaki and Waikato. The King movement in Wairarapa was well organised in the early 1860s, and a ‘King’s Rūnanga’ was in place at Pāpāwai, where well-attended quarterly hui were held.65 Stirling points out that a fundamental premise of the King movement was that land sales should cease, but by this time many Wairarapa Māori held this view, and their allegiance might be to either the Kingitanga or the Kawanatanga.66

Crown officials tended to characterise the King movement in Wairarapa as a subversive ‘anti-land-selling-league’, opposed to the Treaty and the Queen’s sovereignty.67 Many historians have argued, however, that although the King movement sought an end to land sales, it was not opposed to the Queen’s sovereignty. Instead, the Kingitanga sought to regulate the manner of engagement in a way that would best serve Māori interests, including retention of remaining land and Māori mana. Indeed, the ‘Kingite’ Rūnanga were at least partly established in order to provide a local system of law and order in the absence of effective European courts.68

The rūnanga were studiously ignored by Europeans and Crown officials as a matter of policy. Indeed, Stirling notes that although the movement to establish rūnanga was to some extent independent of the King movement – ‘loyal’ Māori also supported rūnanga – Crown officials conflated the two and condemned supporters of either as dangerous subversives opposed to the Queen’s authority.

### 4.2.4 Grey’s ‘new institutions’

Governor George Grey arrived to take up his second governorship in 1861. Reluctant to ‘call a number of semi-barbarous natives together to frame a constitution’, he quickly rejected his predecessor’s plans. Ideas he discarded included holding an annual Kohimārama Conference, and establishing a Native Council of leading chiefs and settlers.
to sit with the Governor to develop laws for Māori, including a means of adjudicating Māori land titles. Instead, Grey sought to exercise a form of ‘indirect rule’ through the establishment of ‘new institutions’, and thereby undermine the Kingitanga. Grey’s ‘official’ rūnanga were to be served by a range of salaried Māori officers, including policemen and assessors (or whakawā), who would work with European resident magistrates to frame and enforce a range of bylaws, and play an important role in the provision of schools and medical services. Another key role of the ‘official’ rūnanga was to determine land titles and boundaries, and once this had happened, to manage land alienation. This proposal envisaged the preservation of tribal authority over land, during both the process of title determination and alienation.

Grey apparently did little to promote the ‘new institutions’ in the Wairarapa, focusing instead on other districts. Although people were appointed to new rūnanga in 1862 and 1863, the Kingitanga rūnanga remained the key form of Māori social and political organisation, and some ‘official’ appointees – including Ngātūere – were later suspended because of their ongoing support for the King. Nevertheless, Grey’s ‘new institutions’ did show that the Crown was capable of sanctioning and working with Māori rūnanga, even on land title and boundary issues, where necessary. Grey and his officials may have been more concerned to counter the Kingitanga and advance Crown influence over the tribes than to recognise rangatiratanga (chiefly authority), but a form of Māori self-government through rūnanga in partnership with Crown officials did emerge. The central North Island Tribunal found this model to be broadly compliant with the Treaty.

### 4.2.5 The Native Lands Act 1862

A further plank of the ‘new institutions’ approach emerged in 1862 through the provisions of the Native Lands Act passed in that year. The preamble asserted the necessity of assimilating the ownership of land as nearly as possible to English law, and the Crown surrendered its pre-emptive land purchase right, enshrined in article 2 of the Treaty. Under section 7, a Māori tribe, individual, or community could apply to the Native Land Court for a certificate of title. While there was no machinery to ensure that the Māori owners could control the alienation process in the newly open land market, and individual Māori might make applications without the approval of the wider community of owners, the Act did envisage some important elements present in Grey’s original rūnanga scheme. Title adjudication would be carried out by leading chiefs acting as Māori judges (or assessors), and by local juries acting under the chairmanship of the local resident magistrate.

In short, the court as constituted under the 1862 Act was to be a predominantly Māori body. The majority of the judges were Māori, presumably the leaders of their day, and they had decision-making power. Individualisation of title was, moreover, not the only option under the Act. Tribal or community titles could be issued, and the tribe could subsequently apply to subdivide their lands – at least some of which, the settler community hoped, would then be available for alienation. The Kaipara district was chosen as a pilot for this ‘prototype’ Native Land Court, and by all accounts appears to have worked reasonably well, and might have formed the basis of a court more attuned to Māori aspirations. The style of the court (under Judge John Rogan) was facilitative rather than adjudicative, and encouraged consensus. As the Tūranga Tribunal observed, this was ‘a Maori forum operating in an essentially Maori way’.

### 4.2.6 The Crown modifies its approach

Between 1860 and 1862, the Crown held out to Māori a series of proposals and models for land title adjudication, and went some way towards implementing them. Although ultimately aimed at land title individualisation and assimilation, these proposals:

- foreshadowed a high degree of Māori agency and control;
- provided Māori with options;
Rūnanga

By the 1860s, many Māori recognised that there was a need for some form of official recognition of their ownership of particular lands so that they could not be claimed by others, and so that they could be utilised in the western economy.

In the southern Hawke’s Bay as well as in the Wairarapa, informal leases continued to give rise to questions about distribution of grass monies. In 1862, Crosbie Ward, the Secretary of Crown Lands, was sent to the district to sort out the problem. Ward noted that native title was in a ‘very well defined state’ and that ‘all parties among them’ were ‘ready to submit their boundaries and their claims for the sanction of the runanga’. When he explained Grey’s scheme of ‘new institutions’ to them, describing ‘the advantages which they would gain, and the corresponding liabilities which they would be under; the chiefs expressed their approval of the plan, ‘having hoped for something of this kind for at least two years’.

According to Ward, Ngāti Kahungunu wanted to deal with their lands ‘as a whole as much as possible’. He said they envisaged a system whereby:

ownership of a certain block would be vested formally in a certain division of the tribe: that all minor arrangements respecting its management will be transacted by the lesser Runanga of that division; and that all such divisions will permit the great Runanga of the district to keep under its control all matters of importance respecting all the lands.

Ward characterised the rūnanga as giving a right of occupation in particular holdings to the individual, establishing a tenure by ‘custom and consent’ which might eventually be changed into fee simple, and argued that this would produce a better result for the Government than ‘any immediate attempt to individualise title, or break up the lands of the tribe amongst its members’.

- permitted the application of tikanga; and
- did not necessarily involve immediate individualisation or alienation.

After the Crown’s military success in the Waikato, however, colonial politicians no longer saw the need to proceed cautiously. The ‘new institutions’ – Grey’s ‘official’ rūnanga – were starved of funds, and by 1865 were largely defunct.

The Crown also radically changed the manner in which Māori land titles would be determined, abolishing the localised, flexible, and Māori-driven courts created under the 1862 model in favour of a national and more formal body controlled by Pākehā judges. These changes, which were pushed through at the end of 1864, were later embodied in the Native Lands Act passed in 1865.

While the Crown considered it expedient to dispense with these more Treaty-compliant measures and proposals after 1864, these models – commencing with the broad concept laid out by Governor Gore Browne in 1860 – were conceived in a time when it was thought necessary to devise ways of working with Māori to settle land disputes and boundaries. They were not set aside because they did not work, or because land titles were unable to be resolved by Māori working through their own tribally-based organisations. Rather, they were dropped because they were ultimately judged insufficient to meet the Crown’s policy objectives, which were large-scale land acquisition and closer European settlement. The changes were imposed and not discussed. We agree with Stirling’s assessment that, from 1865 on, the role in the Native Land Court of Māori and their customary usage of land was significantly reduced.
4.3 Māori Land Legislation, 1865–73

4.3.1 Introduction

We now consider to what extent land legislation enabled Wairarapa Māori to control the title adjudication and alienation process in a manner suited to their needs and preferences. To a large extent, we rely on the analysis and findings of earlier Tribunals, in particular the Tūranga, Hauraki, and central North Island Tribunals, and to a lesser extent those for Kaipara and Te Tau Ihu. Indeed, most of the Crown’s evidence submitted in this inquiry was originally filed in the Hauraki and Tūranga claims. Because the key issues have been discussed in detail by those Tribunals in their reports, we traverse them again only briefly.

The essential features of the land legislation were established by 1873, and remained essentially operative for the remainder of the nineteenth century. Further legislative tinkering was largely superficial in intention and effect, and did not overturn the basic premises of the Acts passed between 1865 and 1873, or ameliorate its adverse effects.

The Acts had two primary shortcomings:

- Māori were excluded from the process of determining title, participating only as applicants, objectors, and assessors whom the judge outranked. Though Māori would consistently demand some way of deciding questions of land ownership for themselves, Government responses invariably fell short of meeting these aspirations, and promising initiatives were always soon reversed.

- The Crown failed to provide appropriate forms of title for Māori land. Importantly, there was no effective corporate title until at least 1894. By this time, as we discuss in later sections, it was too late for this district. The corporate title finally provided was still flawed, but that did not matter for the purposes of this inquiry as most of the land in Wairarapa ki Tararua had already passed through the court and was sold. Corporate ownership was no longer an attractive, or even a viable option.

4.3.2 The Native Lands Act 1865

The Native Lands Act 1865 was the beginning of the end of Māori aspirations for collectively managing and controlling their own lands and resources. It formalised the shift to the more centralised and European-controlled system of title adjudication that had been signalled in various Gazette notices between December 1864 and January 1865. These included the abolition of all existing districts under the 1862 Act in favour of a single national court, headed by a Pākehā chief judge.

These changes consolidated in the Native Lands Act 1865 were revolutionary, with extraordinary impact on Māori land tenure and society as a whole. Yet none of the changes were discussed with Māori. The Native Lands Act 1862 had preserved some of the principles of the ‘new institutions’, particularly an emphasis on Māori involvement at a decision-making level. But this was largely removed in 1865 with the creation of the Native Land Court in its classic form. Rather than the chiefs sitting under the chairmanship of the local magistrate, the legislature opted instead for a formalised ‘English style adversarial Court’ under the effective control of a Pākehā judge who would apply the ‘best evidence rule’ – or, in other words, would take cognisance only of the evidence presented in the courtroom, even if contradicted by other information. In addition, the 1865 Act provided that the transformation of customary tenure would occur immediately and not on a subsequent application to subdivide the tribal estate as had been envisaged under the 1862 Act.79

A general ‘downgrading’ of Māori customary usages, involvement, and control after 1865 is also evident in the switch from Māori sitting as full judges to their occupying a new post: assessors. The status of Māori who sat on the Bench under the 1862 Act was equivalent to the Pākehā official appointed, save for the latter being the presiding officer or ‘president’.80 The Māori judges were rangatira from the district itself, and their vote was decisive. Only in the event of disagreement would the Pākehā president’s vote prevail. After 1865, the judge was always the effective decision maker, as historian David Williams notes. In
1867, only one assessor was required to sit with the judge; in 1873, it was possible for an assessor to sit with a judge, but his agreement was not necessary. The need for a single assessor’s agreement was restored in 1874, but dispensed with again in 1894. As the central North Island Tribunal found, the role of assessors was circumscribed within the tight constraints of a Pākehā system of determining title, and the appointment of an assessor from outside the district to assist the judge was not a substitute for a locally-based process of title determination according to Māori custom.

4.3.3 The 10-owner rule

Another important feature of the court after 1865, and one critical in this inquiry district, was the ‘10-owner rule’. This was the requirement that the court award title to all blocks of less than 5000 acres to 10 or fewer owners, under section 23 of the Native Lands Act. The intention was that large blocks with many owners would be subdivided into smaller portions with no more than 10 owners each. But FD Fenton, chief judge of the Native Land Court, arbitrarily adopted the practice of awarding whole unsubdivided blocks to 10 of the principal owners, regardless of whether the lands were more than 5000 acres in extent. Although it was generally assumed by the hapū that those named on the titles were trustees for the wider community of owners, legally they were absolute owners who might freely alienate the land without consultation with others. Māori communities were often anxious to avoid the expense of subdivisional surveys. They did not at first realise that the 10 nominated owners could be drawn into mortgaging or selling hapū lands, but were denied legal redress. Chiefs sometimes proved easy prey for speculators, who entangled them in debt and threatened court proceedings.

The Tūranga Tribunal found that problems associated with the 10-owner rule did not reflect an erosion of chiefly authority or a breakdown in the relationship between the chiefs and their hapū, but were created by the court itself. This was not an evolutionary process, but was rather created by the individualising tendencies of the Land Acts. The court cut the people out and left the chiefs to act as autonomous individuals, sometimes to the detriment of their people.

In this inquiry district, the extensive Crown purchasing before 1865 had already put the relationship between rangatira and their hapū under considerable strain. There were other forces at work, too, but regardless of what was happening in terms of the ‘commodification’ of land, we see the Crown’s deviation from known best practice in land purchasing as crucial. Māori wanted to find a way of thwarting the Government’s practice of favouring certain chiefs and using them to purchase land without community perusal or consent. This was partly what motivated experimentation in the 1850s and early 1860s with unofficial rūnanga, and the emergence of the Kingitanga movement.

The 10-owner rule allowed tribal hui to be bypassed altogether and failed to provide any legal recognition to authority exercised at the iwi or hapū level. We deal later with related arguments about whether little prejudice was suffered by Wairarapa Māori because land was already held by whānau rather than by hapū, or because local Māori, in fact, wanted to be able to deal with land without reference to the wider community.

We reiterate the findings of earlier Tribunals that the form of title offered was grossly deficient in Treaty terms. Under section 23 of the Native Lands Act, legal authority was bestowed on only 10 of those who held customary rights when there were usually many more. At the same time, it failed to make those named owners legally responsible to other right holders, although it was intended that they would act as their trustees. The end result was that right holders were dispossessed of their lands. The deficiency of the measure was greatly exacerbated by the lack of alternatives for Māori wanting to gain a title recognised by the courts and usable in the colonial economy. In our view, no significance can be given to the ‘tribal title’ mentioned in section 23 of the 1865 Act. Across the whole of the country, we know of only one or two occasions when
such titles were issued. The whole thrust of the 1865 Act was geared towards destroying tribal ownership of lands, not legitimating or recognising it. Crown witness Bob Hayes acknowledged during cross-examination that the legislation was unsatisfactory:

I note that the Crown has acknowledged that there are questions as to the quality of title options made available to Maori through the Native Land Acts and I entirely agree with that acknowledgement. I think it's a problem. I think there is a lack of choice.87

Hayes suggests that by the 1850s, the idea of Māori dealing with land as individuals was not necessarily alien to their society. He accepts, however, that the Crown failed to provide an effective corporate title for those who did want to manage their lands collectively.

4.3.4 Native Lands Act 1867, section 17
When policy makers realised the problem that had been created by the 1865 Act, they attempted limited reforms – but without abandoning the overall objectives of putting Māori into possession of defined properties and facilitating land alienation. The Native Lands Act 1867 was a 'remedial' measure designed to modify or remove the worst aspects of the 10-owner rule by ensuring that all owners were named in what was effectively a hapū list. This removed any legal doubt that the 10 named owners under the 1865 Act were indeed intended to be trustees, even though the legislation itself had been silent on this point.

Under the 1867 Act, the court was obliged to ascertain all owners. If there were more than 10, and if they could not agree to partition land to comply with the 10-owner rule, the court was obliged to issue a title under section 17 of the legislation. Ten owners were listed on the front of the certificate of title; the names of all other owners were entered on the back of the title. The 10 named owners on the front had the power to lease land for 21 years, but they could not mortgage or sell without the agreement of the others. A majority of all the owners was required to agree

in order to subdivide and partition out interests if they wished to sell.

Section 17 was rarely implemented either in this or in other districts.

Chief Judge Fenton opposed the measure as contrary to the Native Land Court's overall objective of eliminating communally-held land, and wrongly declared that the 1867 amendment was discretionary rather than mandatory. Other judges followed his lead and simply refused to implement the provision in many cases.

It is not clear whether Māori actively rejected the option of using section 17, or were unaware of its existence. There is evidence of cases where Māori seem to have wanted to put fewer chiefs on the titles, whether to simplify subsequent land sales or for other reasons. However, translated copies of the Land Acts were hard to come by and they may simply not have known about it. In Professor Ward's view, 'The fact that self-interested Maori and doctrinaire judges acted to prevent the use of section 17 (or apply any other principle of trusteeship to the 10 owners) scarcely warrants the Crown's inaction.'88

Goldstone identifies only seven instances of title awarded under the section 17 provision out of nearly one hundred cases investigated in the Wairarapa before 1874.89 He argues that Native Land Court judges demonstrated no hostility to the provision and makes the point that at least some Māori must have been aware of this title option.90 He does not consider the practice of the court in the northern Bush. It is difficult to draw firm conclusions from such a limited sample, but it seems to us that the success of the measure depended on the willingness of judges to recommend it and agree to its use. Section 17 was very occasionally suggested by the court as a way of settling disputes about ownership, or to ensure that all owners were paid where monies had already been advanced to some parties. Of the seven cases noted by Goldstone, only two (Mātaikona, 18,000 acres and Motuwaireka, 630 acres) came about as a result of direct Māori requests rather than at the court's suggestion.

Judges very occasionally implemented section 17, but
in the overwhelming majority of cases continued to issue title to 10 owners or fewer – even in cases where it was explicitly stated in court that others had land interests. This happened sometimes in the Wairarapa, but was more starkly demonstrated in Tāmaki-nui-ā-Rua, where large blocks were regularly awarded to a few owners only. The lack of support for the provision was also apparent in other ways. For example, although sometimes the court advised Māori that titles needed to be awarded under section 17 (or the block subdivided) there is little evidence of efforts to explain the Act to Māori. As late as 1871, Hawke’s Bay Māori were unaware of its existence.91

The basic goal of dividing hapū lands into small farming blocks remained the same. According to Chief Judge Fenton, the sort of title contemplated by section 17 was not consistent with the general thrust of Government policy and the ‘essential object’ of the Native Lands Acts, which was individualisation and the destruction of ‘tribalism’.92 As Fenton later declared:

The whole theory of the Native Lands Act, when the Court was created in 1862, was the putting an end to Maori communal ownership. To recognise the kind of agency contended for would be to build up communal ownership, and would tend to perpetuate the evil instead of removing it.93

Crown historian Bob Hayes accepted that Fenton and his fellow judges were wrong and did not have the discretion they claimed as to whether or not to implement the provision. The Act obliged the court to ascertain all owners and where claimants refused to partition to comply with the 10-owner rule, it was then required to issue a title under section 17, or none at all.94 Later court decisions made under the Native Equitable Owners Act 1886 and related legislation criticised earlier court practice in this regard. These judgments said that the court’s failure to implement section 17 in the case of the Tāmaki and Piripiri blocks breached its fiduciary duty.

4.3.5 Mounting criticism of the Native Lands Acts

A further amendment in 1869 was also designed to correct some of the problems which had arisen with the 10-owner rule, by making the grantees tenants in common rather than joint tenants. Instead of allowing individuals to mortgage and sell their shares without reference to other grantees, the Act required a majority in value (that is, those owning a majority of the shares rather than a majority of owners) to agree to the alienation. It did not, however, prevent the piecemeal purchase of individual interests until a majority had been secured. In addition, the Act also enabled any grantee to apply for a subdivision and the ascertaining of an individual interest, which could then freely be sold.95

In practice, the Native Lands Act 1865 still dominated proceedings and neither it nor the Native Land Court served Māori needs. This was evidenced by opposition expressed by Māori at the 1871 Haultain commission of inquiry, and later at the 1873 Hawke’s Bay Land Alienation Commission. Prominent Pākehā such as Sir William Martin and Edward Shortland shared many of their concerns.

By the early 1870s, the Government could not ignore the mounting pressure for more radical changes in the Native Lands Acts. In 1871, problems generated by the 10-owner rule, the failure of the court to ascertain all owners in blocks, and controversy over aspects of the land market, meant that something had to be done. One of the steps taken by McLean was to commission the former Chief Justice Sir William Martin to draft a new Native Land Bill. Martin recommended several major changes, including introducing a preliminary investigation to check that applications to the court were supported by a majority of the owners. He also proposed active protections like inalienable reserves, minimum acreages per person, purchase by public auction only, and court supervision of the distribution of payments. Chief Judge Fenton labelled some of Martin’s proposals ‘ridiculous’. He submitted his own draft bill. This also made pre-title dealings illegal, but otherwise tended to strengthen the authority of the court.96
McLean’s Failed Native Councils Bill, 1872

In the early 1870s, Māori communities wanted rūnanga or komiti to be empowered to legally decide titles and to have powers of self-government, in partnership with Government officials. The then Premier of the time, George Waterhouse, put a choice to Parliament: the komiti movement could be ‘availed of beneficially’, or, if it be disregarded, this agitation may be attended with injurious consequences.

Native Minister McLean – seeking to ‘direct the movement’, as Waterhouse phrased it – had drawn up a Bill to give effect to at least some Māori aspirations and to make the komiti movement a ‘source of strength to the colony’.

In introducing his Native Councils Bill to the House of Representatives in October 1872, McLean acknowledged that Māori were entitled to make their own collective determinations of title and that they were the most capable of doing so:

They [Māori] were themselves the best judges of questions of dispute existing among them. No English lawyer or judge could so fully understand those questions as the Natives themselves, and they believed that they could arrive at an adjustment of the differences connected with the land in their own Council or Committee, very much better than it would be for Europeans to do. He hoped honourable members would accord to the Native race this amount of local self-government which they desired. He believed it would result in much good, and whatever Government might be in existence would find that such Committees, with Presidents at their head, would be a very great assistance in maintaining the peace of the country.

This was official recognition of the need for greater Māori participation in the title adjudication process by means of their own customary-based institutions – before the passing of the Native Land Act 1873, which gave them no such thing.

There was some support among European members of Parliament for the idea of native councils as a way of satisfying Māori feeling and preventing a further outbreak of war, and there was strong support among the Māori members. Otherwise, and though the Bill did not provide for a collective title or directly interfere with the individualising of Māori tenure, it got nowhere. Many in the colonial parliament were suspicious of McLean’s motives, fearing that such a measure would undermine the authority of the Native Land Court, while resenting the potential for settlers living in outlying districts to be subjected to the rule of rūnanga. These opponents argued that the Bill had been introduced too late in the session for proper consideration. McLean withdrew the Bill, and reintroduced a watered-down version in the following year but this too failed to pass into law.

Leaders in Wairarapa ki Tararua throughout the 1870s continued to attempt to use their own unofficial komiti to make decisions about ownership and management of their lands, more broadly to regulate the affairs of their communities. They supported retaining the Native Land Court only as a mechanism for giving legal ratification to decisions reached in their own tribal and inter-tribal forums. But the failure to give legal sanction to such komiti meant that their authority was always tenuous at best, leaving the land court in the driving seat when it came to title determinations.

Deep Māori dissatisfaction with the land court also lay behind the establishment of Colonel Haultain’s 1871 commission of inquiry. Haultain held political and military posts in the 1860s and 1870s. He strongly criticised the 10-owner system, the cost of surveys, and the impact of mortgages. Haultain, though, favoured the continuation of the court as a forum for the investigation and determination of title, claiming that it was ‘almost universally accepted as satisfactory’ – an assertion questioned by a number of historians, as well as by the Hauraki Tribunal. Most Māori witnesses at Haultain’s inquiry were assessors from the northern half of the North Island. They
had diverse views but many, according to both Ward and O’Malley, favoured settling titles amongst themselves through a form of rūnanga or komiti, with the court’s role confined to giving the necessary legal sanction.97

McLean’s 1872 Native Councils Bill proposed allowing local councils under a Māori president to pass and enforce bylaws on matters such as sanitation and drunkenness, as well as investigating and determining disputed land boundaries for ratification by the court. It was opposed. It gave Māori too much authority over important matters that affected settlers, and undermined the authority of the court. Wi Parata, member for Western Māori, said the opposition arose from fear that Māori would be able to regain control over their lands. McLean withdrew the Bill until the 1873 session. He tried to make it more acceptable to settler interests by diluting the councils’ powers, but this did not win the critics over, and he withdrew the Bill again.98

Another commission of inquiry was set up under CW Richmond to look into land alienation in the Hawke’s Bay district. Māori witnesses and correspondents expressed deep discontent with aspects of the land court’s administration of their lands, its mode of investigating titles, the ability of those named on the title to act as absolute owners, and the notorious system of credit and private purchase that had developed. Again, many wanted rūnanga with official powers to oversee title adjudications and the subsequent management of lands. Although Richmond condemned the 10-owner rule as a ‘very serious grievance’ and advocated reforms like preliminary investigations and making reserves, he believed that the submission to the court’s authority that had been secured should not be lightly surrendered. Like Haultain, he thought that the court should be retained.99

4.3.6 The Native Land Act 1873
In 1873 a major petition (see over) was signed by Rangitāne and Ngāti Kahungunu asking Parliament to do away with the evil laws (‘kia whakakahoretia nga ture kikino’) and make new ones capable of being understood and stemming the loss of Māori land (‘kia hangaia mai he ture hou e taea nei te mohio e matou a kei ngaro rawa o matou whenua’).100 What they got was the Native Land Act 1873. McLean’s native councils measure, which would have given Māori a greater say in the determination of their own title questions and a small measure of self-government, formed no part of it. Instead, proposals for a radical revision or abolition of the Native Land Court were ignored in favour of a more moderate series of changes. These did nothing to address the key problems of Māori marginalisation in the process of determining titles or the failure to provide for a form of corporate title.

The Native Land Act 1873 purported, among other things, to address ongoing abuses under the 10-owner rule. The 1867 legislation had not fixed these problems, largely because Fenton and the other judges did not implement it. Section 47 of the new Act required that all customary owners were to be recorded on a memorial accompanying the court’s declaration as to the hapū entitled by Māori custom to the land. The 1873 Act also affirmed the underlying principles of the earlier legislation. As the Tūranga Tribunal concluded, Māori land remained open to private purchasers, title continued to be investigated by the Native Land Court operating in accordance with English judicial norms, and title was ultimately to be transformed into an English form of tenure. In short, the preoccupation of the law remained the same: supervising and facilitating the process of transferring lands from Māori into Crown and settler hands.101

The form of memorials under the Act replaced the 10-owner rule with what the Tūranga Tribunal called an ‘intermediate form of title’, halfway between a pure ‘uninterrupted’ customary title and freehold title held by Crown grant, as awards under section 47 did not transform customary title into a new ‘anglicised’ and unrestricted form of tenure. Court awards were effectively membership lists of landowning hapū, but title did not go to the hapū as a corporate entity. While the land remained technically Māori customary land, the court’s award had created a new
Petition to Parliament on the 'Improper, Confused, and Irregular' Operations of the Native Land Laws


Presented 14th August, 1873, and ordered to be printed.

To the General Assembly of New Zealand in Parliament assembled,

THE PETITION OF THE UNDERSIGNED MAORIS OF THE DISTRICTS OF HAWKE’S BAY, WAIRARAPA, WAIROA, AND TURANGANUI.

Showeth,—

1. That for several years past the Maori people have been suffering great loss and injury by reason of the improper, confused, and irregular operations of the Native Land Laws.

2. That first there was one law passed to give Maoris Crown grants for their lands, and then soon came another, and another, and another, each altering and amending the ones that went before it, until now it is impossible to understand what the laws are which govern the Maori lands.

3. That under the present laws the following evils have been created and fostered, to the great damage of the Maori people:-

First. The lands are eaten up by money for survey, Court fees, grant fees, and payments to lawyers and interpreters, and other expenses, to such an extent that the balance which comes to us from the sale of our lands is very small.

Second. The names of few people are put in grants for large blocks of land, and no care is taken of the interests of the people owning the land, but whose names are not in the grant; and thus the grantees are enabled to lease, encumber, and sell the land for their own benefit, without the knowledge and consent of the outsiders, and without sharing with them the money which the lease or sale of the land produces.

Third. That many people are put into grants whose interests in the land are not equal, some being large owners and others small owners, and the laws give no facilities for ascertaining the interests of the several grantees in cases where land has been leased to Europeans, so that after the land has been leased, and some of the grantees sell and others do not sell, there is no clear way of finding out how much of the land belongs to the people who have not sold.

Fourth. That facilities are placed in the way of imprudent owners to dispose of the lands without any regard being had to the remainder of the people.

Fifth. That sufficient care is not taken to secure to the Native owners the benefit of disinterested advice and explanation, when signing papers and deeds about their lands, and the persons from whom they receive explanations being the Europeans who are anxious that the deed should be signed.

Sixth. That no precaution is taken to see that the land is sold or let for a fair price; the Maoris, being ignorant of the causes which give value to these lands, are drawn into leases and sales of these lands at prices very much below what the Europeans themselves would accept.

Seventh. When the names of children and married women are put into grants, the interpreters are allowed to go and obtain the signatures of these women and children in a way which would not be allowed with European women and children.

Eighth. That sufficient care is not taken to make proper reserves to be held for the use and benefit of the Maoris, so that many Maoris are now without any land whatever on which they may live and work.

Ninth. That the Europeans are allowed to go to the men whose names are in the grant one by one and make bargains with them, which are unknown to the other grantees, whereas all the grantees should be called together, and unless all consented the land should not be sold.

4. That these are only some of the great evils and troubles which have come upon the Maori people by the work of the Native Land Laws, and many others will be ascertained if the Parliament agrees to enter upon the work.
5. That for three sittings of the Parliament the talk of the Government has been that they were about to make a new and a clear law for dealing with the lands of the Maori people, and the Maoris, depending on these promises, have been waiting patiently for the fulfilment of the words of the Government, and up to this time have not seen anything come out of these words of the Government, but have heard only of the promises.

6. That the Government also some years ago sent people about the country asking us questions, and telling us about this new law of the Government, and we told these people of all the miseries and evils which had befallen us because of the work of your Native Land Courts, and your lawyers and interpreters.

7. That the Government, if its thoughts had been just and fair to the Maori people, would long ago have come to our assistance, and made for us a law which should be fair in its operation and easily understood.

8. That we are afraid that at this sitting of the Parliament the promising-work of the Government will begin again, and we shall be told pleasant things about this new law of theirs, but shall not see the law made.

9. That we are grieved because of this deception and promise-making of the Government, and therefore request that the Parliament will turn their thoughts to us, and demand from the Government that these should be made good.

10. That only those portions of the Maori people who have fought for the Europeans, and have dwelt quietly under the laws made by the Parliament, have suffered injury; for we, believing that the law about the land was good, have had our lands surveyed and put into Crown grants, because we were told that our lands would thereby be secured to us under the mana of the Queen; and now nearly all those lands are mortgaged or sold, and we the Maoris are left poor and without lands.

11. That if we had not trusted in the laws of the Europeans, but like the rebel or ‘King’ natives had remained holding on to our lands under our Maori customs, those lands would still be in our possession, and would not have gone for debts and drink, and for small sums of money, to deceitful Europeans.

12. That even now it would be better that the work of the Law Courts should cease altogether unless the laws are made better than they now are. Wherefore we ask the Parliament to do away with the bad laws now in force, and to place in their stead a good law which shall be capable of being understood, and under which the evil work of swallowing up lands by debts and drink and mortgages – of going to the grantees one by one, and not speaking to them all together – of leaving us in the hands of the lawyers and interpreters of the European purchasers, and all these other evils, – may, be put an end to.

[Here follow 371 signatures.]

**Ki te Whakaminenga o Niu Tirenī e noho nei i te Paremate.**

*Tenei Pithihana, no matou nga tangata Maori e mau nei o matou ingoa i raro ake nei, no Haaka Pei no Wairarapa, no te Wairoa – no Turanganui, e whakaatu ana,—*

1. I roto i nga Tau tuamahā kua pahure atu nei i mate nga tangata maori, i te kino, ko te take ko te he, ko te whakapuaau me te mahi whakahipahipaha te ture mo nga whenua maori.

2. Ko te ture mataatai i hangaia, hei tukungai mai i te karaatanga o nga whenua mo nga tangata maori, i muri tata iho i tera ka turuki mai he ture muri iho he ture ano a muri rawa iho he ture ano, ko ia ture me ia ture whakairo ke ana i era o mua, a tae noa ki tenei takia e kore rawa e taea te mohio i te pehea-tanga o nga ture e whakahaere ana mo nga whenua maori.

3. Na nga ture e mau tonu i whakaputa i nga kino ka tuhia iho nei a i whakatupu hoki i te mate mo nga iwi tangata maori. *Tuatahi.* I te timatanga, pau ana nga whenua, i te utu mo te ruritanga mo te Kooti, mo nga karaatanga mo nga roia me nga kai whakamaori me era atu utu, a koia ano i iti rawa iho ai te whenua e toe nei kia matou. *Tuara.* He torotoru nga ingoa tangata i tuhia ki roto i nga karaatanga o nga whenua nunui, a e kore hoki e tiakina te mana o te iwi nona ake te whenua, no te kore maunga.
Tuatotu. He tini te tangata e mau nei to ratou ingoa ki nga karaati a e kore hoki e rite tonu to ratou take ki te whenua, he nui to tetahi he iti to etahi, e kore hoki te ture e ata rapu marire i te take o ia tangata o ia tangata roto i te karaati kua otki te te whenua te reti ki te pakeha penei i muri i te reti ka hokona te wahi o etahi, ka puritia to etahi, akeunei, e kore a taea te rapu i te wahi o nga tangata kahore i hokona to ratou whenua.

Tuawaha. He huarahi mama tenei mo nga tangata kuare e whai whenua ana kia hokona nga whenua a e kore hoki era atu tangata e whakaorohia.

Tuarima. Kihai hoki i ata oti marire tetahi ritenga, hei whakapumau kia matou nga kupu whakahaere me nga kupu whakamarama o nga pakeha mohio me nga pakeha e kore nei e uru ki te hoko whenua, tatemea kei te takiwa e tuhiutahi ano i o ratou ingoa ki nga pukapuka tuku whenua, heoi nei te whakamaramatanga ko to nga pakeha pu ano e kaika ana kia mau nga ingoa o nga tngtanga ki te pukapuka tuku i te whenua.

Tuaoono. E kore a whakaorohia he ritenga e tika ai te utu mo te whenua ina ka hokona, retia ranei, noho kuare ana hoki nga tangata maori ki te take e koni ai te utu mo te whenua koia ratou ka riro tonu ai i te whakawai ki te reti ki te hoko ranei i te whenua, ko te utu ia he utu iti rawa iho i te utu e paiangia e ratou i to ratou hokohoko whakapakeha.

Tuawhitu. He mea ano ka tapoko te ingoa o tetahi tama-itwi wahine marena ranei, pena ka haere noa atu te kai whakamaori ki tawa tamaiti, wahine ranei meinga ai kia tuhia tona ingoa a e hara nei hoki tenei i te tikanga mo nga wahine me nga tamariki pakeha.

Tuawaru. E kore etahi whenua e tohungia, hei nohoanga hei oranga ano mo nga tangata maori inahoki he tokomaha nga tangata kua pau rawa atu to ratou whenua a kahore rawa nei he pihiti hei nohoanga mona hei mahinga ranei mana.

Tuaiwa. E tukua noatia ana nga pakeha ki te hoko i te wahi kotahi o ia tangata o ia tangata e mohio i te whakaritenga a tetahi engari, me hui hui tonu nga tangata i te karaati ki te kore raton e noho tahi, me kati rawa te hoko i te whenua.

4. Ko etahi enai o nga tini he, o nga raruraru nunui i ekengia te tangata maori e te ture mo o matou whenua tenei ake ka kitea era atu tini he, kei te mea ka whakaaetia e te Paremata kia tahuri ki taua mahi.

5. I roto i nga nohoanga e toru kua pahure atu nei ko te koreru touu tenei a te Kawanatanga a tenei ratou ka anga ka mahi i tetahi ture hou, ture marama, hei ritenga mo nga whenua o nga tangata maori a tatuana te ngakau o te tangata maori ki enei ki taurangi a tatari marire ana matou kia pumau ai aua kupu a te Kawanatanga, a moroki noa nei ka pore ano matou kia kate noa i te hua o aua kore a te Kawanatanga engari i rongo kau matou i nga ki taurangi.

6. I roto i nga tau kua pahure atu nei ka tonoa mai etahi pakeha e te Kawanatanga ki ia whenua ki ia whenua hei patai haere kia matou a koreru mai ana aua pakeha kia matou i te ture hou a te Kawanatanga a whakaatu ana matou i nga mate me nga raruraru katoa e tau nei ki runga ki a matou, na te mahi he a to kouton [sic] Kooti whakawa whenua na te mahi he hoki a nga roia a nga Kaiwhakamaori.

7. Mehemea i ata rite marire nga whakaaro a ta Kawanatanga mo nga tangata maori penei kua awhina matou e te Kawanatanga a penei kua oti ke tetahi ture whakahaere i te tika i te marama.

8. Awangawanga ana matou kei whakapuakina ano nga kupa kaurangi a te Kawanatanga e tenei nohoanga a te Paremat a ka whakahua ana nga koreru ahuareka mo to ratou ture hou. Ko te ture ia e kore matou e kite i te otinga.

9. E poui ana matou i te pnei mahi tinihang a te Kawanatanga koia matou ka tono atu nei ki te Paremat a kia aro mai kia matou to ratou whakaaro a ma ratou e akiaki i te Kawanatanga ki te whakatuturu i o ratou kupa.

10. Ko nga tangata maori anake i uru i roto i te Pakeha i te whasinga, i noho marire i runga i te tikanga o te ture i hanga e Paremat a, ko ena nga tangata i mate i mea hoki ratou he ture pai te ture mo te whenua, ruritia ana o matou whenua a karaatitia, notemea i kiia hoki na reira ka tino pumau ai te
whenua mo matou i te mana o te Kuini a ko tenei ka tata te pareho o matou whenua i te mokete i te hoko a noho pohara ana matou noho whenua kore ana.

11. Mehemea kahore matou i whakapono ki te ture a te Pakeha me i rite matou ki nga iwi tutu, pena me te iwi o te Kingi e pupuri ana i te whenua i runga i te tikanga maori peni ka toitū rawa ano kia matou o matou whenua, a e kore e pau i ta nama, i te waipiro, i nga nama iti noa iho ranei. Ki nga pakeha tinahanga.

12. A ko tenei engari ano me mutu te mahi a te Kooti Whakawa Whenua i te mea e kore a hangaa tetahi ture pai atu i tenei kua oti nei Koia matou i tono ai ki te Paremata kia whakakahoretia nga ture kikino e mau tonu nei a kia hangaa mai he ture hou e taea nei te moahi e matou a kei ngaro rawa o matou whenua i te nama, i te waipiro, kei moketetia te whenua i runga i te korero a te tangata takitahi te korero nui ai kia nga tangata katoa o te karaati kei whakarerea matou kia mau i te ringa a te roia a te kaiwhakamaori o nga pakeha hoko whenua penei ka taea era atu kino te pehi.

...
a community in securing agreement for sale. The Act contemplated sale agreements with any number of collective owners, including individual owners. Thus any formal power by chiefs, through tikanga, to prevent individuals from selling was overridden. Nor did the community have any veto against the sale of individual interests. By the terms of section 65, if a majority agreed to allow the sellers to partition out their interests for the purpose of sale, the court could do so.

We do not accept that this was an unintentional or unforeseen effect of the legislation. The central North Island Tribunal has stressed the significance of the failure of McLean’s Native Councils Bill, which showed that important protections first intended had been stripped from the legislation as it passed the House. As a consequence, Māori were left only with the protection of not being able to sell lands if this would mean that they were made landless. The Crown made no effort to remedy the position and give Māori the means to manage and utilise their lands collectively. In fact, it strengthened the individualising tendency of the Act seven years later, when the majority requirement was dropped, and any individual could partition out their interests.

The Tūranga Tribunal concludes that there can be ‘no argument’ that individualisation and the erosion of community control was a key feature of the 1873 Act. The Act individualised Māori title only for the purpose of alienation. For every other purpose, it was merely customary land outside English law and commerce. The most objectionable effect of the legislation was that Māori could participate in the new ‘British prosperity’ only by selling or leasing their land – ‘the colonial economy would recognise no other form of engagement.’

A number of Tribunals have also found that tinker- ing with the legislative provisions, such as introducing a requirement between 1880 and 1883 that at least three claimants had to initiate an investigation of title, was only superficial. It did not alter or hide the harsh truth that the intention throughout was to circumvent and undermine communal control of lands, including the decision to take a block before the Native Land Court for title determina- tion in the first place. We concur.

4.4 The Court and Land Purchasing in the Wairarapa Valley, 1865–80

Our consideration of how the court operated in practice, and the impact of tenure conversion and land purchasing, begins with the Wairarapa Valley area in the period to 1880. In particular, we need to test whether previous tribunals’ general findings apply in this district, and ask whether there are any features that may cause us to reconsider or modify that thinking. The evidence and claims submitted to us, and patterns of court activity and land alienation in different parts of this district, mean that we have to consider not only overall impacts, but also whether different circumstances require different conclusions. We consider two main time periods: 1865–80; and from the early 1880s to approximately 1900.

4.4.1 The Wairarapa Valley, 1865–80

Lands along the Ruamāhanga valley – a fertile area recognised to be of likely long-term economic value to Māori and Pākehā, and therefore highly sought-after – were the first in Wairarapa to be investigated by the court. Much of this area had been withheld from earlier Crown purchases to provide for likely Māori requirements. Under the new land legislation and with some protections, once title was determined by the court, private individuals could now purchase the land, and purchases reflect this.

Māori were interested in using this land to participate in economic opportunities, sometimes seeking to lease or sell particular blocks in order to provide capital for future development. This interest and recognised potential seems to have set the pattern of numerous, relatively small blocks being brought to the court for title to be legally confirmed. In many cases, Māori who brought blocks to court had already entered into preliminary or informal agreements.
with Pākehā over the land, including lease agreements, which legal confirmation of title was expected to facilitate.

4.4.2 The court investigation

According to Crown evidence, 89 blocks covering an estimated 126,523 acres – ranging in size from two to 22,000 acres – were brought to the court and awarded title in the first seven years of sittings from 1866 to 1873. Of these titled lands, some 70,466 acres or 56 percent, were in the Ruamāhanga valley and adjoining blocks. In most cases, the original application for investigation was made under the 1865 Act or its amendments, and the court heard the applications and awarded title under section 23 of this Act, which provided for 10 owners. The 1867 amendment (providing for more than 10 owners to be listed on titles, with the 10 named on the front of the certificate to be considered trustees for the other owners) was rarely implemented in this part of our inquiry district.

In 1873 this 10-owner provision was replaced with a new Act which simply stipulated that all owners were to be listed on the title, but only one Wairarapa block, Hikawera, appears to have been investigated under this later Native Lands Act in the seven years immediately following its introduction.

(1) Court low-impact in Wairarapa?

Based on the high number of applications and the apparent absence of widespread objection to or controversy over title awards at this time, Goldstone concludes that Māori in the Wairarapa welcomed the court and the sort of title it provided. He argues that the court represented a less alien environment than is commonly supposed, partly because the judges were knowledgeable and ably assisted by assessors, and partly because Māori were making many of the decisions for themselves in any case. He also contends there were already individualising tendencies in Māori customary tenure in this area, which meant that the
issue of title under the 10-owner rule did not impact on them so adversely. We explore these ideas below.

The first Native Land Court hearing in the Wairarapa was held at Featherston in July 1866. A total of 13 blocks were investigated, with several prominent rangatira listed as claimants: Mānīhera Rangitākaiwaho, Ngātuere, Matira Piripi, Whakamairū Tūtere, Rewai Tāmati, and Te Retimana Te Kōrō.112 Judge Thomas Henry Smith, who presided over this first sitting, was involved in several Wairarapa hearings in the period up to 1873; John Rogan and Henry Alfred Home Monro were also active in the district in this period. All three judges, Goldstone notes, had been surveyors or interpreters, were fluent in Māori, and, he suggests, ‘appear to have been well regarded by Maori’.113 Their usual practice was to ‘preside over the court, but let Maori sort out matters for themselves’. Later judges also ‘seem to have followed this path’.114

Assisting Smith in that first hearing were three assessors, one of them the prominent local rangatira Rāniera Te Ihō. Other important rangatira who acted as assessors at local hearings were Mānīhera Rangitākaiwaho and Ihāia Whakamairū. In the years examined by Goldstone, there were sometimes objections to assessors having interests in lands being examined, or kin relationship to parties appearing before them. These were usually met by substituting an alternative. This could still be a local rangatira, but without the same close connection with the case. Later in the period, after 1872, assessors were invariably drawn from outside the district.115 Goldstone observes that the assessors were leaders of ‘considerable standing’. Stirling, on the other hand, notes the legislative trend towards assessors’ subordination to the judge, which critics of the system observed at the time.116

Goldstone emphasises what he interprets as Māori agency in these early title hearings, arguing that ‘Maori had, in effect, determined the boundaries of the land and who the owners would be before entering the court.’117 He concludes: ‘The proportion of cases that passed without objection indicates that the Native Land Court in the first decade was not a forum hostile to Maori; nor was it generally an “adversarial” environment.’ The court usually adjourned to allow the parties to come to an arrangement either before the end of the session, or if that proved impossible, adjourned to some future date. When the court had to make decisions on disputed cases it ‘was something of a last resort.’118 Goldstone cites many examples of arrangements made out of court in the first years of the court’s operation, and right up to the early 1880s.119 Goldstone argues that surveys were not generally disrupted as a means of objecting to the court process. He found only one instance (at Maramamau, in 1867) of a survey being interrupted in the southern Wairarapa.120 In addition, there were few requests for rehearings in this period (only six out of some 90 blocks awarded title between 1866 and 1873), and few petitions about particular decisions.121 Dealing with uncontroversial cases was of course cheaper for all.

Intrinsic to Goldstone’s argument is his view of land ownership in this region as whānau- rather than hapū-based, and with rights derived from descent rather than contribution to the community. This tenure was readily converted to an individual one, he argues, and the 10-owner rule can therefore be seen as largely benign in the Ruamāhanga valley because ‘In a sense . . . “individualisation” had already taken place, with division of land and allocation of rights to separate pieces prior to the hearing, and the Native Land Court being used to formalise these long-standing arrangements.’122 Individualisation was thus not the imposition that it is often argued to be.

Goldstone challenges the assertion that many Māori were dispossessed by the 10-owner rule. Only in a limited number of instances was there any indication that grantees were acting as representative owners for a wider group of right holders. If there were more than 10 people interested in the land, blocks were subdivided to make sure that all designated owners would receive an interest, a process which Goldstone sees as relatively unproblematic. Though he cites a number of cases in which it was stated in court that there were more persons with rights in the land than
those to be listed as owners, the court simply accepted those arrangements providing no objections were made at the time.

In the same way, when Wairarapa Māori began putting their lands through the court under the 1873 legislation, they often still chose to put only a few names in the title. Both types of arrangements, Goldstone suggested, reflected Māori preference.

Stirling’s core argument about this area and time period is that Māori had no choice but to bring their lands through the court. At first, there was optimistic engagement, but this was soon followed by growing disillusion and concern, prompting Māori to withdraw from the court by the mid-1870s. But this position could not be sustained over the long term because there was no way of preventing applications from being made, and not turning up to court could result in the loss of legal rights. Emphasising the importance of collective decision-making in Māori society, Stirling views the land court and individualised title as destructive impositions.¹²³

(2) Ahikouka

Many of the issues we have been asked to consider are highlighted in the story of the Ahikouka block, some 876 acres located between the Waiohine River and Greytown. Both Goldstone and Stirling referred to it, although with different interpretations. Unusually for this period and part of the district, the case was bitterly contested from the time of the first court investigation of title in 1868, just two years after the court began operating.¹²⁴ Dispute continued through to when a Crown grant was issued in the 1880s, and even beyond.

When the case had its first hearing in 1868, the court heard evidence supporting the application from Matiaha and Tiaki Turi (John Jury), and in opposition from Ngātuere, Te Mānihera and others. The court found the evidence was ‘of so conflicting a character’ that it could make no order.¹²⁵ Instead, the case was adjourned to enable those involved to reach an out-of-court arrangement.¹²⁶ There is evidence that the dispute had already been to a rūnanga hearing, but attempts at compromise and a further rūnanga hearing also failed, and the case came back to the court in May 1870.¹²⁷

This time, the court found in favour of the original applicants and those who joined them, and ordered a certificate of title with no restrictions to be issued.¹²⁸ The successful parties then entered commercial arrangements over the land, selling some portions and entering new leases on other areas of the block. The unsuccessful claimants took the matter further, however. A rehearing was granted in 1870, but an apparent court boycott delayed the hearing until 1872. At this stage, the court agreed to a Māori jury hearing the case. This was one of just four blocks in this district that involved a Māori jury determining title. (Juries also sat with mixed results in the cases of Waihinga in 1867, Tahorahina in 1868, and Ākura in 1869.) The jury also found in favour of the original applicants, but once again much criticism ensued, and Māori took complaints and petitions to Parliament. Pākehā leaseholders and sub-leaseholders also became involved in trying to remove the unsuccessful group from the land. Their legal action to achieve this failed, and meanwhile a Crown grant had still not been issued.

Official concerns about threatened violence over the case resulted in a further committee of chiefs being formed to hear it in 1873. This revealed evidence of earlier informal leasing by the unsuccessful claimants and apparent official recognition of their interest in the land. The committee found that Ngātuere did have interests in the land.¹²⁹ Legislative proposals to enable the court to reinvestigate the contested block were developed, but then the Ahikouka Native Claims Bill was stalled on legal grounds. Although further hui were held, and petitions were sent to Parliament, the case was not reinvestigated. Finally in 1880, a new Native Minister, John Bryce, ordered the issue of the Crown Grant to the original applicants, Matiaha and his party.¹³⁰ Ngātuere continued to protest, and asked the Government to set aside some of the land for him.
However, with time, Government knowledge of the issue dissipated and officials became increasingly reluctant to upset what had become the status quo. In 1883, Ngātuere wrote again, outlining the history of the block and stating that if the Government would not allow him his portion, the land should be left in its former state: ‘let there be no Crown Grant . . . Leave it in its purely Māori state as of old in the days of our Ancestors.’ The Government indicated only that it had received the letter. More correspondence followed. On 2 April 1883, 774 acres of the remaining land of Ahikouka South was sold to John Judd. Ngātuere and others continued to petition the Government, but officials now considered the matter closed and actively tried to discourage efforts to secure a rehearing. In 1890, Ngātuere was still attempting to draw the findings of the committee of chiefs to Government attention. Stirling says the Crown’s response to Ngātuere’s request for the minutes was ‘prevaricating and obstructive’. Ngātuere died the same year.

Goldstone and Stirling appear to agree that aspects of the court inquiry were widely considered unfair, and that at some points, the dispute threatened to erupt into violence. They disagree, however, on what we can conclude from the case.

(a) Goldstone’s interpretation of the Ahikouka case: Goldstone regards this bitter dispute as exceptional. It proves how uncontented and acceptable the court inquiries usually were for Wairarapa Māori. He notes other features of the case – for instance, that the Ahikouka example shows that Wairarapa Māori were aware of the potential for Māori juries to be used to decide land titles from an early period. The failure to choose this option more often therefore reflected Māori preferences rather than ignorance of the right to request a jury. He says the case also illustrates how Māori juries and rūnanga were no more able to decide intractable cases to the satisfaction of all than the court.

To Goldstone, the Ahikouka case also highlights how Wairarapa Māori behaved when they were seriously mistreated. Ngātuere’s persistent protest seeking recognition of his interests in Ahikouka, even though he owned other lands nearby, indicates that there was ‘significant injustice’ here. By contrast, there is little documentary evidence of protest about the other Wairarapa blocks before the court. Opposition in court, while not unusual, was usually because individuals or parties had been omitted from the grantee list, an oversight that was easily remedied. Demands for rehearings were relatively rare. Ākura and Pāpāwai blocks caused some initial difficulties, but ultimately provoked little unrest among Wairarapa Māori. Goldstone therefore characterises Ahikouka as a ‘unique example’. There was no comparable injustice that arose from the Native Land Court hearings in the Wairarapa. Goldstone noted that following the rehearing of Ahikouka, the Native Land Court heard no more cases in the Wairarapa for nearly 10 years. This was perhaps attributable to Māori having lost confidence in the institution because of its handling of the controversial case. The Crown suggested that the dispute at Ahikouka predated the Native Land Court.

(b) Stirling’s interpretation of the Ahikouka case: Stirling contends, however, that this case exhibits many of the flaws of the court system that were apparent even in this early period.

He emphasises the difficulties the court found in adequately resolving contentious issues. The court relied on Māori reaching accommodations through rūnanga and komiti, even though the court did not formally recognise these institutions. They were necessary, though, precisely because Māori supported them as the primary decision-making body, and preferred the court’s role to be limited to providing legal ratification of their decisions. But successive governments failed to legally sanction rūnanga and komiti, leaving Māori marginalised in the process of determining titles.

In Stirling’s view, the Ahikouka dispute was exacerbated and prolonged because the Pākehā system did not recognise the important role of rūnanga. Stirling suggests that as chiefs began to fully recognise the nature of the court
and the implications of its inquiries, they pulled back from their earlier cooperation with it. The Ahikouka case contributed to this disillusionment. By 1874, very few new cases were being brought to the court, although of course cases already in the system might continue, and some disputed cases lingered on for many years.

Stirling dubs the court’s findings in the Ahikouka case as ‘plainly wrong’, and says that although a Māori jury was used at one stage, the court’s selection and use of that jury were flawed. He points to problems with the process of title adjudication, such as the court’s refusal to acknowledge the interests and concerns of parties unable to attend hearings, even when their concerns were well known to the court. These errors could have been corrected when McLean sanctioned the committee of chiefs, which correctly determined the customary owners of the land. The key problem, however, was that despite the Native Minister’s endorsement and the members’ customary authority, the committee of chiefs had no legal power to reverse the Native Land Court’s decision. Ngātuere and Wairarapa Māori persistently tried to challenge the court’s decision, but not even McLean could halt the Native Land Court’s ‘engine of destruction’.

4.4.3 Pressures on title investigation
There were a number of external pressures swirling around the Ahikouka case.

Although the New Zealand Wars did not reach Wairarapa, they appear to have influenced the Ahikouka case, as Hauhau and loyalist labels were put on parties to the dispute and their rūnanga.

Commercial arrangements entered into before title was determined also put pressure on the parties, and on the court. The application for investigation was made in the context of at least some owners seeking to ratify informal leasing agreements previously entered into with settlers. This gave these settlers an interest in the outcome of the case, and they sought to protect their own interests – especially as difficulties and delays with the case caused financial problems for those who had taken on debt expecting that the court would ratify their arrangements.

The claimants argued more broadly that the type of title that was imposed upon them under the native land laws undermined their capacity to retain and utilise their lands and resources. Partly this was because of costs involved in getting title and then defending it, and partly because communal controls were given no legal expression – such as by the creation of trusts in the land. As the Native Land Laws Commission pointed out in 1891, legal models had been readily available to legislators, but they were not taken up.

Because there were no formal trusts created, owners listed on the titles could legally act – whether intentionally or mistakenly – so as to detrimentally affect their communities. Often those placed on the title were rangatira, but their individual title legally severed their ownership interests from their obligation to the community. Rangatira took actions commensurate with their status, including actions for the benefit of their community, but they were also subject to legal obligations based on individual title. For example, debt could be translated into personal liability, and often the only recourse for repayment was land. The 10-owner rule also affected the community as rights of succession were focused on the ‘owner’ recorded on the title, with no reference to the wider community interests that had formerly run with the land.

The Crown argues that Māori sought the title because they wanted to deal with their lands on an individual basis – and they did, because their land had already been commodified. Economic change, not the court, was the catalyst for that change from this perspective.

In Hayes’s view, the legislative regime cannot be held responsible for all the actions performed and prejudice suffered when customary Māori land tenure was converted to titles held from the Crown. Many Māori sought freedom of action when it came to dealing with their lands, he argued, and pre-existing tensions in the exercise of traditional authority lay outside the ambit of the court. By these lights, the court has been wrongly held responsible for problems that had their genesis elsewhere.
4.4.4 Land alienations

Hayes does not see any necessary causative relationship between bringing land through the court for award of title, and its subsequent alienation; though sales and other alienations did follow, taking land through the court was a necessary step for decisions that may have already been made. Nor did taking the land through the court for title determination and award invariably lead to sale. Neither he nor Goldstone see survey and court costs as excessive in most instances.

According to the calculations of James Mitchell, an estimated 27,000 acres were purchased privately between 1865 and 1880, mostly in the Wairarapa area. This figure comprises seven percent of the lands permanently alienated in the whole of the inquiry district over this period.143

The relatively limited sales to shopkeepers, surveyors, and the like in the years immediately after the court began operating raise some important questions. The Crown suggests that the expense of survey and putting lands through the court cannot have been onerous. Otherwise, Māori would have sold more land to cover the costs; and where survey costs could be shown to directly result in the sale of land, it was for limited areas only. We return to these arguments later.

In the meantime, a number of observations may be made about private purchases in the Wairarapa in this period. First, though private purchasing was never extensive in comparison with the scale of Crown purchasing, the private land deals must be assessed not solely in terms of quantity but also with a view to the quality of the lands transacted. A second factor to consider is the enormous amount of land that had been already alienated in the period prior to 1865. In many cases, the lands remaining to Māori had been deliberately set aside for their future needs.

The Crown argued that the blocks studied by Goldstone comprised a smaller but strategically important estate located close to European settlements: “To the extent that Māori progress in the modern world would depend upon the possession of land, the history of these blocks assumes considerable importance.”144 We agree. It was essential that Māori could keep and develop these lands.

Many separate transactions were involved in these purchases. According to Goldstone, of the 84 Wairarapa blocks that went through the court under section 23 of the 1865 Act, 59 had been fully or partly sold by 1882. Included amongst these lands were blocks that had been reserved from the Crown’s prior purchases and awarded under the 1865 rules to fewer than 10 owners. There were restrictions against permanent alienation on the title (we have already discussed the effectiveness of this protection in chapter 3B, and we go on to discuss it further later in this chapter). Here we note that private purchasers often made payments on such lands despite the fact that their alienation was restricted. Application was then made for the restrictions to be lifted, and in the overwhelming majority of cases this was approved, often immediately. Examples of ‘reserves’ or portions of reserves sold in the 1870s include Te Para, Te Waihihi, Whakatomotomo, Maramamau, Ngātāhuna, and Te Ngutukoko.145

As was true of Wairarapa lands more generally, this might be a two-stage process. Lessees, usually owners of adjacent lands that had been acquired as a result of the Crown purchases of the 1850s, were interested in expanding their holdings. Māori consumed goods and bought services (including those of surveyors and others involved in title-related activity) that their lessees paid for, confident that they would be able to reimburse the money from rents. In many cases, a mortgage was signed, and when owners could not pay their debts, they were pressed to sell land. The reasons for non-payment of debt were varied and not always the fault of owners. Some cases involved experience or financial over-reaching, but we also received evidence of Māori putting aside sale blocks to pay debts and then finding that costs and interest amounted to more than the returns. Problems with title could result in lower than anticipated rentals or no rentals at all while matters were sorted. All the while, the interest grew on money owed – including for survey costs. The results were often not revealed fully until leases began to expire in the early
1890s and lessees had an interest in using claimed accumulated debts to either pressure new leases or force sales. Stirling sees the use of credit advances as a deliberate tactic to ensnare Māori into sale, while Hayes sees giving credit as nothing remarkable. The two historians also differ on the role of the costs associated with title and court procedures in encouraging sales.

Although the evidence is patchy, the picture that emerges from evidence submitted to us is of an economy run on credit, where goods and land were the currency. In the nineteenth century, and in rural areas especially, reliance on credit was ubiquitous, and Māori were encouraged – obliged, even – to do likewise if they wanted to take advantage of new opportunities. The question is to what extent credit was managed not just to reflect ordinary lender/borrower relationships, but to entrap Māori into debt in order to force purchasing. And to what extent did Crown policies either encourage such practices, or alternatively protect Māori from becoming the unintentional authors of injuries to themselves?

Irihāpeti Whakamairū described one example of how the system worked in practice in the case of Ahitainga, land purchased by storekeeper AW Cave in 1872. In her evidence to the trust commissioner’s hearing, she said:

We were paid in cattle, timber, goods, and spirits. When we asked for money for the land Cave offered us goods, and pressed them on our acceptance. We got £4 each in cash at the first talk about the sale of the land. Afterwards we received cattle, clothing, spirits and other things . . . We also had sawn timber for our house in payment and a buggy or trap, £45 was its price. There was also a second trap. Wi Tinitara got horses . . . £10 was charged for the gin against the land . . . Both I and Ani Kanara told Cave that we were not satisfied at the goods payments, the articles given were not equivalent in worth, in our estimation, to the prices charged, especially the blankets which were charged [at] 22s each . . . these goods were all given to us at credit prices. I believe that for cash we could have got better blankets.

I got no bill from Cave of my purchases at the time of my purchase but all the goods we got from him which I have now mentioned were charged against us as the price of Ahitainga.¹⁴⁶

On the face of it, Cave’s purchase should have been disallowed since it was illegal to pay for land in alcohol but we leave this discussion to our later analysis of the trust commissioner regime.

James Gilligan provided another example of how storekeepers could purchase land from local Māori. In 1868, he acquired sections of the Taumatawhakapono, Taumataaraia and Pounui blocks by advancing money for survey and court costs in exchange for mortgages. Other examples where land was sold to cover advances for survey include Waipoua A Reserve, Ākura, Kai o Te Atua, and Te Ao Tuhirangi – although these cases generally involved limited areas.¹⁴⁷ Stirling argues on this evidence that survey costs and the expenses of bringing lands through the title system contributed significantly to the need to sell. Mostly, however, his evidence is drawn from a later period, when for reasons we discuss later, costs were likely to have escalated.

A number of examples from the early period suggest that Pākehā speculators could make good profits once the land was out of Māori title, on-selling it quickly and without improvements. Motuhaku block was purchased from its four owners shortly after title determination for £273, and sold the same day for £656. Herbert Wardell purchased a total of 1485 acres at Ngātāhuna for £340 in the early 1870s, and within a year sold it for £1000. At Mangakuta, a number of purchasers acquired interests and made five times the price on resale.¹⁴⁸

We are very aware that this evidence relates to the early period in only one part of the district, with much emphasis on a few major cases like Ahikouka. We must be cautious about inferring from it general conclusions about the court and land alienation in the district as a whole. The historians’ differing interpretations of this period are understandably a product of their differing focus. Goldstone’s
study is limited in area and time; Stirling’s is much wider and longer-term, but possibly seeks to read back too much from later experience.

There are difficulties with going too far either way and it is vital to consider the context of the time as well. We are aware that a number of the general issues raised have already been examined by earlier Tribunals, but we need to consider what different circumstances may have operated in this district.

We will return to these issues and arguments again in our final analysis, but we must first look at the district as a whole and the entire period of court activity and interactions with land alienation up to 1900 – for this is the date by which the parties agree that the situation in the district had become serious. For further context we now turn to consider questions of court activity and land alienation in Tamaki-nui-ā-Rua (the northern Bush) prior to the early 1880s, and then go on to consider cases in the later period from the 1880s to 1900 when effects of title changes and title processes had sharpened.
4.5 The Land Court and Land Purchasing in Tāmaki-nui-ā-Rua, 1865–80

4.5.1 Introduction

The area known as Tāmaki-nui-ā-Rua straddled the boundary of the Wellington and Hawke’s Bay provinces. According to figures provided by Peter McBurney, the region contains approximately 1,047,448 acres.  

The name ‘Tāmaki-nui-ā-Rua’ has meant different things at different times and to different people. Pre-contact Māori knew the area lying to the south of the Manawatū Gorge as Te Tapere-nui-ā-Whātonga (the great territory of Whātonga), and the portion to the north of the Gorge as Tāmaki-nui-ā-Rua. Today, local Māori use the appellation Tāmaki-nui-ā-Rua to describe the entire district between Pūkaha/Mount Bruce in the south and the Manawatū River (near Norwood) in the north.  

In the nineteenth century, Pākehā referred to the Tāmaki-nui-ā-Rua as ‘the Tāmaki’ or Forty Mile Bush (located in what was then mainly the Hawke’s Bay Province) – the area we refer to in this report as the ‘northern Bush’. Nineteenth century Pākehā called the southern portion (which lay in Wellington Province) the Seventy Mile Bush, the Ninety Mile Bush or, confusingly, the Forty Mile Bush. Contemporary maps and documentary sources such as Colenso and Kemp show ‘Forty Mile Bush’ as the southern or ‘Wairarapa’ portion of the ‘Seventy Mile Bush’. As stated earlier, we refer to this area as the ‘southern Bush’.  

Claimant historians Peter McBurney and Stephen Robertson gave us the main historical evidence on Tāmaki-nui-ā-Rua in this period, when the bulk of land passed through the court and was purchased by the Crown. The Crown filed no evidence on this part of our inquiry district. It made concessions on some aspects of the investigations and Crown purchase of these blocks, but Crown counsel also comprehensively challenged historians’ interpretations in submissions.  

The Crown conceded that some Tāmaki-nui-ā-Rua Māori suffered from aspects of the title investigation process implemented at the time, including the loss of ownership rights through the application of the 10-owner rule, and the failure of later remedial legislation to apply to some of these lands. The Crown also conceded that undue pressure was placed on some owners to complete purchases. But the Crown did not accept historians’ suggestions that the Crown failed to recognise and deal with all right holders; that there was collusion between the court and Crown agents over investigations of ownership; that the practice of advance purchase payments was unfair; or that the court and purchase process combined to deprive Tāmaki-nui-ā-Rua Māori of reasonable control over decisions on land management.  

Apart from a few early pre-1865 purchases, most of the lands in Tāmaki-nui-ā-Rua were purchased by the Crown under the Native Land Court system. A group of five bush blocks was investigated by the court in 1867, and what became two more blocks went through in 1889 and 1892. Otherwise, the majority of the lands were taken to court and title determined in a very short period over 1870 and 1871. The blocks went through the court in two stages. The northern part of the Tāmaki-nui-ā-Rua bush lands went through in 1870. The court investigated the southern part of Tāmaki-nui-ā-Rua in 1871.  

The rush of applications for investigation and title determination of Tāmaki-nui-ā-Rua bush land in 1870–71 came about because the Crown was actively seeking to buy large areas of land in the area. By this time, the title provided by the court was required for purchasing to be completed. The court applied the 10-owner rule while the Crown commenced purchase negotiations, making some purchase payments even before title was determined.  

According to McBurney, rangatira from outside our inquiry district – ‘western Rangitane’ from the Manawatū side of the ranges – accepted Judge Rogan’s invitation to apply for the lands to be investigated. Those who did were willing to ‘cooperate with the Crown and its agenda of large-scale land acquisition’, and were accordingly ‘well represented’ when ownership lists (consisting of 10 or fewer names) were drawn up for the Tāmaki lands that
Crown purchases in the northern Bush and southern Bush in 1871 and the blocks that then remained in Māori ownership
went through the court in 1871. He argues that the naming of non-resident right holders was at the expense of resident Māori who were less inclined to sell, and the court’s failure to investigate the interests in the blocks properly meant that many with legitimate claims were dispossessed.\textsuperscript{153} McBurney suggests that there may have been some form of collusion between the Crown agents involved and Judge Rogan.\textsuperscript{154}

According to counsel for Ngāti Kahungunu, the award of land interests to western Rangitāne chiefs was particularly prejudicial to Ngāti Kahungunu. This was because there were whakapapa (genealogical) connections between Ngāti Kahungunu and eastern Rangitāne, but not between Kahungunu and Rangitāne in the west. The court’s awards meant that Ngāti Kahungunu customary interests, based on whakapapa, were far less likely to be acknowledged as a result of these western chiefs, named under the 10-owner rule, obtaining ‘the unfettered ability to deal with the Tamaki land.’\textsuperscript{155}

Large areas were transacted under Crown purchase deeds. Some were based on earlier purchase advances made soon after the blocks passed through the court. McBurney claims that not only were many owners left out as a result of flawed court adjudications, but a significant number whose names were recorded as owners refused to sell. Crown land purchase agents then relentlessly pursued these ‘dissentients’, and the Government resorted to paying ‘bounties’ for each signature its officers could obtain. ‘Pitifully small’ reserves were made from the purchases, and the owners were often soon obliged to sell these too.\textsuperscript{156}

The owners held back several blocks from sale for their own continued use, but these were soon targeted by the Crown – including the valuable Mangatainoka block, which was mostly alienated by 1890. Restrictions against permanent alienation had been placed on the title of much of the land involved, but proved little barrier to Crown purchasing. By the turn of the twentieth century, barely 20 percent of Tāmaki-nui-ā-Rua was left in Māori ownership, and much of that was of poor quality. By 2002, when McBurney completed his report, Tāmaki-nui-ā-Rua Māori possessed a mere two percent of their original estate.\textsuperscript{157}

In response to McBurney’s characterisation of what happened, Crown counsel pointed out that the Crown had been negotiating the purchase of the land for a considerable time before the court hearings took place. Both residents and non-residents came to a ‘widely attended and representative hui,’ ‘where ownership issues and sale were fully debated’ prior to the land passing through the court. Some resident owners considered that those from outside the district had legitimate interests in the land, while others did not. Ultimately the strength of the claims of those supporting western Rangitāne entitlement prevailed, both at the hui and during the ensuing court investigation. Indeed, in respect of 10 of the 17 blocks that went through the court at its September 1870 hearing, there were no objections from counter-claimants, and a number of the objections made in the other seven were said to be relatively minor.\textsuperscript{158}

Crown counsel stated that any advance purchase payments made were properly accounted for, and the price paid was the subject of ‘robust negotiations’. The deeds of sale were ultimately signed by significant numbers of those found to be owners, who, in turn, represented others. Moreover, according to Crown counsel, there was a ‘spread’ of names in the ownership lists, and residents opposed to western Rangitāne inclusion appeared on the title to a number of the blocks. Crown counsel pointed to the retention of a number of blocks by their Māori owners for a considerable period afterwards as evidence that Māori were indeed able to resist Crown land purchase efforts, and otherwise generally control the alienation of their lands.\textsuperscript{159}

The Crown did make some limited concessions, though. With regard to the Tāmaki-nui-ā-Rua area, Crown counsel accepted that undue pressure was applied to those who initially refused to sign purchase deeds. The Crown also accepts that there was ‘potential’ for prejudice to those with customary interests who did not appear on titles issued.
to 10 or fewer owners, and where the land was alienated without their knowledge or consent. The Crown also acknowledges that the Native Equitable Owners Act resulted in prejudice to Tāmaki-nui-ā-Rua Māori as its provisions extended only to titles issued under the Native Lands Act 1865 and lands dealt with by the Native Land Court. Crown grants for the Seventy Mile Bush reserves were issued under another legislative enactment (Volunteers and Others Lands Act 1877), and it was thus later found that the Native Land Court had no jurisdiction to hear these cases.¹⁶⁰

(1) Does Goldstone's model of land ownership apply?
As we discussed in chapter 1, Tāmaki-nui-ā-Rua was claimed by Rangitāne and Ngāti Kahungunu groups. However, by the end of the eighteenth century, intermarriage had largely resolved conflicts between them so that all Māori in the district could whakapapa to multiple hapū and both iwi, as some did when claiming lands in the region before the Native Land Court.¹⁶¹ Kin-group affiliation and identification with resources were governed by flexible tikanga. Yet hapū retained separate tribal identities, tribal names were maintained, and despite mixed whakapapa resulting from a long history of intermarriage, hapū-based rights were exercised in specific areas, or at certain times of the season.¹⁶²

This was a sparsely-populated land utilised mainly for its rich mahinga kai (food gathering sites) by multiple hapū, who exercised a wide and complex range of rights. It was not characterised by the sort of occupation and exercise of rights typical of the habitation and cultivation patterns Goldstone described for the Wairarapa district. We leave our substantive discussion of whether we agree with Goldstone’s conclusion that the 10-owner rule caused no prejudice in such circumstances to our later analysis. Here, we note that the argument cannot apply to the bush blocks, or indeed, to Ngā Waka ā Kupe. The diverse, multiple, and overlapping customary interests present in the district did not lend themselves to such arbitrary demarcation and could not be readily or appropriately divided under the 10-owner rule. Yet this was what happened in the case of almost all of the Tāmaki-nui-ā-Rua blocks, most of which exceeded 5000 acres.

(2) The relationship between Crown purchases and court investigations in Tāmaki-nui-ā-Rua
Tāmaki-nui-ā-Rua was the focus of the Crown’s land-purchasing efforts in the post-1865 era. Its purchasing activities in this part of the region cannot be readily separated from issues of title and court processes.

According to McBurney, the Crown set the pattern for its dealings with Tāmaki-nui-ā-Rua people in its pre-land court purchase at Ngāwapūrua in 1858. When the Crown first turned its attention to the area, issues arose immediately as to who had the right to speak for the land, and how to give appropriate weight to a range of different rights. At Ngā Wapūrua, it found an avenue into the title by dealing with non-resident rangatira first – though this raised considerable opposition at the time. McBurney argues that the same basic practice of focusing first on getting the consent of secondary right holders to purchases continued – was fostered, even – under the Native Land Court system. He acknowledges that the ‘western Rangitane’ chiefs were closely related to the residents of Tāmaki-nui-ā-Rua, and on the basis of this common kinship enjoyed rights to bush resources. But while they may have had some rights to the land through whakapapa connections, they could not claim the primary proprietary rights that the ‘sale of Ngawapuura asserted’. But after this transaction McBurney says that:

Instead of ancestral occupation by particular hapū over an extended period serving as the criteria for determining customary land tenure, Crown purchase agents (and later, the Native Land Court) recognised the rights of anyone from Rangitane iwi whanui, especially if they were willing to sell land to the Crown.¹⁶³
The non-resident chiefs were of course more likely to sell because their main interests lay to the west of the mountains. Their role in Crown purchasing continued into the Native Land Court era. Angela Ballara and Gary Scott observe that:

One of the problems with identifying the Rangitane tribe as the main owners of the Seventy Mile Bush is that Rangitane living east of the mountains were often bitterly resentful of the chiefs of Rangitane living west of the mountains, such as Hoani Meihana Te Rangiotu, Peeti Te Aweawe and others. These chiefs, who were fighting land battles of their own against Ngati Raukawa and other peoples who had invaded the west coast in the 1820s and established claims to land there, were often willing to sell the land east of the mountains for revenue, since they did not normally occupy lands to the east of the ranges, and their claims were restricted to the tenuous one of common descent from Rangitane. Numerous efforts were made in the land court battles for the blocks . . . to restrict ownership of the blocks to eastern descendants of Rangitane such as Rangiwahakawa, Irakumia, Parakiore and others. But they were doomed to fail, because Crown agents were happy, of course, to deal with willing sellers, and could fall back on the argument that Rangitane were all one tribe.¹⁶⁴

The Crown had concentrated its early efforts on the acquisition of pastoral lands, and with only minor purchases of bush land. After the purchase of Ngāawapūrua in 1858, the Crown bought the Mākuri block the following year, and this block included some Puketōi bush lands, although no proper survey was carried out at the time. A few days after this purchase, McLean paid £650 for the 25,000-acre Ihuraua block, and made further advances to several individuals for their outstanding interests in Mākuri, as well as Tāmaki and other blocks.¹⁶⁵

But both central and provincial governments were interested in acquiring a much more extensive part of the northern Bush area. Though the Crown waived its pre-emptive right with the introduction of the land court, its interest in acquiring land for settlement revived in the late 1860s. Impetus came from the more settled state of the colony, the resurrection of the Native Land Purchase Department under Donald McLean in 1869, and Julius Vogel’s Public Works scheme which took shape in 1870. Vogel’s scheme envisaged the acquisition of large areas of Māori land at low prices, with the profit from on-sale to settlers facilitating further settlement and funding infrastructure like road and rail links. Obtaining land in the northern Bush was deemed essential, and sections 8 and 9 of the Railways Act provided for the cost of rail links between Hawke’s Bay and Wellington to be charged against sales of Bush land. The presence there of valuable timber (tōtara, rimu, matai and kahikatea) provided the Crown with further encouragement.¹⁶⁶

So in the early 1870s the Crown became directly involved in encouraging Māori to bring bush blocks in Tāmaki-nui-ā-Rua through the land court, while also conducting purchase negotiations. McBurney argues that the court and purchase process in Tāmaki-nui-ā-Rua then followed a similar pattern to that which tribunals in other district inquiries have identified as destructive.¹⁶⁷ These include the court’s role in effecting tenurial change, and the implementation of the 10-owner rule especially; practices associated with the court, like the conduct of surveys; and Crown agents and officials interfering in the court process to encourage or pressure land sales. They sought to influence which owners would appear on titles, and they bought individual interests and made advances or down payments on purchases before title had been determined, and before detailed purchase terms were agreed.¹⁶⁸

Did these practices render informed community consent impossible? Or did the Crown in fact openly negotiate with all Māori owners in Tāmaki-nui-ā-Rua by alternative and reasonable means, even though it paid some early down payments before there was collective agreement to sell?
(3) Bringing the northern Bush lands through the land court – the 1867 blocks

The first of the Tāmaki-nui-ā-Rua lands to be awarded title by the Native Land Court were investigated in January 1867 as five blocks totalling about 65,555 acres. These lands became the Ōtāwhao, Ōrangi Waiaruhe, Tahoraiti, Kaitoki, and Mangatoro blocks. Title was awarded to 10 or fewer owners in all of them, even though they exceeded 5000 acres and thus might have been awarded under the tribal title provided for in section 23 of the Native Lands Act 1865.

According to McBurney, these awards were made ‘mostly’ to resident Rangitāne owners who had brought the applications for investigation. A major exception was the Ngāti Kahungunu chief from Heretaunga, Karaitiana Takamoana, who was named as an owner in all but one of the blocks. Takamoana was related to local hapū Ngāti Rangi-whaka-ewa, and his name was put forward by the applicants on this occasion (and others) because of his expertise in European commercial practices and his perceived ability to manage the land effectively on behalf of the owners.

McBurney notes that the Crown did not immediately move to buy these blocks. Even so, this early application of the 10-owner rule caused problems. This is evident from Urupane Hikurangi’s complaints to Fenton in 1870, just three years later, about what had happened at Ōrangi Waiaruhe:

This is the difficulty. At the investigation our names were not inserted in the Crown grant. Some of our names were inserted. The arrangement by which these names alone were inserted was that it was quietly settled, that some of our names should not be inserted, as ten names would so fill the paper. It was also arranged that when a payment was made the money should be for all. Another word of ours that we should all live on the land, we are being driven off that land. Then we became very sorrowful about our land. We have been made to suffer by this work.

<table>
<thead>
<tr>
<th>Block</th>
<th>Surveyed acreage</th>
<th>Owners</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ōtāwhao *</td>
<td>4588</td>
<td>8</td>
</tr>
<tr>
<td>Ōrangi Waiaruhe</td>
<td>11,587</td>
<td>10</td>
</tr>
<tr>
<td>Tahoraiti 1</td>
<td>9397</td>
<td>10</td>
</tr>
<tr>
<td>Tahoraiti 2</td>
<td></td>
<td>10</td>
</tr>
<tr>
<td>Kaitoki</td>
<td>16,292 †</td>
<td>10</td>
</tr>
<tr>
<td>Mangatoro</td>
<td>30,750 ‡</td>
<td>10</td>
</tr>
</tbody>
</table>

* The original area for Ōtāwhao and Ōrangi Waiaruhe combined was estimated at 12,008 acres, but after survey Ōtāwhao was 4588 and Ōrangi Waiaruhe was 11,587 acres.
† In 1867, the Kaitoki block was estimated at 13,400 acres.
‡ In 1867, the Mangatoro block was estimated at 27,639 acres.

1867 Native Land Court awards for the northern Bush blocks

The same letter went on to reveal that one of the major lessees in this land by 1870 was JD Ormond. He was Superintendent of Hawke’s Bay Province at this time, as well as the Agent for the General Government at Hawke’s Bay, and was therefore closely involved in directing Crown purchasing efforts. Presumably, Ormond knew to focus his leasing in areas outside the main focus of Crown interest in this period.

(4) The commencement of Crown purchase efforts

Immediate Crown purchase was in prospect, though, for the next significant part of Tāmaki-nui-ā-Rua to go through the Native Land Court. In July 1868, McLean instructed Crown land purchase officer Samuel Locke to begin purchasing in the northern Tāmaki-nui-ā-Rua lands – that is, mainly within the Hawke’s Bay provincial boundaries.

McBurney notes that there was some initial debate about whether land already subject to Crown purchase negotiations needed to go to the Native Land Court for determination of title. JD Ormond appears to have wanted to
avoid court hearings for land already under negotiation. It seems, however, that he received legal advice that the court process was not dispensable. 175

Officials appear to have accepted that a court investigation was necessary, and were already encouraging those with interests in the lands to participate in hui to talk about possible sales, and taking land to court so that their decisions could be ratified and legally implemented. This would involve arranging a court investigation and a survey. In August 1868, a large hui was held at Waipawa for this purpose. According to evidence produced later, a surveyor named Munro was duly sent to prepare a survey plan for court investigation purposes, but was turned off the land twice by Māori, under the leadership of Āperahama Rautahi and others. Unable to do the work on the ground, Munro went to Napier and compiled a sketch plan of the northern lands using the boundaries of adjacent blocks. 176

Officials continued to press for agreement to sell, but in August 1869 the Crown suspended purchase negotiations because of a lack of funds. They recommenced in April 1870. 177

4.5.2 The northern Bush lands – the court investigation

(1) The Waipawa hui, September 1870

Some months after purchase negotiations had resumed, and just prior to a sitting of the court at Waipawa planned for September 1870, another large and important hui took place. It was to discuss the proposed court investigation, the nature and extent of customary rights in the lands to be taken to court, whose names would be placed on the titles, and possible sales of land to the Government. According to a report published in Te Waka Maori o Ahuriri (a Government newspaper), over 300 Māori were present, representing:

Rangitane from Manawatu, Tamaki; Hamua from Wairarapa; Muaupoko from Horowhenua; Whanganui; Ngatimutuahi from Tamaki and Tawhakeroa; Ngatipohoi from Mataikona; Ngatipahoro from Porangahau; Ngatiparakiore from Eparaima; Ngatipakapaka from Okurehi Tamaki; Ngatimaru from Waipawa; Ngaitahu from Te Takapau; Ngatimatekato from Mataweka; Te Whatuiapiti from Te Hauke; Ngatihori from Heretaunga; and some other tribes. 178

Samuel Locke, James Grindell, and Judge Rogan of the Native Land Court (who was to preside over the subsequent court sitting) also attended. Locke opened proceedings, telling the meeting that he was pleased that so many had gathered and taken the opportunity to describe their claims and ‘the sale to Government’. This was not new
talk, he added, but a continuation of the discussion begun
two years before at Waipawa. According to Locke, it had
been fixed at that meeting to sell an area of land. Surveys
began, but ‘trouble’ occurred and work ceased because the
Government was ‘preoccupied with the problems of the
country’. Now, however, there was peace, and the ‘dawn of
a better day’.179

Locke went on to explain that the Government wanted
to purchase land to open up to European settlement, and
for roads and a railway. The Government wanted to buy
some large tracts, but Locke emphasised that it was neces-
sary that Māori:

Hold on to large areas as settlements for your-
selves so that you and the European can both see the
improvements and also both reap the benefits of those
improvements. Let us work hard to improve our settle-
ment and achieve Pakeha standards . . . give up some
of your areas of land to me and hold on to others for
you and your children. My final word is that you must
carefully inquire into the matter so that there are no
arguments and quarrels hereafter. Once the talking is
complete and a decision reached, take it to the Court to
have it finalised. After that we will talk about purchas-
ing. Carefully discuss the matter, seek out all opinion
so that matter can be done with forever.180

This speech is important for a number of reasons. It is
clear that Locke wanted to ensure that the owners under-
stood the significance of the step they were embarking
upon. He also promoted the idea that land should be
retained so that the owners could benefit from improve-
ments later. He seems to accept that the owners would
be making their own decisions at hui, with the court’s
role limited to finalising what they decided. Māori were
disposed to like this approach, but of course what actu-
ally happened in title terms was that only representative
owners were named.

The hui launched into discussing rights in the land and
how the land might be taken to the court, ‘each tracing
his genealogy to his ancestors and his claims to the land’.

Two broad factions emerged – the Ngāti Mutuahi hapū of
Hohepa Paewai on one side, and on the other their relatives
Ngāti Rangi-whaka-ewa, Ngāti Pakapaka and Ngāti
Parakiore.181 Hoani Meihana supported the Ngāti Mutuahi
claimants. He was well versed in whakapapa and trained
in the whare wānanga (institution of higher learning). The
whakapapa evidence of Āperahama Te Rautahi was force-
fully disputed by Hohepa Paewai and Hoani Meihana.
Hohepa gave his genealogy, ‘fixing’ him ‘in the whole of
Tamaki’.

Ngāti Pakapaka and Ngāti Parakiore, ‘and some other
hapu’, stated that ‘Rangitane’ did not ‘come into the land’
and that it belonged to them alone, ‘to their ancestors
down to them’. In other words, they opposed a ‘generic’
Rangitāne claim which would admit chiefs from west of
the ranges. The main speakers for Ngāti Pakapaka, Ngāti
Rangi-whaka-ewa and Ngāti Parakiore were Āperahama
Te Rautahi, Te Rōpha, and Te Takou.

The discussions revealed serious concerns about how
interests might be represented. According to reports, there
was much talk about claimed conquests, and much dis-
pute. This talk went on all day, and into the next (7 Sep-
tember).182 On this final day of the hui there was also ‘much
quarrelling’; nonetheless ‘the gathering stated that it would
send the matter to the Court the following day’.183

(2) The court investigation, September 1870

The court began to hear the evidence on the Tāmaki lands
on 8 September 1870. Hoani Meihana led the case for Ngāti
Mutuahi. His main opponent was Āperahama Rautahi,
representing Ngāti Rangi-whaka-ewa. The latter sought to
limit the owners to those of his immediate kin who lived
and cultivated the land, and who opposed sale.184 Witnesses
named many right holders in the blocks. Huru Te Hiaro
named 41 in the Puketōi blocks, ‘including all the principal
chiefs of Rangitane from both east and west of the moun-
tains, and from Wairarapa and the coast around Castle
Point and [he] said there were others’. Hohepa Paewai told
the court that there were at least 66 right holders in the
Āhuatūranga block, and for Māharahara he named 73.185
Judge Rogan handed down decisions on the 17 blocks on 10 and 11 September after just four days of hearing.\textsuperscript{186} Although the judgments are brief and contain little reasoning, the court seems to have been particularly swayed by the evidence of Hoani Meihana. It may also have been influenced by an incident where Hoani Meihana challenged Āperahama Rautahi’s whakapapa evidence in the Māharahara block, and Āperahama left the court abruptly.\textsuperscript{187} McBurney tells us that the court made some 16 awards covering around 290,000 acres. Each award was to 10 or fewer persons.\textsuperscript{188}

McBurney says that this determination of owners suited the Crown purchase agents. They had refused to deal with the Bush blocks on a hapū-by-hapū basis, preferring to deal with a wider class of pro-sale Rangitāne claimants who did not reside on the land. Karaitiana Takamoana, whose claim to be on the title was least meritorious in terms of whakapapa or occupation rights, was a chief with ‘vestigial Rangitane descent’ whose name ‘topped the list of sellers when it was purchased by the Crown’. McBurney lists the Crown’s criteria for land ownership as descent from Rangitāne, chiefly status, and a willingness to sell the land.\textsuperscript{189}

The alleged failure of the court to ‘adequately’ investigate the ownership of the blocks meant that many with legitimate claims did not receive payment from subsequent sales, and were also omitted from the blocks that were not sold.\textsuperscript{190} McBurney implies, and claimant counsel state, that Judge Rogan and Locke colluded to ensure a favourable outcome for the Crown, or at least that Rogan exhibited partiality that served to advance the Crown’s interests.\textsuperscript{191} We explore this serious allegation below.

The table below outlines what happened to most of the northern ‘Tamaki’ lands of around 290,000 acres that went through the court in September 1870. There was some splitting of blocks as awards were made, and 17 blocks were created.

The table shows that, at the request of the successful applicants, the court imposed restrictions on alienation on just two of the medium-sized blocks created: Tamaki (27,000 acres) and Piripiri (14,000 acres). These do not appear to have been included in the first round of Crown purchasing that had already begun by this time. Another four blocks – Ītanga, Tipapakuku, Tiratū (15,440 acres in total) and Wharawhara (2,180 acres) – were also left out of the purchase negotiations.

The Crown immediately set about completing its purchases in the other blocks that the court had awarded. Purchase deeds were signed by at least some of the legal owners in 1871, and then the Crown started a process of ‘completing’ them, by obtaining extra signatories from among the owners named by the court. The Crown had also begun purchasing in Te Ohu, but the bulk of this block (18,564 acres) would be retained by Māori when it eventually went through the court again in 1882 – this time for the award of the Crown’s interest (2036 acres).\textsuperscript{192}

4.5.3 Crown purchasing in the northern Bush
(1) Privileging the Crown as purchaser
During the 1870s, as Crown purchase negotiations for the Tamaki lands resumed and officials encouraged Māori to take their lands through the court, McBurney notes that the Government was also passing legislative provisions that strengthened its position in dealing with Māori land identified for purchase. A number of tribunals have already noted that the Native Lands Acts enabled the Crown to make purchase payments ahead of title investigations, with the land court acting as a final check on them: indeed, the Act explicitly assumed that the Crown would do so. They found that neither the Native Lands Act 1865 nor the later 1873 Act prohibited pre-title purchase advances on Māori land. Such dealings were at most ‘void’ rather than illegal, and it was possible for purchasers, including the Crown, to risk paying advances that would lock in purchases with would-be vendors who would hopefully later be determined to be the land’s owners.\textsuperscript{193}

Provisions were also enacted to confirm the Crown’s power to purchase Māori customary land for certain purposes before the Native Land Court investigated
<table>
<thead>
<tr>
<th>No</th>
<th>Block</th>
<th>Estimated area 1870</th>
<th>Surveyed area if different from estimated</th>
<th>Grantees</th>
<th>Restrictions on alienation</th>
<th>Alienated 1871</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Puketōi 1</td>
<td>37,000</td>
<td></td>
<td>7</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>2</td>
<td>Puketōi 2</td>
<td>28,500</td>
<td></td>
<td>8</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>3</td>
<td>Puketōi 3</td>
<td>33,400</td>
<td>25,174</td>
<td>10</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>4</td>
<td>Puketōi 4</td>
<td>31,300</td>
<td></td>
<td>8</td>
<td>No</td>
<td>Yes, though already purchased along with Puketōi 5 under 1859 Mākuri deed*</td>
</tr>
<tr>
<td>5</td>
<td>Te Āhuatūranga</td>
<td>21,000</td>
<td></td>
<td>7</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>6</td>
<td>Māharahara</td>
<td>13,000</td>
<td>26,383</td>
<td>7</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>7</td>
<td>Tāmaki</td>
<td>27,000</td>
<td>34,098</td>
<td>3</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>8</td>
<td>Manawatū 1, Umutaoroa</td>
<td>17,000</td>
<td></td>
<td>10</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>9</td>
<td>Manawatū 2, Piripiri</td>
<td>14,000</td>
<td>18,014</td>
<td>10</td>
<td>Yes</td>
<td>No</td>
</tr>
<tr>
<td>10</td>
<td>Manawatū 3, Te Ohu</td>
<td>20,600</td>
<td>28,568</td>
<td>9</td>
<td>No</td>
<td>Yes, but only part, circa 2036 acres, purchased by 1871</td>
</tr>
<tr>
<td>11</td>
<td>Manawatū 4, Tiratū</td>
<td>7945</td>
<td></td>
<td>10</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>12</td>
<td>Manawatū 4A, Tipapakuku</td>
<td>2462</td>
<td></td>
<td>5</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>13</td>
<td>Manawatū 4B, Te Ītanga</td>
<td>5033</td>
<td></td>
<td>10</td>
<td>No</td>
<td>No</td>
</tr>
<tr>
<td>14</td>
<td>Manawatū 5, Ngāmoko</td>
<td>15,000</td>
<td>16,352</td>
<td>10</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>15</td>
<td>Manawatū 6, Tuatua</td>
<td>9600</td>
<td></td>
<td>10</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>16</td>
<td>Manawatū 7, Rākaiatai</td>
<td>8200</td>
<td></td>
<td>10</td>
<td>No</td>
<td>Yes</td>
</tr>
<tr>
<td>17</td>
<td>Manawatū 8, Wharawhara</td>
<td>2180</td>
<td>2275</td>
<td>3</td>
<td>No</td>
<td>No</td>
</tr>
</tbody>
</table>

* Puketōi 5 was brought before the court in the September 1870 hearings but was dismissed as Locke produced the 1859 Mākuri deed. However, Locke did not realise that Puketōi 4 was also part of the 1859 Mākuri purchase, and the court awarded title to eight individuals in 1870. In 1874, Locke realised that Puketōi 4 should have been recognised as part of the Mākuri purchase. One further payment was made against Mākuri (Puketōi 4 and 5) in 1874.

Title awards for the northern Bush blocks as at September 1870
title. Section 42 of the Public Works and Immigration Amendment Act 1871 expressly permitted the Crown to enter into negotiations for land needed for railway or mining purposes, or ‘special settlements’, prior to Native Land Court adjudication. Robertson noted that a sale ‘agreement’ – effectively lining vendors up for a proposed purchase and paying them – could be effected prior to title determination, with the Act stating that, ‘subsequent to such arrangements the land shall be passed through the Native Land Court and a certificate of title of the person entering into such arrangement with the Governor obtained’. This was to help the Crown purchase land required for public works or other essential purposes in advance of a court sitting.

The Crown did not legislate to prohibit pre-title dealing in Māori land until 1883, after considerable complaint from Māori, and then the prohibition applied only to private purchasers. In any case, the protection came much too late for large parts of this district, which had already been purchased.

The Crown also passed legislation during the 1870s to privilege purchase by the Crown over private purchase. Once it began purchasing in particular blocks, the Crown could proclaim them ‘under negotiation’, and issue Gazette notices to inform people of the Crown’s interests. Section 2 of the Government Native Land Purchases Act 1877 made it unlawful for private parties to try and acquire lands in such blocks – and sometimes the Crown had made only a few payments. This effectively reinstated a form of Crown pre-emption on a block-by-block basis, and allowed the Government to complete its purchases at leisure.

(2) Advance payments

It was against this background of expanding Crown powers that Crown purchase negotiations resumed in 1870. From then on, Crown officials made payments to chiefs which were treated as advances against the eventual purchase payment. These payments were described in a later 1871 minute as ‘groundbait’, which gives the contemporary understanding that they lured and bound Māori into an eventual sale.

The advance payments ensured that those receiving them had the necessary cash upfront to pay costs associated with the court hearing and any initial purchase negotiations. These included travel and accommodation costs to attend hui to discuss purchase proposals and presentation of cases to the court, the cost of the survey required for a hearing, and other costs such as court fees. However, being advances, they had to be repaid. They either became debt to be paid off, or they could be deducted from the eventual purchase price paid. Those in receipt of advance payments presumably expected that sale of their yet-to-be-defined interests in yet-to-be-defined blocks would at least cover the debts.

Crown purchase agent Locke claimed that he made such payments to ‘principal claimants’, but did not say how he identified them as such. According to claimant counsel and historians, the primary qualification for being a principal claimant was supporting land sale. But the position was more nuanced than that, as we shall see.

Nevertheless, the evidence showed that Locke did make advance payments to Māori before title was investigated, and could supply receipts for only some of the advances recorded. The advances comprised a mix of payments for various purposes. Some of the payments were made to individuals, including resident chiefs (including Te Hirawanu) and non-residents. For example, at least £26 was advanced to Māori before the title investigation. Other payments were made to Pākehā merchants on store accounts for individuals, and others were made for various costs connected with the court sitting and purchase negotiations leading up to the hearing – including for an interpreter, a survey for court purposes, and accommodation and food while attending court sessions. Some further advances also appear to have been paid after title was investigated but before the purchase deeds were signed in August 1871. By June 1871, when the agreement to sell a majority of the lands was signed, the Crown had paid
(correct). It ignored customary Māori decision-making – which, as we know from the Crown purchase chapter (chapter 3), required all intended transactions to be submitted to, and fully and openly discussed by hapū and/ or tribe as a precursor to any decision to sell or payment made. Owners as individuals were not in possession of detailed information about purchase areas, boundaries, reserves and price when they accepted advances, even though these bound them to sale. As we discuss in our later analysis, this undermined te tino rangatiratanga (the chiefly authority guaranteed by article 2 of the Treaty), and prevented hapū and iwi from making informed choices about their lands.

The Waipawa hui was all very well as far as its kaupapa (agenda) went, but that was limited to agreeing to bring an area through the Native Land Court for determination of title. Though the Crown had signalled its intention to purchase and a number of Māori had signalled their agreement to sell, there was no tribal agreement yet as to the dimensions of the transaction or a price that was acceptable.

(3) Collusion between the court and Crown officials?
We now look at the claimants’ allegation that Crown officials and the court colluded so that, when it determined title, the court was more likely to favour those who had accepted advances on purchase moneys.

The relevant evidence is set out in two tables:
- ‘Advance payments to Māori for the northern Bush blocks, August 1868 to June 1871’ (opposite); and
- ‘Other payments made for the northern Bush purchase, August 1868 to June 1871’ (see over, left).

Several owner names appeared in the titles to more than one of the Tāmaki blocks investigated in 1870, as set out in the table over (right). Asterisks denote the owners who received purchase advances. Only a minority of owners appear to have received them – 16 from a total of 91 grantees, or less than 18 percent. In addition, three recipients said to have received advances do not appear to be included on the ownership lists as determined by the

around £1290 in advances. This included £500 paid to the Provincial Government of Hawke’s Bay for survey (see table opposite).

In some cases then, we can be certain that the Crown paid advances before title was investigated and owners legally determined. Other advances were made after title was investigated but before purchase deeds were agreed and signed. In these instances, the individuals were known to be legally entitled, but the practice was still not tika

Peeti Te Aweawe, one of the foremost Rangitāne chiefs. His name appeared on ownership lists of blocks in the northern Bush and the Crown paid him advances.
### Advance payments to Māori for the northern Bush blocks, August 1868 to June 1871

<table>
<thead>
<tr>
<th>Date</th>
<th>Name</th>
<th>Voucher</th>
<th>Amount (£)</th>
<th>For area or block</th>
</tr>
</thead>
<tbody>
<tr>
<td>3 August 1870</td>
<td>Huru te Hiaro, Wirihana Kaimokopuna</td>
<td>7</td>
<td>12</td>
<td>Tāmaki area</td>
</tr>
<tr>
<td>3 August 1870</td>
<td>Ihākara Whaitiri, Paora Rōpiha, Nōpera Kuikāinga</td>
<td>8</td>
<td>14</td>
<td>Area including Wharawhara, Mangapuaka</td>
</tr>
<tr>
<td>17 September 1870</td>
<td>Huru Te Hiaro, Peeti Te Aweawe, Hoani Meihana</td>
<td>12</td>
<td>100</td>
<td>Tāmaki and Manawatū area</td>
</tr>
<tr>
<td>20 September 1870</td>
<td>Nepe, Hori Tatakai?, Pine Wātene, Maata Te Pare</td>
<td>9</td>
<td>6</td>
<td>Tāmaki area including Manawatū 5 (Ngāmoko) and Manawatū 7 (Rākaiatai)</td>
</tr>
<tr>
<td>22 September 1870</td>
<td>Paora Rōpiha</td>
<td>8</td>
<td>3</td>
<td>Manawatū 7 (Rākaiatai)</td>
</tr>
<tr>
<td>20 March 1871</td>
<td>Hoani Ngāihi, Peeti Te Aweawe, Wirihana Kaimokopuna</td>
<td>10</td>
<td>5</td>
<td>Tāmaki area</td>
</tr>
<tr>
<td>9 March 1871</td>
<td>Peeti Te Aweawe</td>
<td>11</td>
<td>50 + 10 (15 May 1871)</td>
<td>Manawatū area</td>
</tr>
<tr>
<td>9 March 1871</td>
<td>Hohepa Paewai, Wirihana Kaimokopuna, Ihāia te Ngārara</td>
<td>13</td>
<td>30</td>
<td>Tāmaki and Manawatū area</td>
</tr>
<tr>
<td>March 1871</td>
<td>Wirihana Kaimokopuna, Hohepa Paewai, Ihāia Ngārara</td>
<td>14</td>
<td>15</td>
<td>Manawatū area</td>
</tr>
<tr>
<td>1 April 1871</td>
<td>Hoani Ngāihi</td>
<td>10a</td>
<td>2</td>
<td>Tāmaki area</td>
</tr>
<tr>
<td>Dated receipts were not issued at the time of these advances. Voucher 15 indicates all were paid between August 1868 and June 1871</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Ropata Hoakaku</td>
<td>15</td>
<td>50</td>
<td>'Purchase 70 Mile Bush'</td>
<td></td>
</tr>
<tr>
<td>Ropata Hoakaku</td>
<td>3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Hirawanui</td>
<td>50</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Peeti</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Nepe, Pine and others</td>
<td>1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kerei Tanguru</td>
<td>5</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Karaitiana</td>
<td>10</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>Karaitiana</td>
<td>16</td>
<td>26</td>
<td>'Purchase 70 Mile Bush'</td>
</tr>
<tr>
<td>Unknown</td>
<td>Hēmi Te Uranga</td>
<td>16</td>
<td>1.10</td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>Ihaka Whaitiri</td>
<td>16</td>
<td>20</td>
<td></td>
</tr>
<tr>
<td>Unknown</td>
<td>Not specified</td>
<td>18</td>
<td>150</td>
<td></td>
</tr>
</tbody>
</table>

*Advance payments to Māori for the northern Bush blocks, August 1868 to June 1871*
court - Hori Tataki, Pine Wātene and Te Hirawanui. (McBurney suggests Hirawanui’s advance was for the earlier purchase of Mākuri block – later Puketōi 4 and 5 – in 1859.)

In our view, this does not support a conclusion that in its 1870 investigations into these blocks, the Native Land Court was persuaded to award title to those whose eagerness to sell had resulted in their acceptance of advances. These payments were made to both resident and non-resident chiefs. Moreover, as we shall see, a number of owners that the court put into the title subsequently refused to sell, and it took some years for the Crown to acquire their interests. Had Judge Rogan and Locke been working together to ensure that the court’s award of title suited the Crown, one might expect these names to have been omitted. Indeed, McBurney, when questioned closely on this matter by the Tribunal and Crown counsel, provided no explicit evidence of collusion. Apart from a later comment made by Paora Rōpiha Takau, that Locke had given evidence to the court that somehow swayed the judge, there is really nothing substantive to support the allegation.

Locke’s role in the court does not appear to have been large. He did object to the court hearing Puketōi 5 on the basis that it was already Crown land from an earlier purchase, but apart from that, his evidence was confined to confirming the accuracy of the plans before the court. There is nothing in the minutes to support a view that Locke unduly influenced the court. Moreover, the claims of non-resident chiefs such as Hoani Meihana were supported by resident chiefs, such as Huru Te Hiaro, Hōhepa Paewai and Wirihana Kaimokopuna. McBurney also observes that JD Ormond, who was involved in Crown purchase at a supervisory level, had argued that land sales should proceed without any title investigation by the court. Ormond would presumably have wanted to retain court involvement if he had been confident that he or Locke could manipulate the court to achieve their desired outcomes.

McBurney also suggested, in support of the idea that there may have been collusion, that the court put non-resident chiefs into titles as owners, when its main criterion for eligibility was ostensibly occupation. However,
<table>
<thead>
<tr>
<th>Name</th>
<th>Blocks</th>
</tr>
</thead>
<tbody>
<tr>
<td>Karaitiana Takamoana *</td>
<td>Puketōi 1, Puketōi 2, Te Āhuatūranga, Māharahara, Tāmaki, Manawatū 2, Manawatū 3</td>
</tr>
<tr>
<td>Te Wirihana Kaimokopuna *</td>
<td>Puketōi 1, Te Āhuatūranga, Manawatū 1, Manawatū 4A</td>
</tr>
<tr>
<td>Atenata Te Wharekiri</td>
<td>Te Āhuatūranga, Tāmaki, Manawatū 1, Manawatū 2</td>
</tr>
<tr>
<td>Ihāia Te Ngārara *</td>
<td>Tāmaki, Māharahara, Manawatū 1, Manawatū 4A</td>
</tr>
<tr>
<td>Hohepa Paewai *</td>
<td>Puketōi 3, Māharahara, Manawatū 1</td>
</tr>
<tr>
<td>Hoani Meihana Te Rangiotū *</td>
<td>Puketōi 4, Te Āhuatūranga, Manawatū 4A</td>
</tr>
<tr>
<td>Manahi Paewai</td>
<td>Puketōi 1, Puketōi 3, Manawatū 1</td>
</tr>
<tr>
<td>Peeti Te Aweawe *</td>
<td>Puketōi 1, Puketōi 4, Manawatū 4A</td>
</tr>
<tr>
<td>Nireaha Matiu (Tāmaki)</td>
<td>Puketōi 2, Te Āhuatūranga, Puketōi 4</td>
</tr>
<tr>
<td>Nepe Apatu *</td>
<td>Manawatū 3, Manawatū 5, Manawatū 2</td>
</tr>
<tr>
<td>Te Wātene Te Mango</td>
<td>Puketōi 1, Manawatū 1, Puketōi 3</td>
</tr>
<tr>
<td>Mātenga Te Kurukore</td>
<td>Manawatū 5, Manawatū 4B, Manawatū 7</td>
</tr>
<tr>
<td>Heta Tiki</td>
<td>Manawatū 4B, Manawatū 7</td>
</tr>
<tr>
<td>Paraone Ngātata</td>
<td>Puketōi 2, Puketōi 4</td>
</tr>
<tr>
<td>Huru Te Hiaro *</td>
<td>Puketōi 2, Puketōi 4</td>
</tr>
<tr>
<td>Urupana Pakaha</td>
<td>Puketōi 2, Puketōi 3</td>
</tr>
<tr>
<td>Eraihia Te Moko</td>
<td>Puketōi 2, Puketōi 3</td>
</tr>
<tr>
<td>Paora Rōpiha *</td>
<td>Manawatū 3, Manawatū 8</td>
</tr>
<tr>
<td>Ripata Moruke</td>
<td>Manawatū 5, Manawatū 3</td>
</tr>
<tr>
<td>Pete Ropata</td>
<td>Manawatū 5, Manawatū 2</td>
</tr>
<tr>
<td>Hoani Ngāihi *</td>
<td>Manawatū 4B, Manawatū 7</td>
</tr>
<tr>
<td>Maata Te Pare *</td>
<td>Manawatū 4B, Manawatū 6</td>
</tr>
<tr>
<td>Ihākara Whaitiri *</td>
<td>Manawatū 8, Manawatū 4</td>
</tr>
<tr>
<td>Tanguru *</td>
<td>Manawatū 6, Manawatū 3</td>
</tr>
</tbody>
</table>

* Owner received a purchase advance. A further 67 Māori names appeared on only one of the Seventy Mile Bush titles issued in September 1870. Of these 67 awardees, three received purchase advances (Ropata Hoakaku, Nōpera Kuikāinga, and Hēmi Te Uranga).

**Names appearing on two or more titles to the northern Bush blocks, September 1870**
occupation was not the only criterion – and as McBurney points out himself, although the western Rangitāne chiefs did not reside on the land permanently, their ties with the resident population were close, and they ‘presumably enjoyed extensive usufruct rights to the Bush for the gathering of mahinga kai.’ Moreover, the non-resident chiefs were men of mana and influence, and were most likely seen as appropriate representatives of the wider community. This is particularly true of Karaitiana Takamoana, who moved with confidence in the Pākehā political and commercial world, was the member of Parliament for Eastern Māori from 1871, and commanded a great deal of respect. At a partition hearing for Tāmaki in 1895, Manahi Paewae explained to the court that Karaitiana Takamoana was put into the titles as an owner not because he had any customary ‘take’ to the land, ‘but because he was a man of influence and capable of dealing with the Europeans.’ People who opposed the Crown’s objectives were also on titles. Āperahama Rautahi led objectors to the ownership case of the applicants in the Māharahara and Te Āhuatūranga blocks, seeking to limit the owners to those descendants of Rangitāne hapū who actually lived and cultivated on the land. He was opposed to sales, but was still named as an owner of the Tiratū block. McBurney suggests that he was entitled to further lands, but was omitted because he was a non-seller. According to Rogan at the time, though, Rautahi’s omission from the Māharahara block was because his evidence had not withstood a strong challenge from Hoani Meihana, and he walked out of the court.

All of this leads us away from the view that direct court–Crown collusion influenced the names on titles.

(4) Adequacy of the court’s investigation
In the wake of the court’s determination in September 1870, Paora Rōpiha, who was named as an owner in the Manawatū 3 block, wrote to Chief Judge Fenton. He strongly disapproved of the court procedures concerning these lands and claimed that the outcome was wrong for a number of reasons. First, there was no survey, and the map relied upon had instead been sketched at Napier. Rōpiha added that during the first and second days of the court, the evidence was strong on both sides, but in the evening of the third day ‘Locke gave his evidence in the court when Āperahama Rautahi and Rōpiha Takau were defeated. Everyone knew that their claims were just, and that they opposed the sale, ‘but it was on account of the new proceedings in the case of Tamaki that those persons fell . . . two tribes are holding back Tamaki that it should not be sold Ngatierangi-wakaewa [Ngāti Rangi-whakaewa] and Ngati Parakiro – there are two tribes who are selling Tamaki, Ngati Mutuahi and Rangitane.’ Rōpiha concluded his letter by stating that all the Tāmaki tribes were unhappy with the court’s awards, and disputes and protests would not end. They would be carried out ‘in a peaceful or perhaps in a bad manner – it will not be permanently settled in this way.’ Rōpiha was content for the land to be investigated again, but only if a proper survey was available and all interests were identified.

In one way, Rōpiha’s objection can be seen as motivated by self-interest, because he was seeking to limit the owners to those descendants of Rangitāne hapū – including his immediate kin – who actually lived on the block and cultivated it. But on another level, Rōpiha’s complaints are about the adequacy of the court investigation in the short time available and with the external pressure of the Crown’s purchasing agenda. He pointed out that no surveyor had visited the various settlements and discussed proposed block boundaries with the people, and indeed trouble over this had earlier caused Munro (the surveyor) to be driven away. This points to much more serious concerns about right holders’ participation in the court process, and even sale negotiations, than officials were perhaps willing to acknowledge. As noted above, there is no evidence in the court minutes of any decisive intervention by Locke, who did little more than attest to the accuracy of the plan before the court.

These kinds of complaints about the court and survey process were inevitable, given all that was going on. The Crown’s purchase activities were conducted under time pressure. Although Crown officials acknowledged the need
for hui so that decisions were made carefully, and significant areas were set aside for present and future community needs, at the same time they sought rapid release for purchase of as much land as possible. The pressure was on even before an investigation was undertaken. Shortcuts led to inadequate discussions on the land about boundaries, and too little time devoted to hui to sort out real consensus around the nature and extent of customary rights and tikanga. The Native Land Court hearings themselves were brief, and the implementation of the 10-owner rule facilitated the rapid purchase of very large areas of land. For the people involved, it must have all happened in a blur.

(5) Adequacy of the title provided
Once land was taken to court, the issue was whether the title the court provided enabled the owners and their communities to manage their land effectively, and to protect the interests of those who did not wish to sell.

The Crown has conceded that the application of the 10-owner rule was potentially prejudicial to Māori. The evidence is clear that in the Tāmaki lands, some claimants sought to put many more owners than 10 into the titles. For example, Huru Te Hiaro named 41 right holders in the Puketōi blocks, and this did not include all those who had interests. Hōhepa Paewai also told the court there were at least 66 rightholders in the Āhuatūranga block, but it was awarded to seven chiefs. Paewai named 73 right holders in the Māhara block, but the court put seven on the title. In some cases, blocks to be sold to the Crown were awarded in just a few names so as to simplify the transaction, but then the reserves made out of those blocks went only to the very few grantees.

While Māori and the Crown recognised at this time that owners listed under the 10-owner rule were supposed to be trustees for the wider community, the legislation did not actually provide for trustee status. Those named came to be regarded as absolute owners with the legal power to alienate the land without reference to their hapū or the wider community of right holders. Neither was Judge Rogan inclined to resort to the provisions of the 1867 Act, under which he would have had to seek out all owners and list all their names – not just 10 or fewer owners – on the certificate of title.

Often those named in the title tried very hard to stay faithful to the informal trust created, even where no restrictions on alienation were entered on the title as it went through the court. However, as we noted in our earlier discussion, it was virtually impossible for rangatira (or anyone else for that matter) to operate in new economic circumstances without borrowing or accepting advances when cash was scarce. In the case of Māori, for whom land was their only asset, land supposedly held on behalf of the wider community often became the only means by which debts could be discharged. Restrictions on the title did not stop this from happening. The Crown increasingly assisted with the costs of developing and retaining land by providing mortgage finance, but this was often too little, too late – and in some cases, instead of assisting Māori to keep the larger estates they had sought to protect (such as Tāmaki and Piripiri), the Crown became the purchaser.

Although it was well understood that the 10-owner rule gave the named owners rights that really belonged to a larger group, the Crown took advantage of the situation by purchasing from representative owners as if they did own all the rights. This left the communities they represented high and dry.

It is clear that such people were prejudiced by the 10-owner rule, although it is impossible now to name them, because we cannot ascertain retrospectively who would have been on the titles had the system been set up to recognise all those with legitimate interests. Suffice to say, though, that communities were left without land interests, or an effective say in what happened to their tūrangawae (ancestral home), and this was plainly not what the Treaty intended.

(6) Finalising the Tāmaki purchase
Soon after the land had passed through the court, the Crown sought to conclude its purchases. But sale was strongly opposed by influential people who claimed that
the grantees had no right to sell, whatever the entitlement conferred on them by the court. Numbered among this cohort were Āperahama Rautahi, Paora Rōpiha, Hēnare Matua, Ihākara Whaitiri, Ihāia Ngārara, and Nōpera Kuikāinga, and later Hori Herehere. A number of Māori whose names were on the titles also opposed sales, and Crown purchase agents pursued them for many years, seeking to ‘complete’ purchases.

It was typical of this kind of purchase that payments were outstanding long after the deal was done. This raised confusion and complaints about unfair practices, most especially that the distribution of the payment had been arbitrary and that some sellers had received dispropor-

tionate shares.\textsuperscript{212}

Even though the Crown had paid advances and claimed that the purchase was well under way, vital matters like price and acreage were still to be settled. At first the owners who were disposed to sell demanded £30,000 for much of the land and refused a Crown offer of £14,000 plus £1000 each for the senior chiefs. Te Waka Maori o Niu Tirani ridiculed the demand for £30,000 and tried to talk down the price:

It is correct that the land is valuable; however that is the land near shipping ports, the land with roads to carry produce out, and improved land – only then can one say it is very valuable. As for this land which is being talked about for sale, one part is mountainous, there are cliffs, rivers, bush and other things. It is only inhabited by pigs and rats.\textsuperscript{213}

‘Real’ value would only be imparted after its acquisition by the Crown, when money and labour was invested in it. At that point, but not before, Māori would benefit. Their remaining land would become valuable only after a railway was built and settlement occurred.\textsuperscript{214}

Ormond felt the price he offered was high enough, repeating the common view of settlers that land ‘without being open, is valueless’, but nevertheless he was inclined to go up to £20,000.

Of course, the land was not valueless, even if it lacked access at this stage. According to the surveyor Alexander Munro, writing in September 1870, the land – quite apart from its strategic significance – was fertile and well-adapted for agricultural purposes, and access would not be difficult. It also contained much valuable timber, and a site for a small township on open land in the Tuatua block.\textsuperscript{215} Fox admitted that Cabinet was prepared to pay £20,000, but this should ‘cover everything and not leave reserves to be laid off afterwards in diminution of the quantity paid for’.

The prospective vendors then reduced their demands to £25,000, but on the understanding that the Umutaoroa (17,100 acres), Rākaiatai (8200 acres) and Te Ohu (20,600 acres) blocks were omitted and further reserves were set aside from the blocks to be sold. At this point the negotiations stalled.\textsuperscript{216}

According to Robertson, it was Karaitiana Takamoana who brokered a solution to the impasse whereby the vendors agreed to accept a lower price. In April 1871, around 24 owners including Takamoana signed an agreement acknowledging that advance payments of some £1300 had been made against some of the blocks.\textsuperscript{217} On 1 June 1871, 12 owners signed an agreement to sell 231,430 acres (comprising 12 blocks: Puketōi 1–5, Āhuatūranga, Māharahara, Umutaoroa, Te Ohu, Ngāmoko, Tuatua, and Rākaiatai) for £16,000. As it turned out, parts of Umutaoroa, the bulk of Te Ohu, and part of Tuatua (Te Whiti-ā-Tara) – totaling 18,370 acres – were not included in the sale.\textsuperscript{218} Crown officials expected the actual cost of the purchase to come closer to £18,000 when other liabilities like bonuses paid and additional survey costs were added.

On 16 August 1871, and in spite of opposition from some chiefs, a second Tāmaki deed was signed in respect of the same purchase.\textsuperscript{219} Some 69 owners signed up over several weeks.\textsuperscript{220} The Crown appears to have paid out £12,000 of the agreed purchase price, holding back £4000 for later payment. Although the agreed price of £16,000 did not increase, the amount of land to be sold grew by 20,000 acres (although this also included reserves), making a round total of about 250,000 acres.\textsuperscript{221} The five reserves agreed by this time – McBurney described them as
‘patently inadequate’ – were Umutaoroa, Te Ohu, Tuahia (or Tuatua), Te Rotoahiri and Ngāawapūrua (later known as Āhuatūranga Reserve). In all, these reserves amounted to just under 22,420 acres.\(^{222}\)

According to McBurney, purchase monies were really withheld to pay ‘dissentients’ who had so far refused to agree to a sale.\(^{223}\) Eventually, most of Te Ohu had to be excised – or, as it was seen at the time, reserved – for non-sellers. Robertson notes that the £4000 balance was eventually paid in December 1873, and while most of those who received it appear to have been signatories to the August 1871 deed, the Crown continued to court the remaining owners through the 1870s.\(^{224}\) Why the 1873 payment went to many who had presumably already received a share of the earlier distribution is not explained in the evidence. However, there were also some signatories who were now being pressured to complete the purchase, sometimes by continuing ad hoc payments.

Adjustments to block boundaries over the decade came about because more precise surveys were undertaken, or because it was realised that some of the land was already covered by earlier purchases. According to McBurney (citing Ballara and Scott), official Government returns showed that by the mid-1870s, the Government estimated it had paid a total of £18,232, plus £5678 in expenses, for just under 220,000 acres of the Tāmaki purchase. By 1879, after surveys had been undertaken, the area involved had officially increased to just under 265,000 acres, and the total price paid was now £18,222, plus £6077 in expenses.\(^{225}\) McBurney suggests that the increase in the expenses category might have reflected the higher price non-sellers demanded before they would sign the deed, but we have seen no direct evidence of this.\(^{226}\)

Both McBurney and Robertson provided evidence of later purchase payments or attempts in the 1870s to bind owners to the purchase agreement. McBurney notes, for example, that by 1877, officials reported that all necessary signatures had been obtained in eight blocks, while of the remaining four, three required one signature each and the fourth had another four signatures outstanding.\(^{227}\)

Robertson similarly notes that by 1878, only one signature was required on each of three blocks, and James Grindell and Josiah Hamlin were then employed (unsuccessfully) to acquire the remaining shares.\(^{228}\)
(7) The Māori perspective

The primary Māori motivation for sales at this time appears to have been a desire to encourage European settlement to bring in technology, communications infrastructure, employment, and trade opportunities. As we have seen, Locke held out the prospect of economic advancement at the Waipawa hui in September 1870. Te Waka Maori o Ahuriri promoted the same idea, saying that although the Tamaki land was not valuable in its present state, it would become so ‘through the endeavours of the European – that is to say, through the roads, the railways and other such things.’

Locke pointed out that in order for Māori to derive this kind of benefit, they would need to retain perhaps ‘many thousands of acres’ of land. His statements echo Governor Grey’s promises of ample reserves in the Wairarapa. As in that part of our inquiry district, in Tamaki too the issue was on Crown purchase officials to ensure that enough land was set aside to enable Māori there to engage with the new settler economy. This made the exclusion of the large Mangatainoka block from the Crown’s 1871 purchase essential. We come back to this.

Extensive alienation proceeded even though Tamaki-nui-ā-Rua Māori had – and had expressed – concerns about the title awarded, the process of purchase, boundaries, and price. Within six weeks of the signing of the 1871 deeds, further complaints surfaced. Ihākara Whatitiri and Nōopa Kuikāinga asked Fenton for a rehearing of the blocks. They had sought to have their interests cut out, but repeated requests to the Hawke’s Bay Provincial Government to send them a surveyor had gone unheeded. This letter was forwarded to the Native Minister. A response has not been found, but there was no rehearing. Whatitiri and Kuikāinga wrote again on 15 August, urging that ‘the Maoris are in trouble about their lands within the whole lands of Tamaki’. The second deed was signed the following day but, as McBurney states, the writers were not mollified and wrote again to Fenton telling him that Locke and Ormond were committing a grave ‘error’, and ‘the doings at Tamaki are in a state of confusion’. They said ‘some persons who have no interest in the land are selling our piece,’ and added:

Some of the owners of those pieces did not know of the sale, that they might have agreed whether they would sell or not. As it was, Mr Ormond and Mr Locke overlooked some persons at the time of their purchase, they turned constantly to the persons who approved of their purchase, and the money was agreed upon. At the time that the persons who sold the land were to receive their payments we showed our claim, those two then said that we, the persons who had been overlooked, should agree to what they were doing, that we might take part in their work. We were not willing. This, it appears to us, is the confusion caused by the doings of those persons.

There was no response, but three days later, Repudiation movement leader Hēnare Matua wrote to Fenton on behalf of ‘the whole of the Runanga who conduct the business of Tamaki’. He criticised the court hearings on the blocks, and in particular Judge Rogan’s rejection of Āperahama Rautahi’s claim. He also complained about the map presented at the court: ‘That map was made in the town of Napier. It was a compilation of all the maps of the lands sold to the Government previously, taken from the maps of the lands that had been adjudicated upon.’ The court had rejected the claims of known non-sellers, and those who were involved in sale negotiations did not inform the people Matua represented, despite the fact that some had been included in the Crown grants. He and the rūnanga demanded that the purchase be suspended, as ‘arrangements about that land Tamaki are in a very bad state.’

Hēnare Matua raised these issues again when giving evidence to the 1873 Hawke’s Bay Native Lands Alienation Commission. Although Matua did not claim interests in the lands, he represented a number of those who did, principally the ‘dissentients’ who objected to the terms of the court awards and subsequent sales.
Hēnare Matua had multiple criticisms of how the purchase had proceeded. He did not like the survey, the court investigation, or the Government’s failure to address the claims of those who opposed sale of the land. Matua told the commission about how Munro had been turned off the land, so that he had to compile his sketch plan in Napier. Matua objected to the surveyors working only with the land-selling party. His principal complaint about the Native Land Court hearing was that rightful owners had been largely left out, and ‘after the investigation some people were crying because their lands had been taken’. He blamed the Government ‘for acting with one party’ and ensuring that some were left off the titles. Some persons named in the grants were willing to sell, but others were not. Matua claimed to have told Locke to ‘keep the money back and settle these difficulties before anything was done’, but Locke took no notice. In his view, the situation might have been avoided if a rūnanga had investigated the case. Another witness, Hamana Tiakiwai, complained that the grantees sold land they were supposed to be looking after for the hapū as trustees, and although he was in favour of sales he did not receive any money. Eight other complaints about the Bush blocks were filed but not heard. These related to non-distribution of sale proceeds and/or the non-inclusion of certain people in the titles. Locke then questioned Matua, trying to establish that those whom he represented did agree to sell in 1871, and their current objections were an ‘afterthought’. In his own defence, Locke pointed out that opponents of the sale were admitted as owners by the court, and Matua was forced to concede that this was correct.

Hawke’s Bay Native Lands Alienation Commission

Ongoing agitation and unrest over land dealings in Hawke’s Bay eventually prompted the appointment of a commission of inquiry. The commission comprised Supreme Court justice and former Native Minister CW Richmond, the Native Land Court judge FE Maning, and two Māori – Wiremu Te Wheoro of Tainui and Wiremu Hikairo of Te Arawa. The commission opened at Napier on 3 February 1873, and sat for 10 weeks. Its subsequent report proved a bitter disappointment for many Hawke’s Bay and Wairarapa Māori. Maning and Richmond were unable to find a single case of outright fraud in the more than 300 transactions investigated by the commission – a finding, as Keith Sinclair observed, which ‘it is impossible to believe, and which probably no one believed then’. The two Māori commissioners thought otherwise, condemning the often fraudulent system of debt-entrapment employed by Hawke’s Bay land-buyers to ensnare Māori lands. Judge Maning, and possibly Richmond to a lesser extent, was of the view that Hawke’s Bay Māori were in a state of virtual rebellion at this time, and the Repudiation movement was rapidly gaining ground. Consequently Maning was strongly disposed not to enter into the merits of the claims, instead rejecting them on political grounds.

unexceptionable, his attitude is that of denying the authority of the Lands Court to determine conclusively upon Native title.

Compliance with such demands is evidently impossible. No particular grievance was proved to exist . . .

Richmond noted that Matua could point to no evidence in support of his assertion that the Native Land Court acted as the ‘mere instrument of the Executive in effecting the purchase’, and observed that a significant number of owners had still not agreed to a sale. The commission could not find anything irregular or ‘underhand’. The court was fully attended by both the sellers and their opponents,
and there was not a 'title of evidence laid before us to lead us to suppose that anything has been done in this case which is not in the ordinary course of procedure'.

Judge Maning did not report on case 25. His general comments reveal that his agenda was not so much doing justice in individual cases as ensuring that titles awarded by the court were upheld as valid and reliable:

I believe that the whole value and utility of the Native lands Acts depends upon this position – that the issue of a Crown grant founded on a decision of the Native Land Court is final and decisive as to the ownership of the land, and confers a perfectly exclusive title on the grantees; any other theory than this, which would acknowledge the possibility of any rights of ownership founded on Maori custom remaining unextinguished, and vested in any persons other than the grantees, would not only encourage, but create, a general attack on the validity of the titles to all lands which have been purchased by Europeans from Native grant-holders, and finally against all titles to all lands held by Europeans all over the North Island.

Māori commissioners Wiremu Hikairo and Wiremu Te Wheoro found that those who negotiated the sale had paid no heed to its opponents, but they did not uphold Matua's claims relating to the survey or the fact of the plan being prepared at Napier. They also insisted that a Native Land Court determination and Crown grant was the end of the matter. With respect to the claims of Hamana Tiakiwai, they felt that he may well have been entitled according to custom, but it was his own fault that he did not get a share of the proceeds because he had probably not been active enough in taking steps to ensure he received it at the hui where it was paid over. Although the Pākehā commissioners may have been motivated by broader political considerations, we agree with Richmond's finding on claims that Locke manipulated the court process. There was no such evidence, and it is true that a significant number of non-sellers were admitted to the titles. In addition, a number of these owners were still resisting sale at the time the commission sat.

Although they recommended reform of the title being awarded by the court, the commission did not address Māori aspirations for greater control of the title determination process.

By the late 1870s, the Native Department was still seeking to secure the outstanding signatories to the Tāmaki purchase in the face of increasing concerns from Tāmaki-nui-ā-Rua Māori. The Crown's difficulties were enhanced by the fact that the remaining non-sellers were by now committed 'repudiationists' and supporters of Hēnare Matua. Seven outstanding owners refused to sign unless substantial reserves were created and additional large sums paid. There was no progress for some time, although the Āhuatūranga reserve (1575 acres) was created in 1877.

By 1880, settlers were pressuring the Crown to open up the Manawatū 7 (Rākaiaiatai) block for purchase, to enable a Wellington to Hawke's Bay railway connection and also to make land available for settlement. Purchase agents were dispatched to obtain signatures, and were paid what counsel for Ngāti Kahungunu rightly describes as a 'bounty' for each signature. This was not wholly successful. In 1881, a petition from Hori Rōpiha and five others complained of illegal logging on the Rākaiaiatai block. They stated that they had never agreed to sell this block, or Te Ohu, and wished to keep it for themselves. Outstanding interests were, however, acquired in the Māharahara block, and this land was gazetted as having been purchased in August 1881. But other owners remained uncooperative. In September 1881, Nōpera Kuikāinga remained 'doggedly' opposed to selling his interests in Rākaiaiatai, and continued to claim that the whole block belonged to him alone, despite the Native Land Court awards.

Eventually, by the early 1880s and when it was clear the remaining owners would not sell, the Crown sought to have its interests in the lands defined. At a partition hearing in Greymouth in September 1882, 4350 acres were awarded to the Crown, and 3000 acres to Hori Rōpiha.
and three others in Rākaiatai. At Te Ohu, 2036 acres were awarded to the Crown and 18,564 acres to 10 owners as Te Ohu 3A. The Crown part of the block was proclaimed in May 1883. In the following month Paora Rōpiha accepted £200 for his share of Te Ohu, and Maata, another dissentient, agreed to accept £400 for her share in Umutaoroa (Manawatū 1).

(8) Summary
When negotiating with Māori, officials seemed to recognise the need for Māori to be able to manage their lands collectively. Locke encouraged hui to make careful decisions, to take present and future needs into account, and only then to seek ratification from the Native Land Court. But later, when owners did not want to sell, or wanted a better price, Crown officials did not hesitate to apply huge pressure on them to comply, without regard for Māori rights or needs. The Crown's purchases and the needs of settlement always came first. This was a far more serious breach of the Treaty than the Crown has conceded. We do not think that there is good evidence of collusion over names to go on the title. But there certainly was pressure on individuals holding representative interests to sell large areas at low prices, and without ensuring that those individuals were really in a position to make informed and careful decisions on behalf of others about their present and future needs.

When it came down to it, in this district as in the Wairarapa, the Crown was not prepared to take the necessary time and trouble to ensure that there was a proper process for ensuring full consent to land alienation. Those hui that were held revealed that issues about who owned what, and who was entitled to represent whom, were unresolved. Nor had the details of the proposed purchase been worked out, much less communicated. All that was clear was that the Crown intended to purchase a large area, and would make extensive reserves. Māori often complained that they lacked information, and their customary institutions lacked authority. Had they been allowed, they could have worked as autonomous people with Crown representatives to construct a mutually-acceptable arrangement, but instead they were in effect asked to take the Crown on trust. The Crown breached that trust by prioritising large purchases and settlement over adequate provision and protection, and using devices like advances and the 10-owner title to circumvent opposition.

4.5.4 The southern Bush lands
Once the land known as Tāmaki or Forty Mile Bush had been investigated by the court and purchase negotiations were under way, the Crown turned its attention to the

<table>
<thead>
<tr>
<th>Block</th>
<th>Area (acres)</th>
<th>Status</th>
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<tbody>
<tr>
<td>Āhuatūranga</td>
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<td>Gazetted 9 August 1877</td>
</tr>
<tr>
<td>Māharahara</td>
<td>26,383</td>
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<tr>
<td>Ngāmako</td>
<td>16,352</td>
<td>Gazetted 7 February 1878</td>
</tr>
<tr>
<td>Puketōi 1</td>
<td>37,000</td>
<td>Gazetted 27 February 1877</td>
</tr>
<tr>
<td>Puketōi 2</td>
<td>28,500</td>
<td>Gazetted 27 February 1877</td>
</tr>
<tr>
<td>Puketōi 3</td>
<td>25,174</td>
<td>Gazetted 27 February 1877</td>
</tr>
<tr>
<td>Puketōi 4*</td>
<td>31,000</td>
<td>Gazetted 27 February 1877</td>
</tr>
<tr>
<td>Puketōi 5*</td>
<td>15,500</td>
<td>Gazetted 27 February 1877</td>
</tr>
<tr>
<td>Te Ohu (part)</td>
<td>2036</td>
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</tr>
<tr>
<td>Rākaiatai</td>
<td>7230</td>
<td>Four signatures required</td>
</tr>
<tr>
<td>Tuatua</td>
<td>7950</td>
<td>Gazetted 7 February 1878</td>
</tr>
<tr>
<td>Umutaoroa</td>
<td>27,803</td>
<td>One signature required</td>
</tr>
</tbody>
</table>

Total | 264,924 |

* Puketōi 4 and 5 were purchased by the Crown in its Mākuri purchase of 1859

Status of the northern Bush blocks as at 1879
southern end of the Seventy Mile Bush – about 187,000 acres located in Wellington Province. A few Puketōi blocks lying south of the Wellington provincial border had been investigated with the Tamaki lands in 1870, and Mākuri and Ihurua, also located in this area, were part of pre-court purchases of the 1850s. With these exceptions, all of this southern part of the Seventy Mile Bush went through the court the year after Tamaki, in September 1871.252

McBurney suggests that the southern and northern parts of the Bush were treated separately partly because of the different provincial jurisdictions of the time. Another reason was that many Māori who claimed interests in the southern part did not want their lands heard by the Native Land Court at Waipawa, because it was too far away.253

The southern part of the Bush went before the Native Land Court at Masterton, which was also under Judge Rogan. Although it was closer, some right holders did not make it to court because of bad weather and flooding. Judge Rogan adjourned for a week. But even so, among those who failed to attend was the increasingly influential Nireaha Tamaki, whose late arrival at Masterton formed the basis of his later application for a rehearing.

The Crown was interested in purchasing extensive portions of this southern part of the Bush. Ormond again sought to effect a Crown purchase without recourse to the court, and head office in Wellington again said no.254 He then insisted that in order to expedite the passage of these lands through the court, it was ‘extremely desirable that an efficient officer of the government should attend the sittings . . . both to watch the interests of the government in Blocks already dealt for, and also to assist the natives in getting their own differences arranged’. He added that it was possible that no lands would have passed through the Waipawa court if Locke had not been present to perform these functions, and even then the matter was a very difficult one, and purchases ‘at that end of the bush’ would be a great challenge.255 In our view, this is an admission by a knowledgeable and senior official that the decision to take some lands through the court was only made after considerable encouragement from Crown officials, who wanted to expedite a Crown purchase. Ormond was well aware of the difficulties associated with the purchase of the northern Bush lands, and expected the southern blocks to be no easier.

4.5.5 The court’s investigation of the southern Bush, September 1871

The hearing for most of the southern part of the Tamakini-ū-a-Rua lands was set down for late August 1871, but bad weather caused delays.256 When the court finally opened in Masterton on 7 September 1871, both Locke and Ormond were present. There is no evidence that they convened a large hui as they had at Waipawa, so that proposed sales and who should go into the title could be ventilated before the hearing.

As with the northern Bush area, once court hearings began they were completed quite quickly. By 13 September, title had been awarded to around 187,000 acres in eleven blocks.257 It became evident that some Māori at the sitting objected to the court investigating at all, and sought to have all the cases withdrawn.258 The level of opposition was greater than at the 1870 hearings, when no objections to the involvement of the court per se were recorded, only individual objections from counter-claimants on particular blocks.

Soon after the court began investigating the first block before it – later called the Mangahao block – some objected to the court’s determining title to it, and asked to have all the cases before the court withdrawn. One objector, named Piripi, told the judge that Manawatū Rangitāne had ‘crossed over’ and ‘have not considered me in the least. I have a claim to this land. I do not wish my name to be written down. A woman and an old man also said they would not give their names, and would not ‘give up’ their land to the court. Wi Wāka Kahukura also objected to title adjudications on all the blocks before the court. Stirling posits that this may have been part of a wider attempt to boycott the court proceedings,259 while McBurney speculates about whether it was an early manifestation of the
Repudiation movement. Rogan told the objectors that ‘the court would hear the claims if the applicants wished to have them heard . . . if any of the Wairarapa natives had any claims in those lands they would have an opportunity of stating their claims, at the same time they must not say that they had nothing to do with the investigation after the court had come to a decision.’ But, ’As regards the several persons who had appeared to make objections and would not give their names or proper evidence in support of their claim, the court could not take those persons into consideration.’

The court went on to consider all the claims before it. Mangahao 1, comprising some 23,000 acres, was heard on 7 September 1871. Peeti Te Aweawe was the applicant, supported by Hoani Meihana. Rogan awarded the block to Peeti Te Aweawe, Hoani Meihana and eight others, subject to the production of properly approved plans. ‘[T]he persons whose names have been mentioned by Hoani Meihana as members of the Rangitāne tribe were the owners of the block’, the judge said, and if they wished to select the names of 10 persons as named owners they could do so. The judge imposed no restrictions against alienation on the title, enabling the owners to ’dispose of it in any way.’

Mangahao 2, a block of 8000 acres, was heard the next day. Huru Te Hiaro was the main claimant. He informed the court that a number of his co-claimants were not present, and said he wanted his claims deferred. But Rogan had already delayed the court for several days, and he decided to proceed. Once again Hoani Meihana was the principal speaker, and based his claims on occupation. The judge awarded the block to Huru Te Hiaro, Hoani Meihana and four others. This was immediately followed by Eketāhuna (or Manawatū-Wairarapa 1), consisting of 6000 acres. The land was awarded to Peeti Te Aweawe and nine others.

The court heard the Ngātapu block of 11,000 acres on 9 September, and Rogan awarded it to 10 grantees, at the same time acknowledging that the number of owners was ‘legion’. He subdivided the block in order to name more owners on the titles. The parts became Ngātapu 1 and 2, comprising 4000 and 7000 acres respectively, and 10 owners were named in each.

The Wairarapa 2 block, comprising 36,000 acres, was heard on 11 September. After much discussion, this block was also divided, this time into three parcels – Mongorongo and Pahiatua (15,000 acres each), and Pukahu (6000 acres) – again with 10 owners on the titles for each.

Kaihu, a large block consisting of 41,000 acres, was heard the next day and divided into two smaller blocks in order to accommodate different tribal interests. Huru Te Hiaro claimed this land on behalf of Rangitāne, but accepted that Ngāti Raukawa could justifiably mount a joint claim. Not all Rangitāne agreed to this, and there was some discussion outside the court before it was finally agreed to admit Ngāti Raukawa and ask the judge to divide the land, which he readily did. Two blocks of 22,000 and 19,000 acres resulted, both with 10 owners, with Ngāti Raukawa in the smaller block.

The Mangatainoka block (or Manawatū Wairarapa 3), of 62,000 acres, was brought to court on 13 September, and it was awarded very differently from the others. Here, Hoani Meihana told the court that Rangitāne ‘wished this land to be investigated and made a tribal claim . . . that the whole tribe claimed and owned the land and would divide it amongst themselves in some future time’. Rogan was satisfied that the block belonged to Rangitāne based on the awards he had made in adjacent blocks. The court adjourned to permit the tribe to:

consider amongst themselves as to the persons whose names they wished to be put in the C[rown] grants for the several pieces that if they found that there were more than 10 principal men in the one piece they could divide the land as they wished so that a satisfactory arrangement might be come to amongst themselves . . .

The people duly conferred, but rather than providing lists of 10 owners for a number of subdivisions, as the court expected and as they had done in the other Bush
blocks, they placed a single list of 56 names before the court, wanting all to be included in the one block to be held by the tribe. Rogan determined that the land was the property of the Rangitane tribe and that the persons whose names were submitted ‘together with other natives who may be found to be members of the Rangitane tribe are the owners’. The title to the block listed the 56 owners. Finally, the court had deployed the 1867 amendment!

Robertson (like McBurney) did not direct us to clear and specific evidence that supported this claim, but McBurney shows that many of those involved in the northern blocks were now entangled in sales and advances and other debts. This may have put them under pressure to enter into deals on the southern lands.

Once claims were before the court, the native land legislation compelled the court to hear them, and the judge had very little discretion. It was now becoming clearer that once the court process was set in motion, Māori had little
### The Native Land Court and Land Purchasing, 1865–1900

#### 4.5.5(2)

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<th>No</th>
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<tr>
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<td>11</td>
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<td>62,000*</td>
<td>56</td>
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* Surveyed at 66,395 acres

The southern Bush blocks – Native Land Court investigation at Masterton, 9–13 September 1871

choice but to engage with it if they wished to protect their interests. Once an application was made, as Te Aweawe and others had done, and the court began an investigation, those who objected or failed to appear to promote their claims as the court felt was warranted could simply be left off the titles. As the Tūranga Tribunal points out, Māori came to know that once the court was present, they ignored it at their peril: “To turn one’s back on it risked losing jealously guarded rights to a competitor willing to file a claim. The court was an evil but . . . an unavoidable evil.”

Although the court was technically bound to proceed, in the sense that once begun a case could not be withdrawn, the judge could choose to be more or less flexible in different situations. In the Wairarapa valley, discussed earlier, the court adjourned cases for months or years when evidence was ‘too conflicting’ and it wanted arrangements to be reached out of court. Judicial discretion was always available as a tool to relieve the pressures on Māori, but of course depended entirely on the disposition of the judge. Rogan was not prepared to delay the hearings of the southern area in 1871 beyond a few days.

(2) Title options inadequate

As it did in the northern Bush blocks in 1870, the court put 10 or fewer owners on titles for the southern blocks in 1871, and with similar negative consequences. The single exception was the Mangatainoka block, with 56 owners.

The choice of tribal ownership for the Mangatainoka block marks it out from other land going through the court at this time. Meihana and other claimants wanted to keep it in its entirety for Rangitāne. Efforts had been made
in the northern Bush area to protect entire blocks, with the result that Tamaki and Piripiri were excluded from purchase negotiations and restrictions were placed on their titles. But they were still subject to the 10-owner rule. What was so different about the Mangatainoka block was that it got 56 names on its title under section 17 of the 1867 Act.

Why the Mangatainoka block proceeded so differently is unclear. It was the same judge. Had the chiefs only just found out about the possibilities under section 17, or did they try in 1870 but were refused? It was certainly not the first time that there were more people with rights than could be adequately captured by the 10 representative names. It seems likely that Rogan saw the use of a ‘tribal’ title as appropriate in this circumstance because Māori were expected to keep the land.

Although more names were allowed for Mangatainoka, there was still concern that the hearings for the southern Bush had not provided adequate opportunity for a proper investigation and determination of title.

Soon after the court investigation, Locke reported that Hēnare Matua and others from Hawke’s Bay and Wairarapa who were not present at court were ‘determined to upset decision of Masterton Court & get fresh investigation of title’. Hēnare Matua petitioned Parliament for a rehearing: ‘I object to the names of other persons being inserted in the Crown Grants. I have a clear title to those lands. The lands lie between the Wairarapa and Manawatu’. Matua and the other objectors requested that no further purchase advances be paid until their claims were addressed. This request was ignored.

Nireaha Tamaki, who claimed interests in a number of the blocks which had come before the court in September, also submitted a petition to Parliament calling for a rehearing on the grounds that he was unavoidably detained by floods and could not attend the court, despite his best efforts. He appeared before a parliamentary committee in Wellington in October 1871. The committee had the benefit of a written report from Rogan and heard from a number of witnesses, including Locke and Nireaha. The members cross-examining included McLean and Ormond, along with Hori Kerei Taiaroa and Wiremu Katene. Nireaha told the committee that when he got to Masterton, the court was over and the grantees were leaving for Wellington. He objected to ‘strangers’ being made the owners of his lands.

Locke and Ormond endeavoured to cast doubt on Nireaha’s truthfulness, claiming that other Māori similarly blocked by flooded rivers had somehow managed to attend the court on time. Locke also pointed out that many of Nireaha’s relatives were named in the grants, and that ‘ten grantees being the extreme number allowed by law’ not all names could be in there anyway. This was a critical point because, of course, Nireaha might not have been on the title even if he had attended. But his absence also meant that he had not had the opportunity to oppose others whose rights he disputed. Locke seemed blithely to assume that because Nireaha’s relatives were on the title, his interests were somehow protected. Interestingly, Locke’s insistence that the ‘extreme’ number of owners allowed was 10 indicates that the 1867 amendment was still not widely accepted by officials, or perhaps was thought to apply only in limited circumstances.

According to Rogan’s report for the committee, the court investigation at Masterton had lasted a ‘considerable’ time, and there was a good attendance of Wairarapa Māori. Moreover, every opportunity had been given for those who wished to come forward and promote their claims. The difficulty, according to the judge, was political opposition and, by implication, interference in Crown purchases:

A Committee formed for the purpose of obstructing the business of the Court, and several protests were made at the time which were disregarded. As I have never been in Wairarapa but once and know little of that district or the natives, I may possibly be doing an injustice to the Wairarapa Natives. Yet I cannot see that these people are entitled to a rehearing when they did not as far as I know recognise the Court which waited for their convenience in every case. To grant a rehearing would cause an amount of confusion and
dissatisfaction in perhaps all the cases which have been disposed of in the 70 Mile Bush as the land has been purchased by the Government. 286

No rehearing was granted. Robertson suggests that the evidence of Locke and Rogan were influential in this decision. 287

4.5.6 Crown purchasing in the southern Bush

(1) Completing the Crown purchase

After the Masterton court sitting, many of the owners travelled to Wellington to conclude a purchase arrangement involving most of the blocks awarded. This followed a similar pattern to the northern area. Efforts to purchase were already under way, and the court investigation was a necessary step. Shortly after the investigation, on 5 October 1871, an ‘agreement to sell’ was signed. From 10 October 1871, more signatures were obtained, including those of Huru Te Hiaro, Peeti Te Aweawe, Hoani Meihana, and 54 others. The purchase involved approximately 125,000 acres encompassing nine blocks. The price was £10,000. 288 Eight reserves comprising 4369 acres (or less than 3.5 percent) were set aside. A number of these were then later purchased by the Crown. 289

The Mangatainoka block was not involved initially, but before long the Crown began purchasing there too, which we discuss shortly.

Subsequently, in June 1872, Locke reported that 194,000 acres had gone through the court in 10 (in fact, 11) ‘divisions’ so as to allow a ‘fair representation’ of the owners in each grant:

The Grantees then proceeded to Wellington where the sale to the Government of 125,000 less 4,369 acres for Native Reserves was concluded – for the nominal sum of Ten Thousand Pounds, leaving a Block of 62,000 acres which has passed the Lands Court (and on which instalments have been paid) and a Block of 7,000 acres which has not passed the Court, but has been applied for hearing at next sitting of Native Lands Court in Hawke’s Bay. 290

Of course the 10-owner rule ensured that a fair representation of owners was not, in fact, achieved – especially given the nature of the land, and the range of diverse customary interests present. The additional large 62,000 acre block Locke referred to was Mangatainoka, which was actually nearer 66,000 acres. The 7000 acre block was Kauhanga aka Mangahao 3, which was purchased in April 1873 for £550, except for two small wāhi tapu (sacred places) of 20 acres each. 291

Locke’s optimistic report played down the amount of work still remaining for the Crown to achieve its immediate purchase objectives. Negotiations with owners who were holding out were proving more complex than he revealed. James Grindell and the interpreter James Booth were brought on board to obtain signatures to ‘various deeds of sale’. 292

We can find no support for the contention in claimant evidence (and repeated in submissions) that Locke or other Crown agents ‘facilitated the recognition of landselling Maori in numerous Court orders’. While a number of owners were excluded from grants, this was because they could not attend court, or boycotted the hearing, or otherwise failed to cooperate. The process was certainly far too rigid in the way it dealt with right holders who for any reason failed to follow the rules, but we think that this is where culpability lies rather than in the area of collusion.

(2) Completing the Crown purchasing of Wairarapa lands bordering the southern Bush

At the same time as completing its purchase of the southern Bush lands, the Crown delegated powers to William Fitzherbert, Superintendent of the Wellington Province, to purchase lands immediately to the south not covered in the earlier Crown purchase waves. The provincial purchasing agent was Thomas Hill. 293 McCracken suggests two key local motivations. One was to obtain all the land needed for the proposed Upper Moroa Small Farms Settlement.
<table>
<thead>
<tr>
<th>Block</th>
<th>Estimated acreage</th>
<th>Price per acre</th>
<th>Actual acreage</th>
</tr>
</thead>
<tbody>
<tr>
<td>(Upper Tauheru)</td>
<td>10,000</td>
<td>15 6d</td>
<td>2077</td>
</tr>
<tr>
<td>Whangaehu 2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Kurumainono (aka Kurumahinono)</td>
<td>3000</td>
<td>25</td>
<td>690</td>
</tr>
<tr>
<td>Arikirau</td>
<td>3000</td>
<td>25 6d</td>
<td>610</td>
</tr>
<tr>
<td>Maungaraki</td>
<td>6902</td>
<td>25</td>
<td>1666</td>
</tr>
</tbody>
</table>

Crown purchases of lands bordering the southern Bush blocks, 1873–74

located at the junction of the Ihuraua and Te Hoe rivers, a small part of which was still in Māori hands. The second reason was to secure an access route up the Whangaehu River to connect the new settlement with Masterton and the rest of the Wairarapa Valley and beyond.  

Therefore, as with the Bush lands, agreements to sell were negotiated in 1872 for the Upper Tauheru or Whangaehu 2 (15 March), Kurumainono aka Kurumahinono (22 April), Arikirau (22 April), and Maungaraki (10 May) blocks. These agreements stated the purchase price-per-acre for each block with an estimated acreage. Advances had been issued for these lands as far back as the 1860s and, in the case of land at Arikirau, McLean had negotiated a deed in January 1856. The Whangaehu 2 agreement also provided for the Crown to pay part of the survey costs. All four blocks came before the Native Land Court in between October 1872 and December 1873. Following surveys and the court’s award of title, deeds of sale were signed for all except Whangaehu 2, and the lands proclaimed wastelands of the Crown in April 1874.

One piece from the Maungaraki block of 178 acres was reserved at Katotāne although there is no mention in the sale deed. It was sold in 1892.

The lands were soon onsold at a rate of £1 to £3 12s per acre. To help resolve Māori complaints about receiving comparatively little in payment for the same land, Hill offered a koha or 5 percent incentive along similar lines to that offered in 1853 (see ch 3d). McCracken says there is no extant written record of Hill’s koha offer at the time of the deeds, but Heaphy, Maunsell, and Native Land Court Judge Brookfield acknowledged the obligation in 1878 and 1881.  

As the surveys markedly reduced the estimated acreages, the purchase price ended up less than the amount advanced. For instance £205 was advanced for Kurumainono but the final payment due based on acreage was only £200. In the case of Whangaehu 2, there was a £87 overpayment, though Hill ‘gifted’ £37 back when the land went through the court. It appears that these overpayments were to be recovered from any 5 percent payments due.

3 Crown purchasing in Mangatainoka
Apart from limited reserves set aside from the blocks purchased by the Crown, Mangatainoka was the only substantial area of land left to Māori in the southern Bush. But soon the Crown set about purchasing land there too – and also in the purchase reserves.

Even if some owners were willing to negotiate purchases in parts of the other southern Bush blocks, the evidence reveals a very strong preference that Mangatainoka should be retained for present and future tribal needs. There was a really unmistakable signal to the Crown here – but because of the land quality, the value of its timber, and its location (adjacent to other Crown purchases and on the proposed rail line linking Hawke’s Bay to Wellington), the lure to purchase was apparently irresistible. These factors were of course the very features that made it vital for Rangitāne to retain this block in order to benefit from the development of the region.

Was there any justification for the Crown pursuing purchases in this block that Rangitāne had so deliberately put (as it thought) out of reach?

The evidence submitted to us indicates that the Crown was preparing to purchase in Mangatainoka in 1872, just a year after the 1871 purchase. It soon became apparent
that awarding the land to the 56 named owners of the 'Rangitane tribe' under section 17 of the 1867 Act had not, in fact, provided the kind of 'tribal' title Rangitane expected. Instead, those listed on the title were effectively individual owners who could sell their interest in the land without reference to the hapū. Majority consent was supposedly required, but what happened was that the individual's interest was quantified in acreage and partitioned out, enabling sale of the block piece by piece.

Advance payments were again a feature. These took the form of payments for food and provisions for Rangitane, who desperately required them. These were treated as advances against a later purchase of the block, and owners were required to sign documents to this effect. Rangitane owners, including Hoani Meihana, seem to have accepted the money either because they were hard up as a consequence of serious flooding, or because they had missed out on the payments for other blocks. In March 1873, two deeds were signed by prominent members of Rangitane, acknowledging the receipt of cash and goods charged against the land. The signatures included Huru Te Hiaro, Peeti Te Aweawe, and Hoani Meihana. The money was to be deducted when a sale took place. These were not the same as pre-title advances because the legal owners here were known. However, the advances do raise issues, first as to the fairness and propriety of binding owners to a future sale by offering them money when they were so impecunious; and secondly, as to how they could be taken to have given their full and free consent to a subsequent sale, when no details about the sale were fixed. Nevertheless, it seems that the owners accepted that they had an obligation to pay back the advances in land. Meihana gave evidence to the Native Land Court in 1885 that, prior to an 1875 partition hearing, a Māori komiti decided which areas to cut out to satisfy the debt, and which to hold for Rangitane. Meihana said that they sent their decision to the Government, but the Government rejected it because it wanted to acquire the whole block.

The Crown did not immediately press to have its interests in the Mangatainoka block defined and partitioned out, presumably preferring to go on acquiring interests piecemeal as the opportunity arose. In 1875, however, the block was partitioned by the Native Land Court into six parts: 1A (4036 acres); 1B (1710 acres); 2A (17,515 acres); 2B (3170 acres); 3 (37,849 acres); and 4 (2115 acres).

At the partition hearing, Nireaha Tāmaki claimed the major interest in the entire block for his eastern hapū who resided on the land, but Hoani Meihana provided a list of owners that reflected a more even spread of Rangitane hapū ownership from both sides of the ranges. Nireaha was ultimately named as an owner in Mangatainoka 1B, 2A, 3, and 4. McBurney hypothesises that Nireaha probably opposed Meihana in the court because he wanted to retain the land, and keep it out of the hands of non-residents who were more inclined to alienate it, and had indeed already accepted advances. In a letter to Te Wananga, the newspaper of the Repudiation movement, Nireaha stated that:

the decision of this Court is not correct . . . this is the difficulty, by admitting people who have no claim on this Land Mangatainoka, Wairarapa. We, the people who have a claim to said Land were not admitted . . . Ngati te Wahineiti, Ngati Tutaiaaroa, Ngati Mawhai, who have a proper claim to this land . . . These are the Hapus who resided on it from their ancestors, parents, and down to the offsprings, and still residing on this Land.

Nireaha remained vehemently opposed to sale, so further Crown dealings were put on hold.

In June and July 1875, Nireaha demanded a rehearing and threatened to resort to arms. But according to McBurney, following the 1875 partition and identification of owners of the various blocks, land purchase officials 'set about acquiring Mangatainoka share by share, propositioning individual owners wherever they found them, including hotel bars.' According to Meihana, Native Minister Bryce failed to attend a requested meeting in 1882 to discuss the ongoing piecemeal purchase payments. Instead Bryce simply referred the matter to the Native Land Court, presumably assuming that the court would
Nireaha Tāmaki, his Famous Court Case, and the Legal Developments that Ensued

Nireaha Tāmaki is not a household name in New Zealand, but in his day, and in his home territory of Tāmaki-nui-ā-Rua (now more commonly known as the Tararua district), he was a kind of celebrity.

Te ao Māori (the Māori world) knew him as a prominent rangatira of his time, and tireless defender of Māori land rights. He is known to the legal world because of the part he played in Treaty jurisprudence. He relentlessly pursued through the courts in New Zealand a case called *Nireaha Tāmaki v Baker*. It concerned land in the Mangatainoka block, where he was a major owner. The New Zealand courts rejected his suit, but ultimately he appealed to the Privy Council and won.

**His life**

Nireaha was born at Te Pakawau on the Manawatū River in the late 1830s. His father, Matiu Tāmaki, was a man of high rank descended from Rangitāne and Hāmua. His mother, Marea Te Hungatai, also of high rank, descended from Kahungunu and Rangitāne.

In his youth, Nireaha sat at the feet of Te Hirawaru Kaimokopuna, a Rangitāne chief of the upper Manawatū River. When Te Hirawaru died, Nireaha inherited many of his chiefly responsibilities for Rangitāne hapū west of the Tararua ranges. Nireaha married Rihipeti, a high-ranking woman of Hāmua and Muuŋoko. He lived out his life in or near Tāmaki-nui-ā-Rua.

He engaged at various levels with Pākehā society and institutions, and for a time operated a ferry across the Manawatū River at Ngāwapūrua with Te Hirawaru’s nephew Huru te Hiaro. Settler pressure led to this Māori-owned and run service being discontinued after 1880. Nireaha and Huru were justly aggrieved, and negotiated both compensation for their loss and an ongoing right to cross the river without paying tolls. Nireaha also spend a great many days and weeks in the Native Land Court as a spokesperson for Rangitāne interests in Te Tapere-nui-ā-Whātonga (Seventy Mile Bush).

**His case**

In 1894, the Court of Appeal heard Nireaha Tāmaki’s case concerning land interests in the Mangatainoka block.

In 1871 the Native Land Court investigated title to the Mangatainoka block (and Kaihinu 1 and 2 blocks) and made orders for a survey of the lands to be completed so that certificates of title could be issued to the Māori owners named in the court order (including Nireaha). However, only a month later, the Māori owners of Kaihinu b1 and b2 ceded their lands
to the Crown before a survey could be completed. The sale was part of the Crown’s southern Bush purchases, and was completed by a deed dated 10 October 1871. Unfortunately, the deed did not contain a boundary description of the lands. Soon afterwards, the Crown advertised the land for sale and a dispute arose as to whether certain lands had been mistakenly included in the deed and therefore wrongly offered for sale.

Nireaha claimed that the lands described in the deed erroneously included at least 5184 acres of the Mangatainoka block, which had not been sold to the Crown. Before the court, Nireaha asserted that he and other Māori remained the owners of the 5184 acres, either on the basis of the 1871 title order from the Native Land Court, or, if that title was invalid (because there was no survey), then as owners under customary title. The court said that if Nireaha Tāmaki had title, it was based on customary tenure. (The court used the words ‘a pure Maori title’ or the ‘unascertained Maori title of occupancy.’) But the court could not issue title on that basis, because it was bound to follow another case that had been decided earlier.

Back in 1877, the New Zealand Court of Appeal decided, in *Wi Parata v The Bishop of Wellington and the Attorney-General*, that the Crown’s dealings with Māori about customary land were acts of state. This put them beyond the purview of the courts. This was the precedent that was applied to Nireaha’s case. The court thus considered that it was beyond its power to determine the question of Nireaha’s customary title. He lost, and was ordered to pay costs.

Māori thought at the time – and many since have concurred – that the Court of Appeal’s approach arose from fear that, if they agreed to inquire into Nireaha’s allegations about flawed process, it would open a Pandora’s Box of dubious transactions.

In her entry on Nireaha Tāmaki in the *Dictionary of New Zealand Biography*, historian Angela Ballara said that:

Nireaha’s defeat was discussed in the Kotahitanga newspaper, *Huia Tangata Kotahi*. It was claimed that the Court of Appeal had refused to make a decision in his case because if it did, other sales to the Government could be questioned on the same grounds.

Nireaha’s profile increased when he appealed the Court of Appeal’s decision to the Privy Council. It was such an audacious move for him to invoke the authority of the country’s highest court, so far away in London! And using the settlers’ own court system to protest the unfairness inherent in the Court of Appeal’s sophistry had subtle irony. He must have been extremely resolved, given the enormous trouble and expense involved. And then he won!! When judgment was handed down in May 1901, the Court of Appeal’s 1894 decision was overturned: the courts did have jurisdiction in matters of customary title. The burden of costs was now on the respondent, John Holland Baker, who was the Surveyor-General and commissioner of Crown lands for the Wellington district.

**What the Privy Council decided**

The Privy Council focused on whether Nireaha could sue in respect of the shortcomings in the land transaction in question. It did not consider the substance of his original claim to the 5184 acres – although it did accept that, while the 1871 court order did not confer title to Mangatainoka block on the members of Rangitāne (because the lack of a survey meant that a certificate of title was not issued), it did provide sufficient evidence that the tribe, including Nireaha, held native title to the land.

The Privy Council began by finding that the Court of Appeal had erred in treating the respondent, Baker, ‘as if he were the Crown, or acting under the authority of the Crown for the purpose of this action’. Instead, Baker’s ‘authority to sell on behalf of the Crown is derived solely from the statutes, and is confined within the four corners of the statutes’. The relevant statutory provision was section 136 of the Land Act 1892, and if the disputed land did not fall within the powers of that section, then Baker had no power to sell the land, and would be acting outside his statutory authority should he do so. There was ‘no suggestion of the extinction of the appellant’s [Nireaha’s] title by the exercise of the prerogative outside the statutes’, and indeed the Privy Council could not say with certainty a prerogative right of that kind still existed. The issue of fact as to whether native title to the disputed area had
been extinguished in the 1871 Seventy Mile Bush purchase or subsequently, was referred back to the New Zealand courts to determine.

The Privy Council then turned to the broader question of the jurisdiction of the New Zealand courts to hear claims based on native title. Jurisprudentially, this was the most significant part of the judgment.

The Court of Appeal’s 1877 Wi Parata decision had denied the existence of any pre-existing Māori customary law recognisable by the courts:

On the foundation of this colony, the aborigines were found without any kind of civil government, or any settled system of law. There is no doubt that during a series of years the British Government desired and endeavoured to recognize the independent nationality of New Zealand. But the thing neither existed nor at that time could be established. The Maori tribes were incapable of performing the duties, and therefore of assuming the rights, of a civilised community.

The Privy Council roundly rejected this view. It cited ample evidence of existing New Zealand statute law which ‘plainly assumes the existence of a tenure of land under custom and usage which is either known to lawyers or discoverable by them by evidence’. The Privy Council pointed to the Native Rights Act 1865, which provided:

III. The Supreme Court and all other Courts of Law within the Colony ought to have and have the same jurisdiction in all cases touching the persons and the property whether real or personal of the Maori people and touching the titles to land held under Maori Custom and Usage . . .

IV. Every title to or interest in land over which the Native Title shall not have been extinguished shall be determined according to the Ancient Custom and Usage of the Maori people so far as the same can be ascertained.

The Privy Council noted a number of other references to Māori customary law in New Zealand statutes, and observed wryly that it was ‘rather late in the day for such an argument [that Māori had no customary law cognisable by the courts] to be addressed to a New Zealand Court’. Indeed, the Privy Council observed that in this very case, although no certificate of title had been issued, the 1871 court order constituted evidence of court-recognised native title. New Zealand courts were, therefore, ‘bound to recognise the fact of the ‘rightful possession and occupation of the natives’ until extinguished in accordance with law in any action in which such title is involved’.

Thus, as far as the Privy Council was concerned, New Zealand courts could proceed to inquire into whether native title existed over Nireaha’s disputed land as a matter of fact, and into whether native title had at any point been extinguished according to law. If Nireaha could prove that he and his tribe were in possession and occupation of the disputed land under customary title, and that such title had never been lawfully extinguished by the Crown, then he could maintain his action to restrain an unauthorised invasion of his title. The matter was referred back to the New Zealand Supreme Court.

The aftermath of the case

Nireaha Tāmaki never got to establish his claims to the disputed acreage in Mangatainoka in the Supreme Court. Instead, the Liberal Government made an out-of-court settlement with Rangitāne, and passed legislation that removed the courts’ jurisdiction to hear challenges to the validity of Crown titles.

Nevertheless, the Privy Council’s judgment made its mark in New Zealand. Authorities in New Zealand ‘reacted uneasily’ to the decision, because it raised the possibility that, where native title had not been properly extinguished, title based on a Crown grant could be called into question.

Initially, New Zealand courts ignored the decision, and maintained their position that the question of the extinguishment of Māori customary title by the Crown was beyond their authority. But then another case, Wallis v Solicitor General, came before the Privy Council in 1903. This time, the Privy Council’s criticism of the New Zealand courts’ approach was even more direct. The New Zealand courts’ stance that ‘Crown administration of the native title was a non-justiciable regal
discretion’ was, the Privy Council asserted, ‘certainly not flattering to the dignity or the independence of the highest Court in New Zealand’. Consternation within the New Zealand legal fraternity grew. In April 1903, New Zealand judges took the unprecedented step of publicly criticising the Privy Council in a formal ‘Protest of Bench and Bar’, and held a meeting at the Court of Appeal in Wellington to publicly refute the Privy Council’s position. Sir Robert Stout declared in the ‘Protest’ that if ‘the dicta in that case were given effect to, no land title in the Colony would be safe’. Modern-day scholar Paul McHugh characterises the local reaction of senior lawyers, notably Stout, as one of ‘self-righteous indignation’ based on an interpretation of the law concerning native title and the role of the courts that was ‘quite simply wrong’.

Pākehā concern about security of title if Crown purchases were open to challenge in court was not entirely unfounded. At least four cases were brought in the Court of Appeal by Māori disputing the validity of the Crown’s title to certain blocks of land, on the basis of the Privy Council ruling. None was successful, but the cases caused anxiety about lawyers unscrupulously encouraging Māori to bring expensive legal actions with little or no chance of success. This allowed the Liberal Government’s new Land Titles Protection Bill, which removed by statute the jurisdiction of the courts to hear any challenge to the validity of Crown title, to be characterised as protective of Māori interests.

In Parliament, James Carroll stressed the dangers to Māori of exploitation by lawyers:

[Nireaha Tamaki v Baker] was taken to be a victory, and it was enlarged upon and magnified to such an extent as a Maori land victory that the whole race rose up in arms to do and dare in the field of litigation. The fever spread in its most malignant form amongst the Natives, and it became quite an easy work for lawyers to say to the Natives, ‘if you will only instruct us to bring cases against the European holders we can get you back all the lands you have parted with, or make them pay. Your victory is assured, because we have the Tamaki versus Baker case to go by.’

Lawyers . . . have been getting the Maoris to furnish the ammunition of war, with the result . . . that the Natives throughout the colony have been subscribing individually and collectively large sums of money, which they have handed over to lawyers for the purpose of carrying on litigation. They have brought on four test cases not long ago. These cases were brought into the Court of Appeal, and the plaintiffs were beaten and cast in very heavy costs.

Although the Bill was widely supported, a few parliamentarians opposed it. Its staunchest opponent was the Member of Parliament for Northern Māori, Hone Heke, who observed that the Bill was inconsistent with rights guaranteed to Māori under article 3 of the Treaty:

When Europeans have got bad titles this House is compelled to pass legislation for the purpose of making them good. Now, when it comes to Maoris who are exercising their rights as British subjects, and when they desire to contest the validity of any title held by Europeans at the present time, they are confronted with such legislation as we have now before the House.

The Conservative member for Wellington, Arthur Atkinson, also spoke strongly against the Bill because it removed the right of Māori to access the courts. He quipped that the legislation should be called the ‘Native Land Fraud Protection Act’. The member for Eastern Māori, Wi Pere, observed that the proposed law would give the Government the power to determine whether its own land purchasing could be challenged in court. He emphasised the need for an independent tribunal, comprised of Māori and Pākehā members, to adjudicate on which claims against Crown title should properly be heard by the courts. Nevertheless Pere voted for the Bill.

The Land Titles Protection Bill eventually passed with a large (47 to eight) majority. The preamble to the resulting legislation, the Land Titles Protection Act 1902, outlined the two sets of issues the legislation sought to address. On one hand, it referred to costs of £2000 incurred by Māori litigants challenging the validity of Crown titles in court, and also the practical difficulties of bringing such claims, given that many or most of the Native Land Court judges who had originally
heard claims had since retired or died and so would not be available to give evidence. On the other hand, the preamble noted, there had also been ‘considerable alarm . . . amongst the European landholders of the colony at such attacks upon their titles’, and that it was ‘expedient that reasonable protection should be afforded to the holders of such titles’. Similarly, the long title described the Act’s overriding purpose as the protection of European landowners from ‘Frivolous Attacks’ against their title.

The Act removed the ability of any person to ‘call in question’ in any court, the validity of any ‘order of the Native Land Court, Crown grant, or other instrument of title’, where that order had existed for 10 or more years prior to the passing of the Act (that is, since 1892 or before), unless the prior consent of the Governor in Council had been acquired. Historian Peter McBurney characterised the measure as a 10-year ‘statute of limitations’ on the ability of Māori to test the validity of land purchases through the New Zealand courts.

The Native Land Act 1909 continued the provision, stating that ‘the Native customary title to land shall not be available or enforceable as against His Majesty the King by any proceedings in any Court or in any other manner’. It also enacted the Court of Appeal’s position in the Wi Parata case: ‘A Proclamation by the Governor that any land vested in His Majesty the King is free from the Native customary title shall in all Courts and in all proceedings be accepted as conclusive proof of the fact so proclaimed.’ Again, these provisions were continued in the Maori Affairs Act 1953. In fact, it seems that it was not until the 1985 amendment to the Treaty of Waitangi Act 1975 that Māori were able to challenge Crown land purchasing in a judicial setting.

Nireaha’s later life

Nireaha Tāmaki lived to be an old man. He remained an important and energetic leader in Tāmaki-nui-ā-Rua and Wairarapa in the early years of the twentieth century. He played a prominent part in the Kotahitanga sittings at the Pāpāwai parliament, and was advisory councillor to the Rongokako Māori Council. He built a meeting house at Hāmua, called Te Poari, and led the Ngāti Kahungunu haka performance for the royal tour at Rotorua in 1901. When he died in 1911, 3000 Māori and Pākehā attended his funeral. A monument in his memory was erected at Hāmua. At the time of his death, Nireaha still owned thousands of acres of land. Nevertheless, McBurney suggested that, given the considerable litigation costs he must have incurred, he would have needed to sell land between 1892 and 1904 to fund his legal expenses.

Nireaha continues to be most widely remembered because of the Privy Council decision that bears his name. As a result of his efforts and persistence, the Crown paid compensation for over 5000 acres of land it may never have legally purchased.

However, the decision in Nireaha’s favour had more far-reaching effects. The Privy Council affirmed that Māori customary law should be recognised by the New Zealand courts, and that the Crown was bound by statute law and the Treaty when extinguishing customary title. The immediate impact of the decision was considerably reduced by the local courts ignoring it, and then legislation reversing its effect. Nevertheless, it was an important landmark in common law recognition of the status both of the Treaty and of Māori customary title.

In Treaty terms, the story of Nireaha’s work on behalf of his people highlights a number of Crown failures in overseeing survey requirements. The determination of the New Zealand Parliament to set aside the decision of the Privy Council and to remove the ability of Māori to challenge the legality and validity of the Crown’s extinguishment of their native title in the New Zealand courts clearly breached Treaty principles. Parliament’s actions constituted a failure to actively protect Māori as property owners, because the courts were precluded from inquiry into processes that were alleged to be faulty. This was a very fundamental failure to uphold the guarantee of rangatiratanga in article 2.

It also breached article 3, which guarantees Māori the rights and duties of citizenship, because it removed the right of Māori to have their claims heard in court, a basic aspect of the rule of law. Moreover, the moves to lessen Māori rights were taken more or less explicitly to protect the land titles of Pākehā.
cut out the interests of non-sellers. But for the owners, the problem was piecemeal alienation of individual owners' interests, which eroded the tribal estate and divided the people.112

This must have been a tremendous disappointment for Māori. They had engaged with the Crown in land sales in the northern Bush in anticipation of the benefits that settlement might bring. In order to do well out of the settlers coming, though, they had to retain substantial blocks of land themselves – like Mangatainoka in the south, and Tāmaki and Piripiri in the north. Adequate reserves in areas that were sold were also required, both to ensure that their own lifestyle could continue, and so that their land assets were not all concentrated in one place.

And yet here they were in 1872 with the Crown moving in to purchase land in Mangatainoka wherever and whenever it could, with little to fall back on in the way of reserves from the other blocks the Crown had purchased (less than 4 percent of the area sold).

Obviously, this situation posed serious challenges for the 1880s and 1890s.

4.6 The Court and Purchasing in Wairarapa ki Tararua, 1880–1900

4.6.1 Where to from here

In the previous sections, we looked at:

- the implementation of the Native Land Court process;
- purchasing in the Wairarapa Valley in the years from 1866–1880; and
- the different experience of the Tāmaki-nui-ā-Rua area during the same period.

In this section, we consider the inquiry district as a whole in the changed circumstances of the last two decades of the nineteenth century.

Some of the themes we identified for the pre-1880 period continued to play out in the two decades after 1880, but with differences. New developments included legislative reforms, in response to both Māori concerns and European pressure to provide more Māori lands for settlement. We look at the major legislative changes, and how they worked in practice in this district.

As the nineteenth century drew to a close, these trends could be discerned:

- Māori with rights in lands at Wairarapa and Cape Palliser began to bring them through the court after a long period of trying to keep them out. They did this before the Government addressed the long-expressed desire of Māori for some form of collective title sanctioned by the court, and for Māori communities to play a greater role in the process of determining titles. This meant that for these owners, the opportunity for collective management never arrived, although leaders from Wairarapa ki Tararua had been to the fore in requesting status for komiti-based decisions about the land.
- The land laws were amended frequently and often confusingly – sometimes to increase protections; in other cases to limit or remove them.
- No corporate title was provided until 1894, while the general thrust of legislation from 1878 onwards was to make it easier to partition out individual interests.
- Questions of partition and succession began to dominate Court business. This added greatly to the expenses and social costs of the court title system, and also implicated those who did not want to sell.
- Blocks reserved from pre-1865 Crown purchases that still remained in Māori hands now had to be brought through the Native Land Court system, even though they were Crown-granted under the Native Reserves’ Titles Grant Empowering Act 1886. This seems to have been to enable restrictions against sale to be placed in the title. This brought these reserves into the Native Land Court system as if they were blocks requiring title determination or partition, and also made them subject to the restrictions against
alienation protections and the administration of rules about ‘sufficiency’.

The Crown continued to strengthen its ability to purchase lands even where there were restrictions on alienation. This included strengthening and eventually reimposing a form of Crown pre-emption. The Native Land Administration Act 1886, which reasserted the Crown’s pre-emptive right, allowed the completion of transactions already begun. This produced a rush of transactions before the Act was due to take effect, and although private purchases were fewer thereafter, the legislation was reversed in 1888 by a new Native Land Act, and the open market recommenced. The Crown reintroduced its pre-emptive right again in 1894, with much the same result: increased purchasing to circumvent the Act’s effect, followed by legislative reversals. In all, Mitchell states: ‘The net effect of . . . the restrictions on private alienation of Maori land over the whole period was negligible.’

None of the frequent amendments of the land laws delivered to Māori authority or tools to manage their own lands. Ongoing requests for greater powers to determine title and to manage their lands collectively if they wished went unanswered. There were, however, a number of short-lived experiments purporting to address these issues in 1883 (district committees), 1886 (block committees), 1894 (incorporations), and again in 1900 (Māori councils).

The impact of mounting debts became a prominent feature of discussions about land sales. Though it is not possible to ascertain what proportion of the debt related to the cost of court processes and efforts to protect lands, it seems that costs associated with surveys of outer boundaries and then partitions, and the costs of hearings and re-litigation, were significant. We explore these features and their implications below.

4.6.2 The Native Land Court and major land legislation, 1880–1900

(1) Collective title and partitioning

The Native Land Act 1873 replaced the previous 10-owner regime with a requirement for all owners to be named on a memorial of ownership, and was the main Act controlling the investigation and management of Māori land. It was amended numerous times, partially repealed in 1880, and finally repealed in 1886. The Hauraki Tribunal noted that these attempts at modification reflected widespread dissatisfaction with the 1873 regime, but ‘the changes or proposed changes tended to pull in contrary directions’.

In the absence of any legal mechanism for recognising corporate title to Māori land, the ability of Māori communities to retain collective authority over particular blocks was dependent largely on the rules governing applications for partition. In 1869, it became lawful for a majority of a block’s owners to make decisions about alienating land, and the 1873 Act allowed a majority to apply for a partition in order to complete a transaction. Under section 107, the Crown could also apply for partition to complete existing ‘incholate’ transactions in undefined shares. The Native Land Amendment Act 1877 and subsequent legislation affirmed and clarified that right. Private purchasers could do the same from 1878 to 1882.

In 1880, a new Native Land Court Act introduced an important change – the capacity of an individual Māori to apply to partition out his or her interest in certificates of title created under the 1880 Act. By the Native Land Division Act 1882, this was extended to land held under memorial of ownership under the 1873 Act. In the estimation of the Hauraki Tribunal, these Acts allowed ‘an individual Maori or Maori family, to secure a title in their own name for their own piece within the former tribal patrimony. It was more than an individualisation of the title; it offered an individualisation of the land itself.’

At this stage many Māori wanted it to be possible to partition out interests, but not at the whim of an individual. They wanted community consultation first, and majority decisions made in a group context. This was quite different
from what frequently happened, which was for a majority to be obtained by piecemeal acquisitions of individual interests.

In 1886 Native Minister Ballance engaged in extensive consultation with Māori and gave every appearance of heeding what they wanted. He introduced legislation that prohibited private purchasers from dealing in individual shares, in an effort to restore some control over land management to Māori communities. The Native Land Administration Act 1886 provided for a two-tier system a little along the lines proposed by Crosbie Ward more than 20 years earlier. At the local hapū level, block committees would make decisions about sale or lease of their lands. But whereas Crosbie Ward proposed – and Māori wanted – an elevated kind of rūnanga to make wider strategic decisions about the land, Ballance’s Act required Māori to hand the land over to a Government-appointed commissioner who would arrange the alienation, and deduct fees.

This approach found no favour with Māori at all.

The Liberal period of the 1890s was characterised by a drive for closer settlement, and more acquisition of Māori land. It is perhaps unsurprising, then, that Māori demands for reform of title and of court processes met with limited success. The majority of Māori who spoke to the 1891 Royal Commission of Inquiry into the Native Land Laws, for example, sought reform of every facet – of the court itself (its abolition, even), of the type of title that was available to them, and of the land laws regulating conveyance.\(^{316}\) The majority produced a report recommending that title should be awarded to the tribe or hapū in recognition of corporate ownership. But the political will to implement such a move was entirely lacking.

On the surface, the Native Land Court Act 1894 seemed to respond to Māori concerns about the inadequacy of title and the need to reform the land court process. Major provisions:

- provided for owners to form bodies corporate to manage and deal in land as a single legal entity, through elected block committees, supervised by the court;
- empowered the court to inquire into hidden trusts behind the named owners on court titles;
- established the Native Appellate Court; and
- abolished the trust commissioners and transferred their functions to the court, which could inquire into and validate technically flawed transactions, provided that they had been entered into in good faith.

However, the central North Island Tribunal found that the Act did not provide a true corporate title, and that the:

- heavy and controlling role of the Government . . . especially the Public Trustee, accounts in part for Central North Island Maori not actually choosing to use it.

They were seeking full control of their own lands by block and district committees, the replacement of the Native Land Court by committees, and full regulatory powers for a national Maori body. In those circumstances, the incorporation provisions of the 1894 Act were so deficient as to render them useless as a vehicle for the collective tribal management of tribal lands.\(^{317}\)

Meanwhile, in our inquiry district, the small quantity of land remaining to tangata whenua meant that the time had passed when such a measure would be of anything other than theoretical interest to them.

\((2)\) **Laws governing purchase of Māori land**

The 1873 Act effectively allowed alienation to occur only if a majority of owners agreed, or if willing sellers partitioned the land. However, the overall effect of changes to the law concerning Māori land purchase in the 1880s and 1890s was to make it easier:

- to partition blocks;
- for individuals to sell their undivided interests with or without the agreement of other owners;
- to remove restrictions on alienation; and
- to acquire individual interests without the consent of a majority of owners.

In addition, the Crown conditions imposed on private lessees or purchasers that were intended to protect Māori did not apply to the Crown.
As we noted in the context of the northern Bush blocks, the Crown had also begun passing Acts during the 1870s intended to protect its interests in Māori land blocks in which it had commenced purchase negotiations. These included provisions that enabled the Crown to apply at any time to have its interests determined. From 1878 the court could also, on the application of any owner, determine the value and extent of the applicant’s interest in any land held under a memorial of ownership, making alienation a relatively simple affair. From this time, private purchasers, as well as the Crown, could apply to have their interests determined (this permission was later revoked in 1882). The Crown, when negotiating to purchase interests, could prohibit private dealings in the land in question.

In reality two different codes of transacting in Māori land had developed – one for the Crown, privileging its position as purchaser; and the other for private purchasers. The Crown’s position, already strong, was strengthened further in the period after 1880. Notably, in 1883, the Crown exempted itself from the rule prohibiting transacting in Māori land until 40 days after title determination; immediately after title determination was when many new owners were pressured to accept advances or payment for purchase. The Government also maintained its right to deal in individual interests when this was prohibited to others in 1886 (see section 20 Native Land Administration Act 1886). And though the Act was subsequently repealed in 1888, the Crown legislated for itself a distinct advantage when it came to dealing in lands with restrictions against long-term and permanent alienation in the title. In 1892, the Crown gave itself the power to remove restrictions on land it sought to acquire without having regard to the wishes of the majority, and in 1893 it acquired power to buy shares where owners had failed to expressly oppose the majority’s decision and partition out their interests (see below).

The Liberals’ settlement agenda meant that the legislation they brought in facilitated the alienation of Māori land, although often appearing to increase its protection. The Crown and private purchasers were assisted towards greater ease in completing titles through various pieces of legislation, including the Native Land Act (Validation of Titles) Act of 1892. The Native Minister, AJ Cadman, and the Minister of Lands, John McKenzie, worked together to increase Māori land purchasing, funding their efforts by Government borrowing. Dr Loveridge notes that ‘between 1892 and 1900 the Crown purchased some 2.7 million acres of Maori freehold land, much of it at artificially low prices facilitated by the re-assertion of the Crown’s pre-emptive right in 1894.

Most remarkable as a vehicle for promoting the sale of Māori land was the Native Land Purchase and Acquisition Act of 1893. Its preamble stated that 7,000,000 acres of North Island land owned by Māori were lying waste and unproductive and were needed for the extension of settlement. Under the Act, Māori owners could be compelled either to sell their land to the Crown, or to allow it to be leased by a national land board set up for the purpose. Those were the only two choices. If an individual owner refused to ‘elect’ one or the other, section 22 provided for his or her interest to be taken away by Order-in-Council. If he or she refused to accept the money from the sale or lease, the Public Trustee would hold it for him or her (section 24).

Section 117 of the Native Land Court Act 1894 restored Crown pre-emption, making it unlawful for any person, unless acting for the Crown, to acquire any interest in Māori land (except in specified blocks or under specified conditions). This move, which basically put a stop to private purchasers buying Māori land, appeared to offer protection from unscrupulous private interests and speculators. But it also prevented genuine private purchasers from competing with the Crown – and not just for land sales. It also reserved to the Crown leases and royalties for resources, even where the Crown had little interest other than outright purchase. Blocks where private dealings had already begun were exempt.

There were a number of reforms, but they facilitated
alienation and did little to slow the trend towards individualisation of interests. Examples of ineffective reforms were the Native Committees Act 1883 and later the Native Land Administration Act 1886. The Native Committees Act provided for the establishment of district committees elected by local Māori, but restricted their powers to the point of defeating the purpose of the measure. In any case, it was not really intended to confer significant powers on Māori to determine title or control land collectively. The Native Land Administration Act 1886 envisaged district and block committees with real power over Māori districts and Māori lands, but the Bill that Ballance presented was extensively modified in the House (as well as renamed). The Act failed to give Māori more power to determine their own land ownership, failed to keep them out of the entanglements of the court, and fell short of what they had discussed with Ballance. As we have said, the measures won little support, were inoperative in most districts, and the Act was soon repealed by the Native Land Act 1888.

Thus, the efforts of Māori leaders – including in our inquiry district – to gain recognition for community management of lands continued to be frustrated. The various legislative changes proceeded in a one-step-forward-two-steps-back fashion as governments responded first to Māori criticisms, then not long after to Pākehā pressure to make more Māori land available for settlement or to protect private interests in dealing over Māori land. As the Hauraki Tribunal concluded, ‘The stream of legislation from 1873 to 1899 continued to be overwhelmingly directed towards facilitating the acquisition of Māori land by the Crown or private purchasers, not towards development by Māori of their own land.’

Increasing awareness among colonial policy-makers of Māori landlessness prompted the Liberal Government to temporarily suspend Crown purchasing in 1899. From 1897 it had held hui around the country debating what eventually became the Māori Lands Administration Act 1900 and Māori Councils Act 1900. Seddon told Māori at Pāpāwai that what had happened with the land court had been one of the ‘darkest blots’ in the history of the colony. As in the 1880s, when Ballance held hui about reform of the court and the title system, the legislation that resulted was a pale reflection of both Seddon’s words and Māori aspirations for a greater role in title determination and land management. The suggested amendments proposed, debated, and drawn up with much effort by the Pāpāwai parliament and others were mostly rejected. The resulting Acts were at best a compromise supported by moderate Māori leaders as the best they could hope for under the circumstances. In any case, like the 1883 and 1886 reforms, the 1900 Acts were soon modified, and Māori input into the management of Māori lands through the Board was sequentially diluted, then abolished altogether by 1913. We consider this – and in particular, the discussions at Pāpāwai – in more detail in the next section.

**4.6.3 The Native Land Court and land purchasing in Wairarapa ki Tararua, 1880–1900**

The last two decades of the nineteenth century were characterised by increased court activity involving lands it had previously investigated, including continued litigation, rehearings, validations, partitions, and successions. There were also new court hearings for lands previously withheld but now brought and investigated under new provisions and reforms.

A number of issues that had already become evident in earlier periods took on a much sharper focus. Debts and costs began to accumulate, and titles fractionated. New issues arose as new provisions and policies, including apparent reforms, were tested and their effects experienced. For example, the reforms of 1873 resulted in larger lists of owners and later, more successors; this had serious consequences for land management. The response to the new type of title where all owners were listed was often to purchase individual interests piecemeal over an extended period of time, and then partition out the purchased interests.
(1) Remedies for the impacts of the 10-owner rule
One of the most important legislative reforms of the 1880s in our inquiry district was the Native Equitable Owners Act 1886.

This Act was intended to provide remedies for the exclusion of owners that resulted from the application of the 10-owner rule between 1865 and 1873. That the 10-owner rule had created grave injustices was well known, and had been for a long time. Complaints to the Native Affairs Committee were legion, and Native Minister Ballance heard a great many grievances in his meetings with Māori in 1886. It was widely agreed that some measure was needed to provide a remedy to those whose interests had been left out of the title. A Bill was introduced so that Māori ‘o waho’ (left out) could apply to the Native Land Court for inclusion in certificates of title in cases where the 10 owners on the title were really there in the capacity of trustees. The Premier, Sir Robert Stout, debating the issue with Locke, told the House:

There is this much certain: that there is a great necessity for the Bill. The injustice done to the Native people under the Act of 1865 is one of the greatest disgraces to this colony. A great deal has been done under the provisions of that Act which was never contemplated when the Act was passed. What was really intended by that Act was this: that, where there was a piece of land belonging to ten persons, the names of those ten persons should be put in the grant. It was never intended that there should be only ten names put into a Crown grant when the land belonged to a hundred people. The grossest injustice has been done under that reading of the Act. As to raking up past transactions, I say we have a right to do so if we can do justice to the Natives without doing injustice to others, and, as this Bill protects all existing rights, I do not see that injustice can be done to any one.328

The 1886 Native Equitable Owners Act proved to be a very limited remedy in this district and, indeed, elsewhere. Goldstone concedes that ‘relatively few blocks’ were subject to the Act’s provisions.329 The rights of purchasers and lessees who had entered into arrangements in land were carefully protected, and where blocks had been sold or otherwise alienated, the Act did not apply. This was so even when only one share in a block had been sold. This effect was apparently unintended by legislators, but an 1889 effort to remedy the problem failed.330

An amendment to the Native Land Court Act passed shortly afterwards further reduced the availability of redress under the Equitable Owners legislation by imposing a time limit: all applications for rehearing had to be lodged within two years of the passing of the new Act (a deadline of 16 September 1891).331 The Native Land Court Act 1894 repealed the Native Equitable Owners Act 1886, but contained a similar provision that extended to any land the court had dealt with, although it could exercise this jurisdiction only if the Governor in Council authorised it.332

Given that few Wairarapa blocks had an ‘untouched’ title, the measure was of negligible effect.

In the Wairarapa, according to the Registrar of Applications, a single applicant, HW Pohutu, requested reinvestigation of title, but for four blocks – Te White North and South, Ngutukoko, and Maungarake. The application appears to have been refused.333

(2) Rehearing of title investigation in three Tāmaki-nui-ā-Rua blocks
In Tāmaki-nui-ā-Rua, applications were made under the 1886 and 1894 Acts for at least eight blocks: Mangatoro, Ōringi Waiaruhe, Tirañgū, Ōtanga, Tipapakuku, Piripiri, Tahoraiti 2, and Tāmaki. Of these, only Piripiri, Tāmaki, and Tahoraiti 2 met the stringent tests for a rehearing.334

It seems that purchase activity was one of the factors prompting applications for a re-examination of title in the case of the ‘inalienable’ blocks of Piripiri and Tāmaki.

(a) Piripiri block: Piripiri (14,000 acres) had been the subject of numerous petitions from those who protested the
effects of the 10-owner rule. Efforts to have restrictions lifted were resisted by some of the owners and since the time allowed by the Native Equitable Owners’ Act had lapsed, the case was referred to the Supreme Court in 1892 seeking confirmation that the Native Land Court possessed the necessary jurisdiction to rehear the block. Interestingly, Justice Richmond’s approach in the case was to rule that the Native Land Court had failed to in its fiduciary duty because it did not implement section 17 of the Native Lands Act 1867. That was the little-used provision that obliged the court to ascertain all beneficial owners in each block and enter their names on a register. According to Justice Richmond:

It would seem that the Judges of the Native Land Court had put a narrow and erroneous interpretation on the language of section 23 [of the Native Lands Act 1865], and had acted in issuing certificates as if they were justified in disregarding the existence of rights which were not claimed in Court. To correct this practice the former part of section 17 [of the Native Lands Act 1867] expressly requires the Court to ascertain for itself the rights not only of actual claimants in Court, but of all persons interested.

A reopening of the question of title was opposed by some of the existing owners as it would dilute their interests. Nevertheless, an application was made to the Native Land Court by Manahi Paewai and Hori Herehere. They claimed that there were between 200 and 300 owners. Ultimately, the court admitted 124.

(b) Tāmaki block: The Tāmaki block (34,100 acres) had also been restricted and kept for the community. Only three representative owners had been named in September 1870, despite evidence at the time that more had interests. The intention was clearly to keep the block, partly dictating the choice of who to put in the title. According to the surveyor Munro, Māori set ‘more value on this block than any of the others, owing I suppose to it being the land of their birth and on which a great portion of them are at present settled’.

None of the grantees showed any inclination to sell for more than a decade, but this changed when one died. Debt on the estate, the appointment of legal trustees, and growing purchase interest meant that the underlying trust in the three original named owners came under pressure. Attempts were made to bring the land through the court for partition. It would seem that this prompted an application for rehearing in respect of the title, but this was done under the 1894 legislation which had repealed the Native Equitable Owners’ Act.

Judge Mackay, carried out some preliminary inquiries, and then took the same approach as Justice Richmond in the Piripiri case. He declared that in 1870 the Native Land Court had:

entirely misunderstood its duty in the matter as this is a clear case according to the minutes, in which the Order should have been made under Clause 17 of the Act of 1867 . . .

It seems plain that if the Native Land Court acted without jurisdiction, and did what ultimately led to a Crown Grant being issued in favour of three persons only, thereby barring the rights of many others, when it should have proceeded in the matter prescribed by the 17th section of the Act of 1867, which precluded the issue of a Grant, and protected the rights of all parties, that the Supreme Court would grant relief to the persons whose rights have been prejudiced.

An Order-in-Council was issued, giving the Native Land Court jurisdiction to hear the case.

It came before the Native Appellate Court in 1896. An argument that the partitions made the preceding year were illegal since the court had no jurisdiction was rejected, but more (a new total of 99 owners for Tāmaki block partitions) were admitted to the titles. There were further complaints and appeals, but the matter seems to have rested there.

(c) Tahoraiti 2: In Tahoraiti 2, the judge who heard the case also roundly condemned the past insistence on the
10-owner rule, suggesting that it was ‘notorious’ that the Native Land Court of that period ‘treated as a dead letter’ the provisions of the 1867 legislation which made it incumbent on them to ascertain the whole of the owners. Indeed, they seldom if ever did more than ascertain who the owners desired to be placed as trustees in the certificate of title and Crown Grant. The court saw the block as subject to a trust, and 74 persons were added to the title.\textsuperscript{341}

(d) Final observation: Of course, as McBurney observes, these judgments really impugn all of the court’s title decisions of that period – because, as the judge correctly noted in the Tahoraiti case, the court generally did not consider section 17 as an option. The tragedy was that so few blocks were eligible for reconsideration under the Equitable Owners legislation because of the dealings that had already taken place.\textsuperscript{342}

The new land interests created were, however, also individual and alienable and therefore subject to pressure for individual piecemeal purchases. The result was that the individual leaders who were the original grantees were now less able to prevent sale. In fact, the Crown was already negotiating for shares in these blocks for settlement despite their restricted status. Extensive sales soon followed, as we see later.

\textbf{4.6.4 The costs of the court process, and debt}

The costs of the court process and associated debt are a long-standing issue in this district. It was raised in a number of official commissions of inquiry involving Wairarapa ki Tararua Māori. By the later decades of the nineteenth century, court costs and accumulating debt were routinely cited in relation to continuing land loss. This appears to have been linked to how the court process developed.

For example, the claimants emphasised that a true picture of the title system and the costs entailed involves taking into account the growing need to partition. From making up 2.9 percent of court cases during the period 1865–1880, partitions increased to 33.6 percent during the period 1880–1900. During this latter period, partitions made up the largest type of cases before the court, with the next highest being confirmation of alienations with 17.2 percent.\textsuperscript{343} In this period, Mitchell tells us that 297 different blocks in our inquiry district went through the court. The trend towards more protracted evidence, the necessary expenses of surveys for numerous partitions, and the requirements to confirm successions, meant that it was likely that the costs would increase. When partitions were required associated survey costs could be paid for by survey liens. A lien is a debt charged against the land.

The cost of doing land business in the court inevitably brings up the related issue of credit and debts. Without ready cash, costs inevitably meant debts. In a rural frontier society, cash was in short supply. Everyday transactions often ran on goods or wages in ‘kind’ rather than cash. This extended to the provision of credit to cover shortfalls until cash could be obtained. Credit could be extended by friends, family, employers, local merchants, or banks. The reliance on credit was reflected in the widespread use of instruments such as promissory notes, not only by merchants and banks but between individuals.

The system was regulated to a degree by legal penalties and provisions. Prosecutions could be – and were – undertaken for default on debts. However, to a large degree the threat of sanction was just as important as penalties themselves. The whole edifice relied heavily on trust and goodwill and this was needed to access credit and participate in any meaningful way in the new commercial economy.

Many debts involved short term consumption, such as for food supplies, clothing and subsistence needs and might just as regularly be repaid as income was eventually received from contract labouring, wool cheques or produce supplied. Other debts were incurred in order to increase overall income and the value of assets, for what Hayes terms ‘capital purposes’ such as buying stock, fencing and land development.\textsuperscript{344} While all debt involved some risk and there might be unexpected reasons why it could not be repaid, such as ill health or poor investment
decisions, in the normal course of things it was assumed that debt would be undertaken, paid off, and incurred again as assets were further developed and improved.

(1) **The questions to be answered**
What we must assess is how the costs and debts incurred as part of the process of achieving legal title contributed to Māori selling so much land.

Gaining proper land titles was necessary for Māori to participate in most new economic opportunities, and Māori had to engage in the system set up for them to get titles to land. The system encouraged ascertainment of title as a precursor to sale. An important question is whether in effect the nexus between court costs, debt, and land sale distorted the normal relationships between lender and borrower. Did this nexus make lenders keener to entrap Māori in debt in order to acquire their lands cheaply than to foster the usual kind of credit relationship, where returns to the lender accrue over a long period of borrowing? A factor that we must take into account is that the problematical form of title available to Māori meant that land value increased instantly ownership passed from Māori to Pākehā.

Further critical questions are:
- Did the Crown strike the right balance between the right of Māori to deal with their own land asset as they saw fit; the settlers’ right to lend to Māori on the basis of an assessment of risk and appropriate security; and the Crown’s own duty to protect Māori from full exposure to the new economy and the land market?
- To what extent did the Crown promote its own interests in acquiring extensive areas of Māori land for settlement, by allowing a situation to develop and continue where relationships based on the provision of credit adversely affected the ability of Māori to retain land?

Historians Stirling and Mitchell depict a system where credit was readily and knowingly extended to Māori by their own tenants, storekeepers, and others in the confident expectation that they would be unable to repay debts either by rentals or other sources of income, and would have to settle by selling land. They also see the level of survey and associated court costs (paid in cash or land) as having contributed significantly to Māori debt. They suggest that such attempts as were made to prohibit debt from being attached to Māori land (through restrictions on alienation entered on titles) were ineffective.

On the other hand, Goldstone and Hayes question whether court costs were really so onerous. They doubt that Māori systematically had to sell land to pay them, although they agree that this happened on occasion. Hayes has difficulty attributing debts to court and survey costs at all, or connecting those costs (or prosecutions for debt) with a subsequent decision to sell land. He argues that the legislative regime often did not permit debt to be attached to Māori land. Such prohibitions were part of the Government’s evolving reforms of Māori land tenure.

(2) **What were the costs of taking land through the court?**
The costs entailed in taking lands through the Native Land Court are well known and we only briefly describe them here. For example, by 1880 fees were: £1 per day for every party appearing in court; £1 for the investigation of each claim; and £1 for the issue of a certificate of title.

In regulations promulgated under the 1874 Act, other costs were detailed: subpoena – five shillings; filing any document – three shillings; copy of title – 10 shillings; copy of any order – 2s 6d; inspection of plans – each case one shilling; copy of plan – not exceeding £1 for each 1000 acres or part of 1000 acres; examination of plan by inspector – not exceeding £1; testamentary order – £1; drawing any document not above mentioned, at request of party – 2s 6d per folio; copy of same – sixpence per folio.

After 1880, there was also a charge of 10 shillings for a copy of a certificate of title. A fee of two shillings was to be paid before giving evidence, five shillings for each court order, and £1 to make a partition order. Fees were also payable for examining a plan. For filing rehearing or appeal proceedings, substantial deposits were also required.
The evidence submitted to us indicates that in the period before about 1880, in both the Wairarapa Valley and Tāmaki-nui-ā-Rua districts, average hearing times were quite short – often only days or weeks for large areas of land. Shorter hearings helped to keep down the fees and other direct costs. Goldstone shows that the fees charged per investigation and issue of a title at this time ranged from £1 to £10, with the average about £3.349

Even then, however, there were other unavoidable costs involved in court hearings besides the actual court fees, like survey costs, and interpreters’ and agents’ fees. The quantum of these is harder to pin down. Also, obtaining title was not a single event. Costs for an initial investigation of title, for instance, cannot be calculated by adding together the price of the fee and the actual sitting days. One block might require repeated attendance at court for those who needed to protect their interests, even if the actual hearing time was just a few days. When a court sitting was notified, owners had to ensure that they could be there for the duration of the hearing as there was no appointed time for the hearing of a particular block, and a hearing might also be adjourned and recalled for various reasons several times during the sitting. Uruokakite was cited as a block that came before the court on four separate occasions between 1866 and 1870. During that period, there were potentially 51 days of hearings those interested in the block would have had to attend to ensure that they were there at the right moment to assert their interests.350

(a) Hayes’s and Goldstone’s assessments: Both Hayes and Goldstone offered an analysis of survey costs. Hayes studied survey costs for 38 of the 118 blocks calculated to have been put through the court from 1867 to 1880.351 He assessed the total costs for 77,446 acres at £2104 or a rate of 6.5 pence per acre on average. He notes, however, that there is a ‘surprisingly large variation in survey costs. Some are surprisingly high and warrant further study.’ Unfortunately, he was not able to do this and nor did he identify those blocks he considered warranted it. His table includes Opoukaio East (20 acres) brought through the court for award of title in 1871 where the rate for survey worked out at £1 4s per acre; Te Waihinga, 460 acres (1867) at 3s 3d per acre; and Tuhitarata, 24 acres (1868), at 5 shillings per acre. Hayes’s overall assessment is that the Māori practice of paying for survey by lease arrangements, or by the sale of a portion of the block, showed that ‘Maori leaders had a management plan.’352

Hayes also argues that the Crown’s legislative regime either prohibited or heavily circumscribed the attachment of debt to various categories of Māori land over the period, especially prior to 1878. Thereafter, until 1894, a trust commissioner generally had to certify that the transaction upon which the debt arose was not contrary to equity and good conscience, and the Governor in Council had to consent. After 1894, with the reassertion of Crown pre-emption, creditors could not attach debt to any category of Māori land at all.

This was for ordinary debt, however; the regime for survey debt was different. Under the 1865 Act (section 68) the court could order the Crown grant to be delivered to the surveyor if it was satisfied that he had not been paid. The surveyor could then detain the certificate until his lawful charges were satisfied.353

The Native Lands Act 1867 brought in major changes. The right of the surveyor to hold the Crown grant was revoked; it was held instead by the Secretary of Crown Lands until the survey charges were paid (section 31). Under section 33, Māori could charge their lands for survey and other costs incurred in prosecuting their claim to land; such agreements were to be registered in the Native Land Court. The court could also direct Māori owners to mortgage land to satisfy survey charges, following which the Māori owners could have the Crown grant straight away (section 34). There was no power to force a sale, but owners who wanted to alienate whether by lease or sale had to deal first with the holder of survey charges or liens. Section 35 of the 1867 Act provided that once title had been ascertained, the Māori owner could grant a mortgage over such part of the land as the court considered sufficient security for the debt.
What was the effect of these sections? According to the Hauraki Tribunal, sections 33–35 were answerable for much land alienation. Entrepreneurs could lend money for survey knowing that the debt was secured against Māori land, and: ‘From this time on, survey debts were an important reason why Maori owners alienated significant portions of the land they had just put through the court.’

The 1873 Native Land Act gave the Crown a greater role in survey matters: Māori were able to request the Crown to undertake surveys (under section 69). Creditors had to demonstrate, in the case of future survey charges, that the work had been authorised by the Inspector of Surveys (section 74). Hayes acknowledges that these provisions suggest that section 88 of the same Act prohibiting the attachment of debt to Māori land did not apply to debts arising from survey, but questions how often prosecutions were in fact undertaken for their recovery. In his view, it is only from 1878 onwards that there is an unambiguous capacity to recover survey charges by requiring the sale of land. That year, the Native Land Court was empowered to award survey payments in cash or land. This regime remained in place until 1894, when the effective power to sell Māori land for survey costs moved from the court to the Crown.

Goldstone analyses the same 38 blocks, but his total of acres that went through the court is 83,000 acres (as against Hayes’s 77,446 acres). Goldstone looks at survey costs as a portion of the value of the block, as demonstrated by returns from leases or sale within 10 years of the title being issued. The range varied from 2 percent to 21 percent. On average, the costs came to 8.6 percent of the proceeds of subsequent sale. He explains that survey was cheap relative to value in the case of smaller blocks near towns, and proportionally higher for larger blocks comprising more rugged land. In the three cases noted from Hayes’s analysis, Goldstone provides no figure for Opoukaio East, and assesses the proportion of survey costs to sale value at Te Waihinga as six percent and at Tuhitarata as 24 percent. He does not comment directly on whether these percentages were fair, but he does ask whether survey costs were being used as a means of obtaining land, and posits that where they ‘probably did contribute to the sale of land, it would seem that the land sold was a small proportion of a larger block.’

Like Hayes, Goldstone considers that the role of survey-related debt in land sales has been exaggerated:

As a crude generalisation, the cost of survey came to usually between 5 and 10 per cent of the land’s value at sale. This obviously represented a burden for Maori owners, and may have indirectly contributed to pressures upon Maori owners to sell land. However, the evidence does not indicate that survey costs by themselves were the cause of land selling, except in the case of relatively small parcels deliberately set aside to meet those costs. It is also apparent that a number of communities of owners had arranged for the sale or lease of land to cover the cost of being able to acquire legal title (and so be able to deal in their lands).

(b) Stirling’s assessment: Stirling’s judgement is otherwise, though. He notes a number of cases where it can be shown that survey costs directly contributed to land sales, ate up rents, or created a substantial burden that had to be paid out of income. Included here were Takamaitu and Hūpēnui, where survey costs were paid for by rents in advance. Taumataraia (66 acres) was alienated to cover survey expenses of £100 (1868), and portions of Ngutukoko were sold for charges of £110. Kai o te Atua (200 acres) was sold for charges of £210 (1873), and Ākura (52 acres) for costs of £130 (1872). There was also a considerable burden placed on blocks such as Ōkupatutu, where the survey costs amounted to £560, or two shillings per acre.

When Ngāpaeruru block was partitioned in 1893, the Ngāi-Tūmāpūha-ā-Rangi owners complained at partition that the survey charge was excessive. The court said it had no discretion to vary the charges that the Chief Surveyor assessed.

Stirling also describes the practice of making advances against survey costs, which had the effect of luring Māori
into greater debt generally. The mounting debt could then be used to encourage dealing in land in order to repay the amount owing. This could be either through leasing or sales, although leasing often eventuated in sales as well. In chapter 3A, we related the story of how Charles Johnson Pharazyn managed to acquire extensive interests in Mātakitaki-ā-Kupe lands by extending credit to the lessors, and we repeat it here only to the extent of noting that some of this debt related to costs and fees associated with the court. For example, he bought Whatarangi (1510 acres) in 1869 for £488, and he held a survey debt of £4512s against that block. By the close of 1870, he already held debt of more than £378 secured against Te Kōpi, Whatarangi, and Kawakawa, and then agreed to advance another £296 10s to complete the survey of this hilly, broken country. Māori were to repay the survey debt out of the rents for Kawakawa. They agreed to a lease for 21 years at £175 per annum for the first 10 years, and £215 for the balance of the term. At this rate, the survey debt comprised 76 percent of the rental the owners would receive for Kawakawa over 21 years, not counting interest (we do not know the interest rate). Stirling argues that by 1872, Ngāti Hinewaka had devoted £740 in known expenses to determining the title to 26,810 acres of their Mātakitaki-ā-Kupe lands; about one-eighth of its market value.

In the period after 1880, the court hearing fee of £1 per day did not increase, but other costs did. For example, the fees for each witness rose to £1 per day. In the much longer hearings typical of this later period, court fees could mount quickly. In addition, surveyors charged for attending court, and there were interpreters’ fees, lawyers’ fees, and the fees charged by Māori kaiwhakahaere (‘native agents’), and every day in court increased the cost. If cases were relitigated, which was not uncommon, this too added to the cost. A minimum £5 deposit was required should parties apply for a rehearing. All court orders cost at least £1, but sometimes more. Many of the fees involved were advanced by leaseholders or purchasers, and later stopped out of rents or the purchase price. And the fees applied not only to sellers, but to non-sellers as well. Mitchell calculates that between 1880 and 1900, any party, whether claiming or counter-claiming, could count on paying at least £4 to £5 per day. A 10 percent stamp duty was also payable when land was transacted. Court expenses had to be paid in cash up front: credit was available for most things in those days, but the Native Land Court was no bank.

Other less direct (but still significant and unavoidable) costs associated with attending hearings included accommodation and food in the towns where sittings might be held, sometimes for weeks or months while cases were brought on. Hui to discuss presentation of cases and proposals for purchase or lease could be expensive, for attendees and hosts. And then there were indirect costs that arose from neglecting harvests and other aspects of the local domestic economy while waiting for weeks or months for one’s case to ‘come on’.

Costs were also high for community leaders, who were expected to provide for and assist their communities. Stirling records that:

Tamahau [Mahupuku] ran up thousands of pounds in debt while putting the fiercely-disputed Nga Waka-Kupe blocks through the Land Court. By 1895, he was ‘threatened with bankruptcy,’ and sought to borrow against the security of his extensive and recently-granted holdings. These totalled almost 12,000 acres in seven blocks, land that was found to be worth at least £18,000, and it was this massive amount that Tamahau sought to borrow from the Public Trustee. It was reported that, ‘the greater part of such debts were incurred in the investigation by the Native Land Court into the title of your petitioner’s lands.’

(c) Costs on Pāhaoa block: The case of Pāhaoa (Hinakura) block – an area of about 7200 acres – is particularly well described in the surviving documentation. There, survey costs prior to title determination were £250, a bill Hoani Tunuiarangi considered excessive. He subsequently reached an out-of-court settlement with the surveyor concerned, so it was not recorded as a lien.
Niniwa-i-te-rangi (1854–1929) at her wedding to Tamaihotua Aporo in about 1900. Niniwa-i-te-rangi was married several times; she bore no children but had many whāngai (children by customary adoption).

She was a strong, knowledgeable, and well-known woman, who often fought to defend her land interests, which were many and complex. They led her into quarrels with her whanaunga (relatives), including the Mahupukus. Despite this, Tamahau Mahupuku admired her and put her in a position of prominence at Pāpāwai.

Niniwa-i-te-rangi: tāna ngawe mō te kooti

In 1894, Niniwa-i-te-rangi of Ngāti Hikawera, a major grantee in Ngā Waka à Kupe and other blocks, wrote to the Māori newspaper Huia Tangata Kotahi, describing how the cost of food and rent while attending the Native Land Court amounted to around £10 a week. She had to pay for sugar, tea, jam, bread, butter, milk, and fish, even though the land interests she would receive were relatively small and would not cover her expenses. This is what she wrote:

ka tae mai au ki te taone ka utua e au tuku whare
e mea nga moni i te wiki ka haere enei mea.
He moni te Huka He moni te Rohi
He moni te Ti He moni te Pata
He moni te Tiamu He moni te Miraka
He moni i nga Pakeha mahi Ika
Na ka puta mai te pire ki ahau i te wiki mo enei mea katoa
neke atu pea i te tekau pauna taaku moni e Pau ana mo enei
mea i au e noho ana i te taone.

Ko nga eka o te whenua i tukua atu ai ki te kooti kaore
i rahi, hei te whakataunga mai a te kooti iti rawa atu te
whenua, i riro mai i au heoi kaore i ea nga kai i tangohia mai
ana e ahau ki tenei whenua.

She does not even mention court costs, but presumably she would have had to contribute to those too, making her involvement in the process even less worthwhile.

To put Niniwa’s expenses into perspective, at the time when she was paying £10 per week for food and accommodation, a skilled shepherd could earn 25 to 30 shillings a week in season; a rabbiter 20 shillings. In other words, she was spending 10 times as much as a rabbiter could earn.

Niniwa may have lived better than some of her contemporaries who camped out in tents during hearings, but she goes on to say that she fears that the kaumātua bringing their land before the court after her will fare even worse.
The partition ordered at that first hearing resulted in more costs, bringing the total to over £400. Further partitions were made between 1895 and 1900, often to enable some owners to alienate their interests. Stirling notes that though restrictions against permanent alienation were entered onto the title of the 1890 partitions, these were removed with ease. By 1900, a third of Pāhaoa was sold and more was alienated in subsequent years. Neighbouring landowner, William McLaren, and his family rapidly took up leases for all but two of the Pāhaoa blocks that had been created in 1890, at variable rents. Purchase of interests began at the same time. Pāhaoa 5 (1930 acres) was bought between 1892 and 1896, and the purchase of blocks 1, 2, 8, and 10 also commenced in this period and was largely concluded by 1900. The applications for removal of restriction that these alienations entailed indicate the plight of some owners – including, in a number of instances, the costs incurred as part of the title and partition process.

(d) Total survey costs: According to Mitchell’s figures, the total survey costs still outstanding at 1900 for around two-thirds of the inquiry district were £6000. This figure does not include survey costs that were paid promptly before they could be registered as a debt, or costs that were absorbed in larger mortgages. These figures are not available, but Stirling speculates that the total amount was likely to be as much as £20,000.

4.6.5 What protections were provided for Māori under the Native Land Court system?

The Tūranga Tribunal found that the Crown was obliged to provide a reasonable level of protection to Māori landowners in the administration of their lands. In particular, it was required to protect Māori landowners from unfair or inappropriate land transactions and to prevent Māori landlessness.

The Crown recognised that it had such obligations, and developed two related sets of policies:

- oversight of transactions to ensure that they were not contrary to equity and good conscience, with that duty devolving upon trust commissioners appointed under the Native Lands Frauds Prevention Act 1870 and its amending legislation;

- Māori retention of lands sufficient for their support and maintenance, ensured by (i) putting restrictions on mortgaging and alienating on to the title of blocks as they came through the Native Land Court; and by (ii) establishing a minimum acreage of Māori land per person below which individuals were not allowed to go if they were seeking to sell land.

However, as we discuss further below, it was not intended that such restrictions would be irrevocable or permanent. We shall see in chapter 5 how early Crown officials spoke of a ‘permanent possession’ of land for Māori. But colonial politicians thought more in terms of preventing landlessness until such time as Māori became ‘self-reliant’.

Responsibility for oversight of the title restriction system fell to an assortment of officials: trust commissioners, district officers, Native Land Court judges, and the Governor or Governor in Council. As land law after land law was passed, complications were inevitable. In some instances, it was mandatory for the court to ascertain whether lands should be protected by restrictions in the title; in others, its powers were discretionary and findings recommendatory only. The legislation always preserved the right and means to have restrictions lifted, but differences also developed in administrative responsibilities for this step, depending on when a restriction was first entered into the title of the block. In the case of most Wairarapa ki Tararua blocks, final approval for the removal of restrictions depended on the Governor in Council. Applications were often accompanied by a letter from native agent ES Maunsell assuring the Government that the Māori concerned had more land than they required. It was standard practice in the early 1880s for the Native Department to refer applications for the removal of restrictions to Maunsell for comment. He generally advised that the owners of the land in question had an ‘abundance of property’ and recommended in
favour of removing the restrictions. Such recommendations were often framed in terms of Māori having sufficient lands for their ‘subsistence’, and without consideration for future needs or potential economic development.

(1) **Restrictions on alienation up to 1880**

The Native Lands Act 1862 gave the Governor the power to impose restrictions on alienation if he deemed it ‘requisite for the future benefit of the proprietors or their descendants’. He could also have such restrictions removed. The 1865 Act similarly provided for restrictions. In the first instance, the court was to recommend restrictions on alienation where the need was apparent. It remained at the discretion of the Governor as to whether to adopt any such recommendation. An amendment Act in 1866 made it mandatory (rather than merely optional) for the court to investigate and report on the advisability of restricting alienation on every block of land passing before it. This was because – as Richmond explained it – ‘Cases are already coming to the knowledge of the Government in which Natives [had] divested themselves of all their land’. Such a measure was required not just for Māori, but ‘to protect the public generally ... from the curse of pauperism’.

Hayes notes that Chief Judge Fenton disliked the mandatory reporting provision, believing that Māori would be better off on the same footing as Europeans. Fenton recommended that the provision be repealed, but his advice was not taken up: the 1866 Native Lands Act also required the court to place alienation restrictions on any existing Crown purchase reserves for which titles were sought (although the Governor could still give his assent to a conveyance).

The Native Land Act 1873 provided for more restrictions. No Māori land subject to a Memorial of Ownership could be sold or leased for more than 21 years unless the owners unanimously agreed. However, the protective potential of this provision was negated by other provisions in the Act that enabled owners to sell by majority decision or to partition the area for sale if unanimity could not be achieved. The effect was that while the manner of alienation was restricted, alienation itself was not – and even when specific reserves were created, ways to have restrictions removed were always found.

(2) **Restrictions after 1880**

The trend after 1880 was for greater responsibility to be delegated to the Native Land Court to oversee restrictions on alienation and sufficiency requirements.

In 1880, it became the court’s duty to ascertain whether it was appropriate to place restrictions on a block in every case. From 1882, the court could impose or remove restrictions without the assent of the Governor when subdividing a block. The Native Reserves Act 1882 vesting reserves in the public trustee also enabled the court to remove restrictions, provided that it was satisfied that ‘a final reservation’ had been made which was ‘ampley sufficient for the future wants and maintenance of the tribe, hapu, or persons to whom the reserve wholly or in part belong[ed]’.

In 1886, all Māori land was made inalienable (unless express consent was given by the Governor). All the owners could, however, apply to have restrictions removed as long as they could satisfy the court that they had land elsewhere ‘sufficient for their maintenance and occupation’.

But two years later Māori land was once again opened up directly to the market. The court was directed to ascertain whether owners had a sufficiency of inalienable land and to introduce restrictions if required (previously, the court could only recommend that this should be done). It was also made responsible for administering applications for removal if restrictions had been imposed under the Native Land Court Act 1886 or later legislation. However, most Wairarapa ki Tāmaki-nui-ā-Rua reserves remained under the jurisdiction of the Governor in Council until the law changed once again (see below).

A majority of owners was now allowed to decide to sell not only regular Māori land, but also blocks with restrictions in the title – again provided the court was satisfied that the owners had sufficient lands remaining elsewhere for their maintenance and occupation. All those with a beneficial interest had to concur in restrictions being
lifted (under section 6 of the Native Land Court Act 1886 Amendment Act 1888), but this was not required under the Native Land Act 1888 section 5, which dealt with restrictions entered into the title prior to 1886 – as was the case for most blocks in Wairarapa ki Tararua. In 1890, the Native Land Laws Amendment Act brought the two systems into line, removing the requirement for all beneficial owners’ consent in the post-1886 blocks as well.385

Both Stirling and Hayes track the legislative trend, from the 1890s onwards, towards easing the way for selling land originally reserved from Crown purchases, or designated as inalienable by the owners when they brought a block through the court for title determination. In 1892, the Native Land Purchase Act gave the Governor the power to have restrictions on alienation removed for the purpose of sale to the Crown.386 Then two years later, when the Native Land Court was effectively made responsible for the administration of the whole protective regime, the majority requirement was further revised so that only one-third of the owners were needed for consent. At the same time, the trust commissioners were dispensed with, and the responsibility for vetting transactions was entirely given over to the court.387 In 1909, the Crown removed all restrictions on alienation, while maintaining the court’s role in scrutinising all dealings in Māori land.388 This meant not only that the option of placing restrictions on the title of land was no longer available, but also that any remaining land was open to purchase. The same Act permitted the Governor, acting on the recommendation of the Māori Land Board, to confirm an alienation of land causing the vendor to become landless if he or she was able ‘to maintain himself by his own means or labour’.389

(a) Hayes’s view: Bob Hayes placed emphasis on the creation of trust commissioners under the Native Lands Fraud Prevention Act 1870. These officers had oversight of alienation to prevent abuses such as payment in alcohol and arms, and, before confirming alienations, were required to ascertain whether those wishing to sell lands had sufficient remaining for their own maintenance. Though trust commissioners were not responsible for deciding whether restrictions on alienation should be lifted, the issue was often referred to them for report and their response was influential. Hayes emphasises that the duties of this officer were part of a wider structure of protective mechanisms set in place for Māori to prevent abuses, and to assist them in retaining land for their support until it was no longer needed.

(b) Stirling’s view: Bruce Stirling argues that the Act meant nothing more than that transactions should be barred only when they were ‘so improvident on the part of the Natives, as to be likely to reduce them to a state of pauperism’.390 His evidence suggests that neither trust commissioners, nor the restrictions system, nor statutory directives that Māori should retain sufficient lands for their individual support, were at all effective.

According to Stirling, Charles Heaphy, the officer responsible for the Wairarapa district from 1870 to 1879, was diligent, but severely hampered in his duties by under-resourcing. Though few figures are available, we know that in the year ending May 1874, Heaphy had been able to look into 84 cases, 18 cases were held over, and 103 were not processed at all.391 Stirling argues that one officer could not possibly give adequate attention to each transaction, and that the legislation under which that officer operated did not meet Māori needs.

In his summary of evidence he suggests that about one-third of the blocks investigated by the land court up to 1900 had restrictions against permanent alienation put in place. He calculates that by 1900, restrictions had been removed from half of those blocks.392 Included in these

(3) Differing interpretations and case studies
The responsibilities, practice and effectiveness of trust commissioners, restrictions on alienation, and statutory requirements that Māori retain sufficient lands for their support, were all a matter of debate between historians that appeared before us.
figures are reserves from the pre-1865 purchases that were brought through the land court in the late 1860s when it first began hearing, or in the late 1880s after the passage of legislation confirming grants. In fact these examples dominate in Stirling’s 10 case studies, which show how easily restrictions could be circumvented. But in cases where it was more difficult to lift restrictions, and delay ensued, this could work to Māori disadvantage. For example, it inhibited Māori capacity to raise capital on some of their best and most valuable land. As 21-year leases expired in the 1890s, a round of removals of restrictions followed.

(c) Mitchell’s view: James Mitchell argues that the trust commissioners needed greater powers and resourcing to be effective. Though he makes no attempt at a statistical analysis, he points out that ‘there are many indications that the workload pressure was even greater’ largely as a result of the increased number of alienations in the 1880–1900 period. The commissioners remained reliant on the truthfulness of statutory declarations of interested individuals, and there was a ‘remarkably high’ approval rate in the inquiry district.

Though he hesitates to draw conclusions about how many transactions should have been refused (because in most cases little documentary material was collected), Mitchell argues that mostly, in cases that were well investigated, Māori interests were insufficiently protected because the trust commissioner’s powers were inadequate. He cites multiple examples of alienations that went ahead even though there seemed valid reasons for objection. On the other hand, ‘Rapid changes in the legislation and the red-tape of the trust commissioner’s office could also serve to hinder what would otherwise have been relatively uncomplicated transactions.

Mitchell also cites figures to show that Crown officers did not respect the original intention to reserve, and paid ‘scant regard’ to restrictions when it came to their own purchase activities. He states that: ‘Of the 38 blocks on which it made payments in the period, at least 20 had some form of reserve status or restrictions prior to sale.

Like Stirling, he provides case studies of the operation of the restriction regime, questioning the thoroughness with which transactions were scrutinised, and the efficacy of rules about sufficiency.

(d) Protection system ineffectual?: We think these figures are compelling, while the various examples brought to our attention show that errors were certainly made when it came to both the maintenance of restrictions and the oversight of transactions for matters concerning equity and good conscience.

At Te Para, for example, the registered copy of the grant did not record the restrictions. Native officer and interpreter ES Maunsell and others made purchases in the 1870s, which was allowed since there appeared to be ‘no special reason’ for refusing. Other instances of this sort of mistake include Maramamau, Ngātahuna 1, and Te Ngutukoko.

In addition, the activities of Maunsell showed how ineffectual the system really was. In the early 1880s, the Native Department seems to have referred applications for removal of restrictions to him on a regular basis. He generally agreed, regularly suggested that Māori had not really intended lands to be retained, and offered platitudes about what a good thing it would be if Māori were to invest the returns in other properties. He had no power to insist that this be done – his only power was to recommend that restrictions should stay in place so that Māori had sufficient lands left for their support. He did not do this in any instance brought to our attention.

In every case Stirling discusses, the restrictions were lifted. His case studies show a varying degree of inquiry. There was sometimes concern about whether vendors would be rendered landless and about how they would spend the money, and whether they represented the wishes of all grantees. Still, restrictions were almost always lifted when requested. Although, legally, interests could not be permanently alienated, these lands were often encumbered
by debts or mortgage arrangements well before applications were made for restrictions to be removed so that portions could be sold. This practice was so prevalent that Native Minister Ballance ordered an investigation in 1885.

A special commissioner, George Barton (a lawyer and former member of the House of Representatives) was instructed to investigate cases in which Europeans had entered into negotiations for lease or purchase of restricted lands. Stirling argues that Barton’s investigation of Te Ore Ore 5 (amongst other blocks) revealed some questionable goings-on – in particular, the advancing of goods and monies to Māori by a Masterton storekeeper which was partly credited against the small 30-acre block (which also lacked legal access). In this instance, Judge Brookfield was willing to recommend the withdrawal of restrictions from the 30-acre block only if the proceeds were handed over to the Public Trustee for investment. The Native Land Court had no authority itself to impose such a condition, and Chief Judge MacDonald disapprovingly characterised it as a ‘new and troublesome duty’ unlikely to be productive of any good. Native Minister Bryce turned down the application because the ‘Natives had parted with nearly all their land and had not sufficient for their support’; it was not intended that restricted land should be alienated unless ‘very good reason’ was shown. He lamented that while purchasers simply wanted to obtain the land in question, Māori – in their desire for money – never seemed to consider ‘the requirements of succeeding generations in view of which restrictions are no doubt specially imposed’. But two years later, the business that had taken over the debt applied for the restrictions to be lifted once again. This time, the sale went ahead on Barton’s recommendation that it could be allowed to proceed if the price per acre was raised. This was done despite his criticisms of the local magistrate and interpreter who had witnessed the declarations transferring the land, and Barton’s description of the standard declarations before the trust commissioner as ‘mere cloaks for fraud and dishonesty’.

Hayes does not agree that the protection system was ineffectual. In a specially commissioned research report on the trust commissioner regime in Wairarapa, he expands on ideas first presented in an issues report for the Gisborne inquiry on protection mechanisms. Hayes sees the criticisms of Stirling and Mitchell as exaggerated or misplaced, and argues that allegations that the trust commissioners’ vetting of transactions was perfunctory are based on an uncritical acceptance of criticisms of the system by politicians of known partiality.

In Hayes’s view, the regime was rather more effective than they represent. He sees the powers of the trust commissioners as adequate to their task, and suggests that they could not be criticised for most of their decisions. They relied on the statutory declarations of Māori, and were bound to give their approval when transactions met the prescribed elements. The commissioner had to be satisfied that a transaction was not contrary to equity and good conscience; did not contravene any trust affecting the land; that the consideration had been paid and had not involved arms or alcohol; and the vendors had sufficient other land for their support. The Governor in Council, who had the last word, had more discretion. Hayes conceded though that, in practice, both commissioners and the Governor in Council focused on whether intending vendors had ‘ample sufficient’ lands left (as prescribed by statute), and whether the price was fair.

A key criticism of the system has been that the trust commissioners approved transactions when the Māori vendors were selling as individuals even though they had been placed in the title as representative owners and in reality held the land in trust for the hapū as well as themselves. Though this was a known problem resulting from the ‘10-owner rule’, trust commissioners had been specifically instructed not to look behind the title awarded by the Native Land Court for undisclosed trusts of this kind. Hayes argues that the frequency of such transactions, and how and why the trust commissioners passed them, requires careful consideration. Again, he considers criticism to be misdirected; the Crown’s instruction was appropriate – the trust commissioners’ court was not a suitable forum for the ‘re-litigation of ownership’. A
principle underlining native land legislation was that the court’s determination of title was conclusive and Crown grants, issued on its basis, barred all claims in the land except the named grantees. This was at the very core of the Torrens system of land title registration. Hayes argues that trust commissioners could not be expected to identify undisclosed owners and were entitled to rely upon the court’s award of title. A ‘more legitimate criticism’, he concedes, is the ‘Crown’s failure to adequately remedy the detriment arising from the 10-owner rule... once it became aware of the potential for detriment’.404

Hayes also concedes that there may have been failures in the system, but argues that more research is required before coming to a considered view of its effectiveness and the overall competency of its officers. Looking at the various case studies of Stirling and Mitchell, he suggests that only in two of them was Heaphy as trust commissioner shown to have made wrong or questionable decisions. These were an 1873 transaction for Ahitainga 2 where the sale was approved although alcohol had been supplied on credit and had been paid for by the purchaser; and Hūpēnui where, Hayes agrees, Heaphy should have passed his certificate of title at a higher rental than the one approved. He disputes, however, that the differential was as high as Stirling contends, or that the Māori lessors were prejudiced by Heaphy’s actions.

It is important to note that Hayes’s assessment focuses solely on whether the trust commissioner met his statutory obligations. He argues that trust commissioners could not be expected to retard land loss to any great extent. They could not refuse their consent where the statutory criteria were satisfied; and further, the native land laws contemplated that Māori were to a very large degree free agents in dealing with their lands.

Hayes is not concerned by the fact that legislation shifted towards making it easier to lift restrictions against sale. Although he agrees that it was designed to protect Māori in the retention of land, he points out that legislators never intended restrictions against alienation to be in place forever. It was always contemplated that the

Governor in Council (on the advice of the Native Minister) could approve the removal of restrictions with regard to specific transactions – but not give general consent to a blanket removal.405 Not only was it always open to owners to have restrictions removed, but policy makers intended the whole system of restrictions and sufficiency to be temporary. It was to be disestablished once Māori acquired ‘perfect self-reliance’.406

(e) Previous Tribunals’ views: Previous Tribunals have not been impressed by the effectiveness of the restriction system. Argument has been focused less on whether it prevented sale – it did not – than on whether it needed to, and whether the Crown would have been acting with ‘inappropriate paternalism’ if it had insisted on permanent reservation of these lands. The Hauraki Tribunal thought not. It said ‘inappropriate paternalism’ suggests the taking of property decisions for Māori without consultation, treating them as minors in law, and ‘failing to provide them with thorough participation in the administration of their own property, with the experience and mechanisms to make their own commercial decisions’. There was a strong case for some land to be made a permanent hapū patrimony, absolutely inalienable except by short-term lease or occupation licence, including to members of the hapū.407

The Tūranga Tribunal was of a similar mind, commenting that:

Legislation that provided for inalienable reserves that could none the less be made alienable, while limiting the effective use of land thus restricted in the meantime, reveals the conflicting aspirations of colonial governments between acquiring Maori land and... cushioning some of the effects of alienations.

In any event, ‘restrictions were not at all effective in protecting Maori land. They were too easily removed or evaded by purchasers with ready cash and Maori owners in need of it.’408
(f) The evidence speaks for itself: As restrictions on alienation were designed to prevent the descent of Māori into a state of landlessness, and as the Crown now concedes that a state of landlessness had been reached by 1900, it would appear that the protection system failed.

James Mitchell’s report gave the broad outlines of land loss in this inquiry district in the last two decades of the nineteenth century. He estimates Crown acquisitions in this period at 60,744 acres, equating to 53 percent of the total Māori land purchased in these years. However, this acreage was acquired in far fewer blocks. Of the 38 blocks the Crown purchased, 27 were subdivisions of Mangatainoka, including eight sections of the Tūtaekura reserve. These purchases took place under reformed land laws of the 1880s and 1890s, but in many cases they were initiated in preceding decades. Examples of this include Tararua (14,000 acres), Rangitūmāu (70 acres) Whangaehu 2 (2077 acres), and Manaia (two acres).

In comparison, private purchasers (a mix of farmers and speculators) acquired 53,403 acres over the same period, generally in much smaller blocks (367 in total). This was nearly double the area private purchasers acquired in the years prior to 1880 (27,000 acres).409

4.6.6 The Ngā Waka ā Kupe block
The lands in the Ngā Waka ā Kupe block began to pass through the Native Land Court in the 1890s.410 It was the last large area of Māori land in this district to do so.

(1) Title investigation
At title investigation in 1890, the lands (including Pāhaoa) were estimated to contain 62,700 acres. They lay east of modern Martinborough and were bounded in part on the west by the Whangaehu and Huangārua River valleys.411 They stretched east over hilly country to the sources of the Pāhaoa River. The Wainuiorū River, which drains into the Pāhaoa at Hinakura (Hinekura) formed part of the eastern boundary. None of the land was coastal.

Rights in the lands were hotly contested before the court. The hearing extended intermittently from June to October 1890,412 and there was a rehearing in 1892. Title was awarded to relatively few people. Some of them ended up owning vast, individual estates of many thousands of acres – even though the 10-owner rule no longer applied at this time, and under the 1873 Act all those with interests were to be on the title.

No external survey had been undertaken, and the hearing before Judge Alexander Mackay proceeded on the basis of a sketch plan, probably compiled from old maps.413 A survey may have been thought unnecessary for, except in the north where it touched the Wera-a-Whaiitiri block (which had already passed the court in 1882), Ngā Waka ā Kupe was completely surrounded by blocks purchased by the Crown in the 1850s or early 1860s.414

Being taken to the court considerably later, the investigation and later alienation of Ngā Waka ā Kupe block was atypical from either the rest of the Wairarapa valley or the Tāmaki-nui-ā-Rua bush blocks in many respects. The subsequent history of alienation of these lands also followed different patterns. Stirling describes this as a history of partition, fragmentation, leases, debts, mortgages, and land loss.415

Judge Mackay awarded:

► Ngā Waka ā Kupe and Pārororangi to Wi Hikawera, Tamahau and Ngāti Hikawera, including the grandchildren of Te Keepa Oraora (of Ngāti Mahu and Ngāti Parera);
► Te Uhiroa to the descendants of Tūponga, who had been given the land in return for a gift of a precious garment by Tūrangatautahi of Rangitane. Tūponga was the elder sister of Pōuri, a descendant of Kahukura-āwhitia;
► Te Hau-o-Koeko and Tahuoro to the Mahupuku family and others (Ngāti Hikawera) whose ancestor, Te Rangihauta had been gifted the land by Ngāti Merōiti chiefs; Ngāti Hikawera had returned part of it to Ngāti Merōiti (the people of Wi Hikawera’s wife);
► Wainuiorū to the descendants of Kōhere and Te Rangiwhatino (a child of Kahukuranui);
In this case, it appears that in some areas there were sufficiently few owners and large enough areas of land to allocate areas of what were significant parcels of land. In other cases, further partitioning was required. A flurry of further partitions of the Pāhaoa took place between 1895 and 1900, apparently in order to separate out lands between owners. Following further partition in 1895–99, single owner blocks ranged in size from 43 to 469 acres. The most owners named on any single Pāhaoa block were 15 on Pāhaoa 1D (396a), which was partitioned in 1899.417

However, the system of succession quickly undermined even this apparently early effort to create individual blocks of land (rather than just shares) in practice. For example, in the Pāhaoa 3 blocks, Stirling records 332 successors by the 2000s.418

(2) Rehearing

There was much dissatisfaction with Mackay’s judgment, and seven individuals indicated they required a rehearing.

At the rehearing, there was still no external survey of the block. But despite objections about this, the rehearing judges proceeded ‘to locate the parties upon fixed places’419 At rehearing, the block was estimated at 62,753 acres, including eight subdivisions (or nine counting Kehemane, taken out of Ngā Waka ā Kupe) considered in the first hearing but denominated differently in the second hearing. Mackay’s judgments as to title were not disturbed, but all the Ngā Waka ā Kupe subdivisions were adjusted slightly in size and ownership. All the blocks were made inalienable except by lease up to 21 years – except for Kehemane, which was made absolutely inalienable by either sale or lease. The results of their decisions are shown in the table over.

The net result was 54 owners in five subdivisions (excluding Pāhaoa, discussed above). However, there were actually only 31 individuals involved of whom 11, the leading people of Ngāti Hikawera, were given shares in multiple subdivisions. These leading 11 also received much larger relative interests than the 20 other owners, many of whom were spouses or children of the 11 leading people.
and received shares only in the relatively small (and absolutely inalienable) Kehemane Reserve.  

(3) Partitions and sales
This pattern is evident in many of the partitions in Ngā Waka ā Kupe lands:

➤ The blocks could be and were leased for up to 21 years in order to make an income for owners (Kehemane was only able to be leased from 1909).

➤ The income in many cases barely rose above unimproved values, and was often swallowed or significantly taken up with existing or new debts. Debts were incurred in anticipation of rental incomes. Private dealings were, however, significantly restricted under new legislation, and getting exemptions could be time-consuming. Delays in receiving anticipated rentals, and rentals that fell far short of what was required for debt repayments, led to increasing debt.

➤ Many owners applied for removal of restrictions on alienations of lands in order to obtain new and cheaper loans to replace old debts with poor terms, and to rationalise by selling some land in order to pay off debts and develop remaining lands. While the process of obtaining an exemption could be slow, the court would generally recommend the removal of restrictions on alienation on the application of the owner or owners.

➤ After 1894, unless they had already entered into a private deal they had to complete, owners were obliged to turn to the Government if they wanted new mortgages. Mortgages were possible through the Public Trustee or other Government lending departments, although strict criteria applied to lending on Māori land (including that lending was only possible against land that was held by a sole owner, and was leased to a European). The land also had to be of sufficient value to repay the loan.

➤ Unusually for Māori land, many Ngā Waka ā Kupe lands met these criteria, and numbers of owners obtained mortgages from the Public Trustee especially. Government mortgages were typically taken out to try and save lands by paying off existing debts, or to re-structure debts to replace existing harsh repayment terms. There was often little money left to invest in land improvement to increase overall income from the land concerned.
The land court varied restrictions on Ngā Waka ā Kupe lands in 1907 so that Government mortgages were easier to obtain. Later the Ikaroa District Māori Land Board would consider and usually approve a mortgage, based on land value and on established criteria, including that the applicant had sufficient ‘other’ lands for his or her maintenance.

In many cases, and in spite of trying to restructure earlier debts, owners would eventually be forced to sell some of their land in order to pay off growing debts. As land was sold, opportunities for owners to develop other lands were less, and a cycle of mortgaging and then sales ensued.

Historian Tony Walzl also noted this pattern:

In certain localities where Maori land was situated, a specific European family might hold all the surrounding land. In such a situation, the European
Niniwa-i-te-rangi and her Ngā Waka ā Kupe Lands

In 1892, Niniwa-i-te-rangi was awarded interests in various Ngā Waka ā Kupe partitions that amounted to more than 1000 acres. When her father died, she succeeded to at least another 10,000.

Niniwa’s father, Heremaia Tamaihotua obtained the following awards in Ngā Waka ā Kupe:
- 100 acres in Te Uwhiroa;
- 300 acres in Tahuroa;
- 8000 acres in Ngawakaākupe 2 (proper); and
- a share with 18 others in Kehemane.

Heremaia Tamaihotua also had shares in the Ōro reserve of 1280 acres (as Ngāti Rangaranga), and in Mātakitaki and other blocks. With others, he had been selling the surrounding lands to the Crown from the early 1850s.

Niniwa was awarded 25 acres in Te Uwhiroa, 1000 acres in Ngā Waka ā Kupe proper (eventually in Ngā Waka ā Kupe 2), 212 acres 2 roods 17 perches in Wainuiorū C, 252 acres 14 perches in Wainuiorū D, and 291 acres 2 roods 32 perches in Kehemane 4, after partition and successions.

After her father’s death she owned, as well as other interests, half of 927 acres in Mātakitaki 1C, 5871 acres in Ngā Waka ā Kupe 2D, 4014 acres in Ngā Waka ā Kupe 2E, 104 acres 3 roods 18 perches in Uwhiroa 2, 309 acres 4 perches in Te Uwhiroa D, interests in Te Kōpi–Waitutuma, and interests in Kawakawa. In 1913, Niniwa also inherited some interests from her mother in Kehemane and Wainuiorū D.

However, she also inherited £7000 worth of debts from her father, and had liabilities of her own – £900 for fencing and stock at Kehemane. She had leased part of her lands for £934 per annum. (In those days this was a large income – in 1909, the Public Trustee’s annual salary was £800. His staff earned salaries of as little as £40 a year for a junior cadet.)

In 1897 Niniwa found herself in a situation where no rents were payable to her until the following January, and she needed money. She petitioned the Governor to exempt her interests in Ngā Waka ā Kupe 2D from section 117 of the Native Land Court Act 1894 so that she could raise a mortgage. She used 1682 acres 1 rood 18 perches of 2D as security on a £900 mortgage. In 1900, Judge Mackay annulled the restrictions on another 4203 acres 2 roods 22 perches in 2D so that it could be exchanged or leased for any period not exceeding 21 years.

The Government was interested in compulsorily acquiring some of Niniwa’s land under the lands for settlement scheme. In 1905, Niniwa petitioned the Government to protest against her experience as a landowner in this block (see sidebar above).

4.6.7 Crown purchasing, 1880–1900

The titles of many of the blocks the Crown purchased in this period had on them restrictions on alienation that the Native Land Court had applied, indicating that these lands began life in the Pākehā process as blocks the owners wanted to keep. In this section, we examine the Crown’s role in purchasing this type of land as the century drew to a close, at the same time drawing a picture of what was happening to Māori landholdings generally across the district.
the law being able to take her lands, the Ngawakaakupe Block'. On 19 October 1905, the Native Affairs Committee reported that ‘as this petition refers to a question of policy, the committee has no recommendation to make’. It is not clear from the evidence which of her Ngā Waka ā Kupe lands were affected.

In 1906 Edward Riddiford applied to lease the part of 2D on which restrictions had been annulled; he wanted the lease to be for 30 years at £1051 per annum. In July 1907 the court ordered a variation of the restrictions on 2D 'so as to admit of mortgage thereof to a Government Lending Department only and of lease for a period not exceeding 50 years'. Riddiford already owned the limit of freehold land for settlers (2000 acres of third-class land, and smaller amounts for first and second-class land). The Ikaroa District Māori Land Board reserved its decision, effectively refusing his application. The case went to the Supreme Court in August 1907, which issued a writ of mandamus (a mandatory court instruction) ordering the Board to hear the case. The Board approved the lease in September 1907.

In 1907, Niniwa applied under section 6 of the Native Land Laws Amendment Act 1897 to borrow money by way of mortgage for the same 4023 acres 2 roods 22 perches of Ngā Waka ā Kupe 2D. The permission to do so was gazetted on 2 May 1908. She had originally borrowed £3000 from the Advances to Settlers Office, but the later £8000 was from the Public Trust Office. The first mortgage was to be repaid out of the second.

It might be though that the second mortgage would provide a temporary reprieve, but in the meantime Niniwa had purchased property at Whāngaimoana, near Lake Ferry, worth £7122 75. The instalments on this purchase were to be paid out of the new loan. In 1910, the Chief Judge of the Native Land Court, Jackson Palmer, ordered that Ngā Waka ā Kupe 2D was to be held as European land within the meaning of the Native Land Act 1909. In 1895, an order removed the restrictions on Ngā Waka ā Kupe 2E. This 4014 acres was part of the land the Crown acquired in 1895.

Niniwa was also embroiled in loans and mortgages in relation to her interests in blocks outside Ngā Waka ā Kupe. She had been loaned money on her father’s interests in Kawakawa although not named on the title; she cut out her interests in Mātakitaki 1c as 1c1 (489 acres) for lease at a time when many of her Wairarapa interests, including those in Te Kōpi-Waitutuma, were being sold to clear her ongoing debts. In 1919 she petitioned unsuccessfully to succeed to interests owned by her whāngai (adopted) child Te Raro (or Rangi Kerehoma). When she died in 1929, she was still in debt.

We concentrate here on land restricted from alienation in Tāmaki-nui-ā-Rua; we examined the Crown’s role in the alienation of reserves in the Wairarapa in our discussion of reserves from the Crown pre-1865 purchases (ch 3B). Although Mitchell provides a table showing a number of cases where new lands in the Wairarapa (not reserve lands from early Crown purchases) had restrictions entered into the titles, we did not receive detailed evidence on these blocks. In any case, in this period, as in the 1870s, most Crown purchases were occurring in the northern part of our district.

It will be recalled that Tāmaki-nui-ā-Rua was opened up to settlement on the explicit undertakings of Samuel Locke, the Crown’s main purchase officer in the district, about the necessity for Māori to retain sufficient land. He spelled out that this meant land sufficient for their immediate and their future use, and for purposes both traditional (bird-snaring, resource-gathering, and cultivation for sustenance) and modern (commercial farming, lease, and sale at a profit). Over the decades that followed, however, the Crown made small purchases and public works takings in the blocks reserved out of its purchases under the Native Land Court system. It also purchased extensively – aggressively, even – in areas that Māori had explicitly sought to retain by excluding them from purchase negotiations, and by getting the court to put alienation restrictions on titles.
(1) What exactly had been reserved for Māori in Tāmaki-nui-ā-Rua?

The first blocks brought through the court at Tāmaki-nui-ā-Rua were leased to settlers, notably John Davies Ormond. Purchase would not emerge as an issue until the leases were about to expire (apart from Kaitoki block, where by 1897 private purchasers had bought over 12,000 of 13,400 acres in the block).\textsuperscript{123}

Of the northern blocks that went through the court in 1870, Māori retained Tāmaki (27,000 acres), Piripiri (14,000 acres), Wharawhara (2180 acres), Tiratū (7945 acres), Tipapakura (2462 acres), and Te Ōtanga (5033 acres). (These last four blocks had acquired the designation Manawatū 2, 4, 4A, and 4B.) Tāmaki and Piripiri were explicitly reserved, with restrictions on their titles prohibiting sale or lease for more than 21 years. Although Te Ohu was listed in the June 1870 agreement to sell to the Crown, only part (2036 acres) was purchased by the Crown. Most of the block (18,564 acres) was set aside for the non-sellers, and the title was not restricted.

The Crown had also agreed to set aside some small reserves from the blocks purchased at Umutaoroa, Tuatua, and Ahuatūranga, as set out in the table opposite.

In fact, it is difficult to discern much difference in how the restricted and unrestricted blocks were treated over the next thirty years.

We described earlier in this chapter how the reserves in the northern Bush blocks remained undefined while the Crown was pursuing outstanding signatures on purchases. Grants were issued for neither the one at Umutaoroa nor at Te Ohu. In the meantime, the land remained under proclamation of purchase. Government officer George Preece reported in 1882 that:

the principal argument I used with the Grantees in the Ohu and Umutaoroa Blocks in inducing them to sell their interests have been, that at present the Crown Grants for the Reserves have not been issued and that the whole block being under proclamation they could be in no way dealt with but that so soon as the Government interests were completed the proclamation would be withdrawn and Crown Grants would issue for the Reserves.\textsuperscript{124}

All necessary signatures had been obtained by 1883, and the reserve was granted to Hōhepa Paewai and others by Crown grant under the Volunteers and Others Act 1877. The wording gives a hint of the complications that had arisen as the Crown pursued final signatures while the land remained unsurveyed:

with respect to any lands acquired under the provisions of ‘The Immigration and Public Works Act, 1870’ and any Act amending the same, out of moneys available for the purchase of lands in the North Island, or any estate or interest therein, it shall be lawful for the Governor to give effect to any stipulation made in any instrument of sale or transfer to Her Majesty of any such land by Natives, for the reservation, sale, or grant to them of any portions of such land, and for that purpose to reserve or to grant such portions accordingly in manner required by the aforesaid Natives. (s 5)\textsuperscript{125}

The reserves from Āhuatūranga also came under this legislation. When the purchase was under negotiation, the vendors had wanted to keep sites at Ngāawapūrua and Rotoāhiri. Later, by agreement of the ‘certified owners’, the two reserves comprising 1575 acres were located in one block now designated as section 200 block 8 Woodville Survey District. When this happened is unknown. Apparently for convenience’s sake, the same seven grantees named in the parent block in 1871 just before its sale to the Crown were also put into the title of the reserve. Twenty-two acres were later taken for railway purposes under the Public Works Act, and in 1889 the Native Land Court awarded compensation to the grantees (or their successors) in equal shares.\textsuperscript{126}

Because Crown grants for Umutaoroa and Āhuatūranga reserves were issued under the Volunteers and Others
Lands Act 1877 and not the Native Land Act 1865, the Native Land Court had no jurisdiction to hear applications to include more people in the title under the Native Equitable Owners Act 1886. Applications to put more names in for these two blocks both failed.

Tuatua (aka Te Whiti-ā-Tara) was also set aside as a reserve under the 1871 agreement, but it is not clear whether restrictions were ever placed on its title. Māori grantees seem to have acted as though there were none. It was leased in 1881 without reference to officials, and mortgaged two years later. The Crown purchased the whole block in 1911.

At Te Ohu, the Crown continued to make payments, so that when the block was brought through the court in the early 1880s, the Crown was awarded 2036 acres as Manawatū 3, while the non-sellers retained the rest (18,564 acres) as 3A. An effort to bring the block under the Native Equitable Owners Act 1886 failed because the block had been partitioned, and the Act applied only in cases where the title was untouched.

At Tāmaki and Piripiri, restrictions on the title only delayed sale, and in effect preserved it intact for future Crown purchase. We return to their history later. We shall see that the Crown acquired extensive interests in both blocks in the late 1880s and 1890s, despite political and cultural objections to sale; increasing awareness of impending landlessness; the restricted nature of the title; and encumbrances of timber leases.

(2) Southern Bush blocks

Of the southern blocks put through the Native Land Court in 1871, Mangatainoka (containing an estimated 62,000 acres) was clearly marked for retention by its Māori owners. This land was awarded under a section 17 title and very consciously excluded from the sale to the Crown. Eight reserves comprising 4369 acres were all that was set aside from the Crown’s purchase of the other 10 blocks comprising an estimated 120,631 acres in October 1871 (see table over).

Crown purchases then followed at:

(a) Ngātapu: Two areas of 500 acres were reserved from Ngātapu 1 and 2 (totalling 11,000 acres), and the Crown purchased them in 1872 (Ngātapu 2) and 1879 (Ngātapu 1).
<table>
<thead>
<tr>
<th>No</th>
<th>Parent block</th>
<th>Estimated acreage sold</th>
<th>Reserve block</th>
<th>Estimated acreage reserved</th>
<th>Surveyed area reserved</th>
<th>Area at 1900</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Eketāhuna (Manawatū–Wairarapa 1)</td>
<td>6000</td>
<td>Eketāhuna</td>
<td>1000</td>
<td>1020 a 1 r 27 p</td>
<td>Just under 98 acres</td>
</tr>
<tr>
<td>2</td>
<td>Pahiatua (Manawatū–Wairarapa 28)</td>
<td>15,000</td>
<td>Pahiatua</td>
<td>1000</td>
<td>1017 a 1 r</td>
<td>1017a 1r</td>
</tr>
<tr>
<td>3</td>
<td>Mangahao 1</td>
<td>23,000</td>
<td>Puapuatapoto</td>
<td>530</td>
<td>530 a</td>
<td>None. Sold to the Crown in 1873</td>
</tr>
<tr>
<td>4</td>
<td></td>
<td></td>
<td>Rarikōhua and Tūtaitapara (aka Tūtaetūpara)</td>
<td>289</td>
<td>304 a</td>
<td>None. Sold to the Crown in 1883</td>
</tr>
<tr>
<td>5</td>
<td></td>
<td></td>
<td>Tararu or Torotoroiata</td>
<td>200</td>
<td>175 a</td>
<td>None. Sold to the Crown in 1883</td>
</tr>
<tr>
<td>6</td>
<td>Mangahao 2</td>
<td>8000</td>
<td>Huru’s reserve aka Ruawhenua</td>
<td>350</td>
<td>3557 a</td>
<td>None. Sold to the Crown in 1880</td>
</tr>
<tr>
<td>7</td>
<td>Ngātapu 1</td>
<td>4000</td>
<td></td>
<td>500</td>
<td></td>
<td>None. Sold to the Crown in 1879</td>
</tr>
<tr>
<td>8</td>
<td>Ngātapu 2</td>
<td>7000</td>
<td></td>
<td>500</td>
<td></td>
<td>None. Sold to the Crown in 1872</td>
</tr>
<tr>
<td>9</td>
<td>Kauhanga aka Mangahao 3*</td>
<td>7000</td>
<td>Te Rerenga o Whiro</td>
<td>20</td>
<td>20 a</td>
<td>20 a</td>
</tr>
<tr>
<td>10</td>
<td></td>
<td></td>
<td>Te Potae</td>
<td>20</td>
<td>20 a</td>
<td>20 a</td>
</tr>
</tbody>
</table>

* The Kauhanga block was investigated by the Native Land Court in March 1873 and purchased by the Crown the following month. The two reserves were awarded a certificate of title on 17 August 1882 under the Volunteer and Other Lands Act 1887 and still exist as Māori freehold land. The Kauhanga block adjoined Mangahao 2 and its acquisition in 1873 completed the Crown purchase of the whole Mangahao block.

Reserves set aside out of the southern Bush purchases

(b) Puapuatapoto: The 530-acre Puapuatapoto block was one of four small reserves set aside for individual rangatira. The Crown bought it within two years of it being reserved (in 1873).

(c) Eketāhuna: The Crown paid compensation of £78 when it compulsorily acquired 16 acres from the Eketāhuna block for the railway in 1888. It took another seven acres for a road in 1894. An application to have restrictions lifted in 1894 stated that a lessee had offered to buy. It was approved; restrictions were removed in 1897, and 898 acres were sold to a private purchaser in 1898.

(d) Kauhanga aka Mangahao 3: In 1873, the Crown also acquired one of the two remaining blocks excepted from its purchase of the southern Bush – Kauhanga, or Mangahao 3.
It purchased all but 40 of the 7000 acres; the two reserves, Te Pōtai and Te Rerenga o Whiro remain Māori land. The Crown was purchasing interests in Kauhanga and in the adjoining Mangatainoka block at the same time.

(e) **Mangatainoka (the later purchasing):** We described earlier in this chapter the beginning of Crown purchase activity in Mangatainoka. We discussed the special circumstances in which Rangitāne carefully chose to keep the block as a kind of tribal reserve, and the court issued title to 56 owners under section 17 of the Native Lands Act 1867. A section 17 title might require prior collective agreement before any sale, but this did not happen here. Instead, the Crown quickly set about purchase of Mangatainoka in 1872, only a year after its special tribal title was confirmed. It made purchase advances in the form of payments for food and provisions and Rangitāne, very needy at the time, accepted them. Purchase of the whole block was soon under way.

By April 1885, the Crown had purchased substantial but undefined interests throughout the Mangatainoka blocks, and applied to the Native Land Court to have its interests partitioned out from those of non-sellers. Hoani Meihana asked for an adjournment for five months, as there were...
many disputes among the owners. The Crown claimed that three weeks was reasonable. To this Meihana replied: "This is the last of our land. We have no more. We want five months to make private and tribal arrangements about its disposal or of as much as remains to us." The court granted a two-month adjournment, and when the case was called on 30 June 1885, the Crown was awarded 44,296 acres: 66.71 percent of the block. In his evidence, Hoani Meihana described previous unsuccessful efforts to reach some agreement with the Crown on the question of advances and partitioning the land. He also described the manner in which Government agents:

went everywhere afterwards to Public Houses and elsewhere to take signatures of owners of Mangatainoka. I thought this could not be the work of the Government, but of a Company. My continuous desire was to have an amicable arrangement of the partition for the Crown and for the people... We are now troubled with this and some other important matters so that we cannot see what to do for the best.

The non-sellers' interests were then partitioned into six blocks that together comprised 23,969 acres. The lists of owners were long, especially in the larger blocks, but this did not reflect any form of tribal or collective ownership. Rather, they were the names of individuals whom the Crown's agents could target one by one, buying their shares and then applying to partition them out.

By 1890 the Crown had acquired the bulk of the block, leaving only a few hundred acres in Māori hands. That year, it also acquired seven lots at Tūtaekara, and another one in 1891 — a total of 400 acres out of the 598 acres originally reserved as town plots.

(3) Completing the purchases further north: Tāmaki and Piripiri
Both Tāmaki and Piripiri blocks were awarded under the 10-owner rule, but with restrictions against permanent alienation on the title.

For Tāmaki, 20 names were submitted to the court, but it awarded the block to only three. There was a definite intention to keep this block: Karaitiana Te Kōrou was deliberately selected as a grantee to help keep it.

Piripiri was split from Umutaoroa at the 1870 hearing to satisfy two different parties of claimants. Ten owners were on each of the titles. Umutaoroa was sold with a small reserve for the vendors, but Piripiri was to be inalienable.

The owners of these blocks came under increasing pressure to sell in this later period, as the original grantees who had been acting as informal trustees fell into debt, or died, and the Government began to acquire shares in the blocks for settlement.

(a) Tāmaki: Surveyor Munro had noted about Tāmaki in 1870 that Māori set great store by it. When it went through the court in 1870, Ihāia Ngārara had stated that the block belonged to Rangitāne who resided on this land and at Tahoraiti. Though there were many owners, the three named were Ihāia, Atanata Te Wharekiri and Karaitiana Takamoana, the latter chosen for his skills in the Pākehā world. The owners needed income, so the land was leased for its timber. However, it was agreed that restrictions against permanent alienation should go on the title.

In the early 1880s, a decade after these arrangements were made, the Crown had at long last finalised its purchase arrangements for surrounding lands. It turned its attention then to these remaining lands. In 1882, Parliamentarian William Cowper Smith asked in the House whether the Government was intending to purchase the block.

In September 1882, John Sheehan, trustee for the Karaitiana Takamoana estate, began efforts to have the restriction lifted to allow a sale. The estate was in debt, which motivated Sheehan to sell Takamoana's interests in the block which, he said, Takamoana owned in his own right as one of the original three grantees.

When the Native Department inquired into it, they reported 'grave objections' to the removal of restrictions. The grantees were representative and not absolute owners.
Indeed, Karaitiana Takamoana was only in the title to secure retention of the block, and the surviving grantees did not support the sale!\textsuperscript{439}

The matter seems to have rested there until the 1890s, when Albert Karaitiana, Takamoana’s only son, came of age. On Sheehan’s death in 1885, the Supreme Court had appointed two new trustees – Messrs Bennett and Pitt of Gisborne. They held a mortgage over one of the properties of the estate for the sum of £8000, which, with costs and interest, now laboured under a debt burden of nearly £11,000. Karaitiana commenced suit against the estate’s two trustees, seeking their removal, and the Supreme Court appointed John Coleman as sole trustee. There were other creditors as well, and Coleman asked for removal of restrictions on the Tāmaki title to allow its sale on ‘favourable terms’ to pay off debt and save the estate from serious and irreparable loss.\textsuperscript{440}

This prompted the Government to seek the consent of the other two grantees, as applications for removal of restrictions on alienation required majority support. Government land purchase commissioner Gilbert Mair was sent to talk to them. Atenata Wharekiri, described as the principal owner, consented to the sale of 12,000 acres provided that the people were consulted first and agreed. Mair reported that he had visited their various kāinga (settlements), and a general meeting was arranged. In the meantime, they asked for information about a lease that had been entered into a few years earlier as ‘they have no clear idea what the terms are and do not appear to receive any adequate or regular rent’. Apparently East Coast lawyer and land developer William L. Rees had visited them earlier, urging them to join a company for the purpose of felling the timber and running a farm. They had refused but, in the meantime, the lessee had felled 500 acres on the portion that Rees wanted to secure as Albert Karaitiana’s share. Local Māori argued, however, that ‘Karaitiana had only a small interest . . . and this contention is borne out by what I am told by disinterested Natives.’\textsuperscript{441}

Three months later, George Kelly, the land purchase officer based at Dannevirke, telegraphed his department confidentially, revealing that both grantees agreed to sell provided their price was met. The parties were a long way apart on the per acre price, though. The vendors wanted £2, but the Crown was offering only 10 shillings. Kelly reported: ‘They are not ripe for business yet. I have no doubt that they will come around before long.’\textsuperscript{442}

In the following month, land purchase officer Patrick Sheridan informed the Minister that the offer was on the table; that though the shares were held on trust for the tribe, the grant placed them in the position of absolute owners. The shares were as yet undefined and thus, ‘unless the two other owners agreed to sell at the same time’, or until Karaitiana’s share was defined by the Native Land Court, it could not be purchased. The Government was prepared to purchase ‘singly or together’. Sheridan promised that he would visit himself, if there was no progress within the month.\textsuperscript{443}

The purchase of Karaitiana’s share proceeded at 10 shillings per acre, with an advance of £1500, even though the shares were as yet undefined on the ground, so it was unknown how many acres Karaitiana had to sell. Sheridan informed the Chief Judge of the Native Land Court of the intended purchase, inquiring:

Would it be reasonably safe under the circumstances to advance him one ninth of the total consideration on the assumption that the shares are equal. They are at present undefined but I understand that Arapata [Karaitiana] is in possession of a duly executed agreement by the other two owners a voluntary arrangement that shares shall be deemed equal on partition, or definition of interest.\textsuperscript{444}

The chief judge refused to comment since the matter might come before him as a judge of the Appellate Court.

The block came to the court for partition in January 1895. Manahi Paewai appeared to make the wishes of the Tāmaki people known to the court: ‘the parties did not now desire to proceed with the work.’ He complaining that
under the new Act (1894) ‘the position of the Assessor was not the same as it used to be. His assent or dissent was not necessary to the judgment of the court. Consequently the Natives interested in the Tamaki block desired to withdraw their application until the law was amended.”

The court explained that the provision was intended as a ‘precautionary measure to prevent collusion between the Assessor and any of the parties to the case’. It would not consent to the withdrawal of the block, but did grant a short adjournment. Then the claimants broached the matter of the interests being held by the grantees on trust. The court replied that this question could be heard only by an Order in Council; and the partition hearing proceeded on the next day.

After extensive evidence, the court decided that Karaitiana Takamoana had no beneficial ownership in the land, and that his was only a fiduciary position. But since his two co-grantees had agreed to his having 200 acres allotted to him, and in order to reimburse costs of £500 incurred in surveying the block, his descendant was awarded 1200 acres in all.

While the case was proceeding, Mare Rautahi and others petitioned the Governor that it had been intended that the grantees should act as trustees for the hapu. They urged an investigation of title so that their names could be included. We discussed earlier how the view by this time was that the earlier judges had unnecessarily limited names on the title, and the case was allowed to go before the Appellate Court in 1896. They rejected the appeal, and the earlier partition stood. Complaints continued, but the matter went no further.

The 1200 acres of the Tamaki block that were awarded as Karaitiana’s share were located in its north-east corner. The Crown’s purchase proceeded, though it remained encumbered by the timber lease. However, in 1898, Minister of Lands John McKenzie resisted settler pressure for more Crown purchasing: ‘in view of the landless Native difficulty which is steadily developing itself in the North Island, the Government does not propose to allow any further alienation in fee simple of Native Lands.”

In this case, though, restraint was short-lived. Seddon (in July 1899) wrote to land agent William Rose about the Government’s plans and the ‘opinion which the Government [had] held all along’ that parts of Tamaki block were ‘admirably adapted for settlement’:

Two difficulties, however, at present stand in the way of the acquisition of the freehold of the land by the Government namely the landless Native difficulty, which is fast becoming serious, and the leases, held by the Hawke’s Bay Timber Company, which encumber the title.

As to the first mentioned difficulty I propose, at an early date, to interview the Chiefs and other leading men amongst the Native owners and talk the matter over with them with a view, if possible, of arranging some terms by which reserves for such of the owners as have not a sufficiency of land elsewhere would be set aside and the balance of the block be thrown open for settlement.

By the time the blocks came through the court again in 1902, the Crown’s purchases amounted to 23,060 acres, leaving to Māori 3172 acres. Although officials were authorised to agree to a price of up to 20 shillings per acre, they succeeded in acquiring almost all of it at 10 shillings per acre.

(b) Piriiriri: In the 1890s, the Crown continued its purchase of interests in the Piriiriri block, despite growing concerns about landlessness, and even though there were restrictions against alienation on the title and a timber lease already in place. We do not have much evidence about the method of purchase of this block, however. As noted earlier, an 1892 hearing under the Equitable Owners Act resulted in 124 names being placed in the title. The Crown appears to have acquired these in the usual piecemeal fashion. By 1898, when the Crown sought to have its shares defined, it had purchased the interests of all but six of the owners. This amounted to 17,056 acres, while the remaining Māori owners retained 913 acres. The Crown also claimed £430 of the £1200 rent owed on the block.
4.6.8 Summary
The need for Māori to retain sufficient lands for customary use and to play a full part in the new economic order was signalled in the Crown’s negotiations in 1870; and Māori signalled in court their desire to keep certain large expanses of land for the long term. Various strategies to retain the land as a community asset were tried, but none proved particularly successful because this was never a policy goal for settler governments, and they passed no adequate mechanisms into law. An attempt to retain a collective tribal title to Mangatainoka was thwarted primarily by the Crown’s unwillingness to respect the choice that Rangitāne had made not to sell this land. Listing 56 names on what everyone knew was intended to be a tribal title provided a means for its piecemeal purchase. The owners’ debt and the Crown’s cunning purchase tactics did the rest.

Similarly with Tāmaki and Piripiri, the Crown targeted individuals for piecemeal purchasing, especially when they were in difficult circumstances. Concerns about Māori becoming landless tended to be linked to preventing the activities of private speculators – Charles Johnson Pharazyn and his ilk – who were accused of using shameful methods to purchase land from Māori. Yet the bush areas went not to private purchasers, but to the Government – and at the very time that they were talking about what a problem landlessness might become. The Crown knew that these blocks that were still in Māori hands in the last two decades of the century were their last remaining estates in land, and that once they were gone there were simply no more. That knowledge was no deterrent. On the contrary, it almost seemed to be an incentive to the Crown to waste no time, lest others purchased the land first.

By 1900, really only a generation after the big Tāmaki-nui-ā-Rua title adjudications, Māori in the region were well on the road to landlessness, with barely 20 percent of the land still in their possession. The trend continued, of course, so that today a mere 2 percent remains in Māori ownership.\(^{453}\)

4.7 The Response of Wairarapa ki Tāmaki-nui-ā-Rua Māori to the Court
4.7.1 The parties’ contrasting interpretations
Wairarapa Māori passed very few blocks through the court from 1874 to 1880. Claimant submissions referred to this as a boycott organised by Māori committees opposed to the court. Counsel for Ngā Hapū Karanga stated in closing submissions that Māori people of the district from Wairarapa to Tāmaki-nui-ā-Rua opposed the Native Land Court. He pointed to their involvement in attempts to boycott the court, their active involvement in the Kotahitanga and the Repudiation movement, and continued use of customary komiti and rūnanga. All of this evidenced an ‘ongoing search for an alternative mechanism that better suited their needs.’\(^{454}\) The Crown, however, failed to make the changes sought by Wairarapa Māori, even when it became clear that the system was ‘neither beneficial nor responsive to their interests.’\(^{455}\)

The Crown prefers to refer to the period when Māori did not use the court as a 'hiatus', and asserts that claimant evidence, particularly that of Stirling (who provided the main evidence on these matters) is overstated. Crown counsel says that there was little or no reference to a ‘boycott’ in settler press or the correspondence of Government officials. Rather, the hiatus can be partly attributed to the influence of Māori committees, but also to political divisions among Māori (‘Queenite’ and ‘Kingite’ factions). Māori were also dissatisfied with the court’s inability to sort out the problems in a number of highly contentious blocks, and wanted to reform the laws affecting Māori land. But what they wanted to reform, Crown counsel contended, was how cases were prepared and presented, ‘rather than opposing the principle of a Court in its entirety’. In short, Wairarapa Māori were not consistently opposed to the court.\(^{456}\) Crown counsel also casts doubt on other aspects of Stirling’s analysis of Wairarapa Māori protest. The Crown provided no detailed Wairarapa evidence of its own on the issue of political response.

We turn now to consider the evidence before us on the response of Wairarapa ki Tararua Māori to the
introduction of the land court, and the perceived impacts of land legislation and land purchasing.

4.7.2 Evidence of boycott and repudiation

As we have seen, there was an initial enthusiasm for the Native Land Court among many Māori communities in our inquiry district. They welcomed an opportunity to engage directly with settlers in leasing and selling their surplus lands, and the secure tenure that land legislation and Crown grants appeared to promise were perceived as a major advantage.

But shortcomings soon became more apparent, especially the dominance of the Pākehā judge and European ways of thinking, and the marginalisation of Māori themselves from the title adjudication process. Also, there was increasing concern about how the 10-owner rule affected the rights of those whom named grantees were supposed to represent but who had not been made legally responsible. Consequently Māori opposition began to harden in the late 1860s, leading to the first concerted attempt at a boycott at Greymouth in 1871, where Māori applied to have several cases adjourned 'in order that they might be investigated by a native, or some other, tribunal in which they might have confidence'. They also sought an alteration in the Native Lands Acts which would permit Māori themselves to carry out adjudications through rūnanga or komiti:

electected by themselves, to be presided over by some representative of the Government who should have the assistance of two assessors, who, after hearing the evidence, should give their decisions and report the same to the Government. These Runanga, or Committees as they themselves call them, would occupy the position of jurymen, rather than as witnesses, and who would aid the chairman and assessors in arriving at a decision agreeably with native custom.

Māori of the district began to organise around their opposition. In early 1872, a ‘Committee of 24’ was formed at Te Ore Ore with the task of watching over ‘the interests of the natives, and also their wish is to settle their own arrangements about the possession of their lands, and then for the court to ratify their decision.' A number of claims were withdrawn from the court. A komiti was also formed at Pōrangahau with the same object, and the two komiti (Te Ore Ore and Pōrangahau) were ‘working in unison together’. As Stirling notes, this led to many claims being withdrawn, and those that were brought before the court appear to have already been decided or approved by the komiti. This seems to have generated some conflict in the court, as witnesses invoked prior komiti determinations, and the judge refused to recognise them, insisting on his exclusive authority.

There was little further business brought before the court between 1873 and 1875. During this period, Māori of the district were said to be ‘unmanageable,’ and had ‘closed all lands in the district.’ After 1875, though, the boycott movement broke down as the Crown exerted pressure to further settlement in the area, and community authority was not strong enough to maintain resistance. Under the circumstances, it is remarkable that it lasted so long. Any individual Māori could make an application to the Native Land Court, and the court was required to hear any claims brought before it, so there was a clear risk to boycotters that they would simply be excluded from land titles. Any boycott really needed to be universally accepted and observed. But perfect unanimity is, of course, a virtually unattainable goal, certainly for longer than a short period.

From 1867 to 1873, Wairarapa Māori sent a number of petitions to Parliament that strongly criticised the court. One 1872 petition was signed by 171 Wairarapa and Hawke’s Bay Māori, and called for the abolition of the court. Another called for ‘the adoption of certain propositions for the better settlement of land questions,’ including a proposal that Māori elect a committee ‘from among themselves’ to determine land titles. The Native Affairs Committee considered that the petitioners should be ‘granted that privilege,’ but it had no recommendations to
make in respect of other matters raised: questions of policy were for the Government.\textsuperscript{463}

In 1873, a hui at Pakowhai organised a large petition signed by 371 Wairarapa, Hawke’s Bay, and other Māori. It told the Government that, for years, Māori had been suffering ‘great loss and injury by reason of the improper, confused and irregular operations of the native land laws’. The lands were ‘eaten up by money for survey, Court fees, grant fees, and payments to lawyers and interpreters, and other expenses, to such an extent that the balance which comes to us from the sale of our lands is very small’. They also hated the 10-owner rule:

The names of few people are put in grants for large blocks of land, and no care is taken of the interests of the people owning the land, but whose names are not in the grant; and thus the grantees are enabled to lease, encumber, and sell the land for their own benefit, without the knowledge and consent of the outsiders, and without sharing with them the money which the lease or sale of the land produces.\textsuperscript{465}

Moreover, ‘imprudent owners’ could be picked off by land purchasers, because:

the Europeans are allowed to go to the men whose names are in the grant one by one and make bargains with them, which are unknown to the other grantees, whereas all the grantees should be called together, and unless all consented the land should not be sold.\textsuperscript{464}

The petitioners’ complaints were legion. It was impossible to understand the complicated native land laws, and no independent advice on legal matters and land values was available; and ‘sufficient care is not taken to make proper reserves to be held for the use and benefit of the Maoris, so that many Maoris are now without any land whatever on which they may live and work’. Agreeing to Pākehā settlement was their downfall:

for we believing that the law about the land was good, have had our lands surveyed and put into Crown grants, because we were told that our lands would thereby be secured to us under the mana of the Queen; and now nearly all those lands are mortgaged or sold, and we the Maoris are left poor and without lands.

They argued that ‘the Government, if its thoughts had been just and fair to the Maori people, would long ago have come to our assistance, and made for us a law which should be fair in its operations and easily understood’.

The petition ended with a warning and a plea:

That even now it would be better that the work of the Law Courts should cease altogether unless the laws are made better than they now are. Wherefore we ask the Parliament to do away with the bad laws now in force, and to place in their stead a good law which shall be capable of being understood, and under which the evil works of swallowing up lands by debts and drink and mortgages – of going to the grantees one by one, and not speaking to them altogether – of leaving us in the hands of the lawyers and interpreters of the European purchasers, and all those other evils – may be put an end to.\textsuperscript{465}

In 1873, the Repudiation movement circulated a huge petition in the district. Again, it complained about the court and the land laws.\textsuperscript{466} Hēnare Matua, one of the principal right holders at Tautāne, and a leader of the Repudiation movement, travelled extensively throughout the Wairarapa district that same year, seeking support for calls to end the Native Land Court and land selling.\textsuperscript{467}

The Wairarapa petitions had little impact. The Repudiation movement claimed small successes, but they were hard-won and hugely expensive. Even so, there continued to be widespread (although not universal) support in Wairarapa ki Tārārua for the Repudiation movement and its key goals.

Most prominent rangatira attended a big Repudiation hui in Hawke’s Bay in 1876. They travelled as a large party of 500, with hapū represented including Rongomāiaia, Ngāi Tahu, Ngāi Te Rangiataia, Ngāti Hikawera, Ngāti
Hēnare Matua me Te Hunga Whakakorekore o Te Matau-a-Māui (Hēnare Matua and the Repudiation Party)

Hēnare Matua was a Ngāti Kahungunu rangatira, probably born in the 1830s at Nukutaurua. He also had connections to Hāmua and Rangitāne through his mother. He lived until 1894.

Although Hēnare Matua signed the deed of sale for the Waipukurau block, he otherwise consistently opposed land sale. From 1870–1880 he was the spokesperson for Te Hunga Whakakorekore o Te Matau-a-Māui (the Repudiation Party), and he regarded the Native Land Court as an instrument for land-buyers. He became a national figure, and many feared his radical influence. He was a great supporter of rūnanga as a means of Māori resolving their own land issues.

He was buried at Pōrangahau after a tangi at Waipatu where his coffin was covered by many fine cloaks. The cortège was led by a horseman carrying a red flag with the words ‘Tiriti o Waitangi’ in white letters.

Members of Te Hunga Whakakorekore (Repudiation Party) at Ahuriri (Napier) in 1876. Hēnare Matua sits at the end of the bench, beside Henry Robert Russell. Matua was a key figure in the Repudiation movement, which was based in Hawke’s Bay and which grew out of a widespread Māori dissatisfaction with land transactions.
Maehu, Ngāti Parera, Ngāti Te Hika-ō-Pāpāuma, Ngāti Moe, and Ngāti Hāmua. Their first stop was at Matahiwi. There they presented a great number of gifts to Te Hāpuku, including pounamu (greenstone), dogskin mats, korowai (cloaks), quilts, fine flax mats, and what were called ‘half-caste mats’ which combined wool and flax. Pound notes were attached to many of the items. Te Hāpuku’s people reciprocated, and though we do not know the reason for the exchange, the occasion was clearly an important one. The hikoi (march) then moved on to Pakowhai to join the main hui held in the new rūnanga whare (assembly building) named Hau Te Anau.

Foremost among topics discussed was the abolition of the Native Land Court. Hēnare Tōmoana told the meeting that:

The Native Lands Court must cease to wield its present power. Let all land sales cease, and let single individuals for the future cease to sell land, and let the people agree or not as to what lands are to be sold by the Native people . . .

Then Hēnare Matua told the meeting that:

We Maoris, of our own knowledge, know all our rights to our lands. We know who are the owners, and who are spurious claimants. We know all this without the aid or teaching of the European . . .

Why is it . . . that we, the Maori race cannot, or are not allowed to work with the Government, in regard to the adjudication of Maori claims to land. We, the Maori people, are fully enlightened, and know all our old customs in regard to land claims, and by us alone can a full and clear, and true judgment be given in our own land disputes. And we, the Maori alone, are competent to sit as Judges in Maori disputes or claims to land, as we are guided by our perfect knowledge of our own laws and customs to our own land. The European is ignorant of our ancient laws in regard to our Maori lands, and the European is wrong in his mode of investigation, also in his judgment and decision given by him in all Maori land claims, as the landless man obtains by the foolish acts of European, as Judge, the lands of the rightful Maori owner.470

Matua went on to protest about court fees and survey costs, and objected to the use of mortgages to obtain land and rates.

There was broad agreement on all of this from those present, including the Wairarapa chief Tikawenga. Resolutions calling for an end to the court and sales were put to the hui and passed.471

4.7.3 Komiti and the development of Kotahitanga
Another hui at Pakowhai followed in June 1876. Resolutions called for an annual Māori Parliament (Pāremata), kotahitanga (unity), and an end to land sales, land laws, and the Native Land Court. The minutes record agreement that:

the manner of purchasing land in accordance with the regulation now in force, is evil, and the cause of much confusion, and that all land purchasing under such regulations should cease. That land should not be bought in unalienated districts. That not till a majority of the Maori people have consented, shall land be surveyed or put into the Native Lands Court . . . or sold. And in all districts where the consent has not been given to the land being sold, in no case shall money be paid in advance for land . . . to those Natives who claim the land . . . Government officers shall not, without authority, or invitation from the majority of Natives, go into Native districts, and annoy by requesting the Natives to put their lands through the Native Lands Court, and to sell them. Let the Natives use their own discretion as to the survey, or passing them through the Native Lands Court.472
More petitions were prepared. Two were organised by Hoani Rangitākaiwaho of Wairarapa and may have been based on a document handed into the hui by Wi Mahupuku in answer to the agenda items considered by the hui. The petitions had very wide support.

The petitioners opposed the court in its unreformed state, and they sought the establishment of a Māori Paremata:

We say the conduct of Native land sales, or purchases under the Act at present in force is very confusing and very bad, and that purchases under these regulations should be stopped . . . If the tribe, the hapu and the chiefs consent to sell, to survey, and to have the title to the land investigated by the court, in accordance with the approval of all, then only will it be right to survey, to have the title investigated, and to sell. When all do not consent to sell, let no money be paid to the persons owning the land. A stop should also be put to the unauthorised going of Government officers into the Native districts, to urge the Natives to sell their lands or to have them surveyed or passed through the court. Let the investigation of title to and disposal of their lands rest with the Māori people to be done when they think fit.473

For the next two years at least, the Repudiation movement continued to act as a forum for the expression of pan-iwi grievances, especially in relation to the Native Land Court. Three hundred Māori, including a number from Wairarapa, attended a hui at Ōmāhu in 1877. This assembly sought reform of the Native Land Acts and land purchase methods. Many Wairarapa ki Tamāki-nui-ā-Rua Māori agreed, and sent more petitions. Then there was another Repudiation hui at Pakowhai in 1878, and again petitions followed.474

Support for the Repudiation movement began to wane after 1877, however, and energies focused instead on a local Wairarapa komiti movement — and later on the emerging Kotahitanga movement.475 The main Wairarapa (or
Tamatea) Komiti was established in 1876. It sent missives from Pāpāwai to indicate its authority over remaining lands, and named the individuals who would sit in the Pāremata that was expected to result from the Repudiation petitions. Stirling notes that this Komiti was implacably opposed to the Native Land Court, and frequently pointed to defects in legislation. It wrote to Parliament strenuously opposing further law changes supposedly intended for the good of Māori:

> We, and the tribes of this North Island are already being made poor by the laws of that man Sir D. McLean. There have been many laws made in years gone by, and we have not seen any good come from them. All that we have seen is that our lands have been taken by those laws.\(^476\)

In 1877, Paora Te Pōtangaroa and others wrote from Ōāhanga on behalf of Te Hika-ō-Pāpāuma, stating that:

> the teeth of these laws . . . are voracious in consuming people and land. It is because we the Maori people have seen the fault of decision making of this entity, the court, a stranger who owns the land, deciding in favour of the person who speaks falsehoods . . . We are not agreeable to these laws.\(^477\)

### 4.7.4 Te Whatahoro’s calls for reform, 1877–78

In 1877, Te Whatahoro submitted a detailed analysis of the court, based not only on his experience in Wairarapa but as a whakawā (assessor) in other districts. He declared:

> I have seen the object for which the Europeans instituted that Court, and all its officers. And I see that that Court is verily the monster who swallows the most land in this world, and by which the Maori people will be most certainly impoverished.\(^478\)

He called for kotahitanga, and urged Māori to:

> cease to take our lands into the Native Lands Court, but let us act together, so that the European judges of the Court may be put away. The reason I say this is, that the European does not know how to adjudicate on Maori claims to land. And hence I say, let the Maori people investigate the claims, and say who are the real owners of the land . . . and when the Maori people have decided as to whom the land belongs, then let some one give effect to such decision, that is some man may be empowered by law to seal and give effect to the decision, come to by the Maori investigators.\(^479\)

Te Whatahoro’s experience had led him to the view that the court, with its formal European legal norms, was an utterly inappropriate body to interpret Māori custom:

> I have seen that it is wrong, and is not in accordance with the Maori knowledge of such matters, but it (the investigation) is conducted in accordance with the rules which guide the Courts where pure European disputes are discussed. Such a mode of procedure is not right, because those of the Maori young men who have resided near the European towns understand that mode of procedure, but the old men, and those who are ignorant of the rules of the Native Lands Court, and therefore do not know how to act or give evidence in the Court. They are afraid, and such fear prevents their evidence from being given in a clear and creditable manner. And [when spoken to by the judge in a censorious manner] they become afraid, and thereby they lose their case. Another matter is, the Judges do not put questions to the Maori witnesses in that way which the Maori would put them to a Maori. And in summing up the evidence (in Maori cases) the Judges do not act in a clear way. Nor do they appear to take into consideration the difference (in knowledge, age, or knowledge [of] how to give evidence) in witnesses. Nor do they consider, that in some cases one of the parties to the dispute is more learned than his opponent. I have seen
that ‘The Maori people should conduct the Maori Land Court.’\(^{481}\) There are many more examples of petitions, protests, and efforts of local komiti to take control of the land adjudication process and exercise some form of local self-government, despite lacking any legal authority.\(^{482}\)

When Governor Grey visited Pāpāwai with Native Minister Sheehan in 1878, the Māori assembly greeted them very warmly. Te Whatahoro read out an address prepared on behalf of the many rangatira: ‘It is like the word of David which says, “You have come to hear the cry of the prisoner, to free the people afflicted with illness.”’\(^{483}\) It was on this occasion that Te Mānihera offered Grey Lake Wairarapa, stating ‘I have no ancestral treasures that can be returned to you, only Lake Wairarapa’, reminding him at the same time, of a promised school that had never materialised.\(^{484}\) To their great disappointment, Grey and his party departed almost immediately. Sheehan, however, returned the following week. Again, Te Whatahoro ‘strongly urged the expediency of establishing local committees among the natives whose decisions would be recognised by the Government’. Wi Mahupuku, Te Mānihera, and Karauria were in support. According to Te Whatahoro’s report to the local press, Sheehan encouraged them to ‘empower some people as members for that committee of yours.’\(^{485}\) They also called for Māori judges to be appointed to the Native Land Court, and for the abolition of sales and mortgages. Sheehan told them that they should point out any defects in the new law that was being prepared.\(^{486}\)

John Bryce, Sheehan’s successor in office, later responded to the request from Wairarapa Māori for a committee to be given legal powers to investigate land matters in the district by declaring that the Native Land Court was the committee appointed by law.\(^{487}\) In 1880, Maunsell reported that:

A strong objection still pervades their minds against the Native Land Court as a means of acquiring land titles, the process being vexatious and incomprehensible to them. They have on many occasions of sittings of the Court withdrawn their applications for

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John Sheehan, circa 1884. Born in New Zealand in 1844, Sheehan became involved in Auckland provincial politics in 1869. He entered Parliament in 1872 as (according to his maiden speech) the first true colonial to occupy a seat in the House. With Grey’s election as Premier in 1877, Sheehan was appointed Native Minister and Minister of Justice. He lost office in 1879 and returned to legal practice.

many blocks of land gained by a claimant solely on the power he had to speak. And the real owner has lost his land through his ignorance in conducting his claim.\(^{486}\)

He provided a list of more than 50 recommendations for improvements which might be made. The first was
investigations through this objection, and in anticipation of a more simple tribunal being substituted. Even now, natives withhold their land from the operations of the Native Land Acts, except in cases of claims to succeed deceased grantees, and of disputed title forced into Court by one party having animosity towards the other, and of mercenary motives, when sullenness and indisposition to allow the hearing to proceed on the objecting side result.\(^{488}\)

This shows how a boycott needed universal support: even one disgruntled individual could reject a komiti decision and act without reference to other right holders.\(^{489}\)

Māori tried to get legal recognition for komiti and their decisions. In 1880, HMTāwhai, the member of Parliament for Northern Māori, with the support of other Māori members Wi Te Wheoro (Western Māori), and Hēnare Tōmoana (Eastern Māori), drew up a draft Native Committees Empowering Bill for Native Minister Bryce.\(^{490}\)

Under this measure, committees/komiti would be established and empowered to inquire into disputes in connection with surveys, applications for land title investigations, and the sale of lands. Bryce resigned in the wake of the Parihaka affair, and the Bill went no further. Hēnare Tōmoana then presented a more limited Bill, which Bryce had previously promised to have ‘properly drawn out’ and printed. Under this proposal, a recognised committee could only make binding recommendations when all the parties agreed to submit to a committee decision. This opened the door to individuals choosing to try their luck in the Native Land Court forum – where judges might be swayed by clever advocacy in a largely non-Māori environment.\(^{491}\)

Even this limited Bill found no favour with the Government. It was continually demoted in the order paper, and then lapsed. Bryce returned as Native Minister in 1881, but did not reintroduce the Bill. Tōmoana then introduced the Bill again, and it got as far as a second reading in 1882. Bryce urged the House to reject it. A clause requiring the Native Land Court to take judicial notice of committee decisions made its passage ‘inadvisable’. In a close vote, the House rejected the Bill. But then a modified Bill was introduced in 1883. This version permitted Māori committees to ‘assist’ the court, and was passed. This was a bid for Māori support that formed part of a wider strategy
Māori around the North Island, including those from Wairarapa ki Tararua, were initially enthusiastic about this measure, not realising its significant limitations.

As early as 1881 Maunsell had reported that Wairarapa Māori had, in anticipation of the Bill being passed, elected (at Pāpāwai) a ‘Committee of Twelve’ whose duty was ‘to inquire into and decide all questions relating to land titles’. When they learned that the Bill had been rejected, they nevertheless resolved to ‘abide by the decisions of a committee constituted without Act of Parliament; and to adopt the European mode of conducting its deliberations, appointment of officers, and so forth’.493 As we have seen, the komiti was also active in helping the Government to administer the koha/five percents.

When the 1883 Act got through, Piripi Te Maari told a hui in November that year that ‘the passing of the Native Committees Act was the beginning of a new era in which they could settle all their own difficulties and those between themselves and Europeans’.494 Te Mānihera and Ihāia Te Whakamairū were more sceptical: ‘They had at last got a little portion of what was asked for in Parliament, but . . . did not believe the bill would cure all the sorrows and troubles – it did not give sufficient power to do so.’ Te Mānihera concluded that the Bill might be good for the King Country and wherever the land court had not been in operation: ‘But as for the land in this part, it was too late.’495 Ihāia Te Whakamairū also thought the measure was too late. Had it been passed ‘when it was asked for it would have been better for them’. He predicted that they would find defects in the bill as they had in the Native Land Court.496

The Wairarapa committee elected and established under the Act began slowly, as it lacked funds and clear direction from the Government, and was not finally established until 1887. Stirling found no evidence in the files of its day-to-day activities, and concludes that it languished because Māori soon realised that it was powerless.497

Previous Tribunals concluded that the Native Committees Act was a real missed opportunity. It would have been so easy for the Crown to make this post a

John Bryce (1833–1913). Bryce was chairman of the Native Affairs Committee from 1876 to 1879 and the Minister of Native Affairs from 1879 to 1884. He rigidly enforced the law against Māori who resisted selling land, and he increased the power of the Native Land Court.

to encourage cooperation from King Country chiefs so that they would agree to open up their district to European settlement. As it transpired, committee investigations were only for ‘the information of the court’, which remained the final arbiter of Māori custom. It was therefore a toothless measure that gave Māori no more right of decision-making or even influence than they had already.492
Land Law Reform

They have no power in that way to determine Native title, nor is the Native Land Court bound to be guided by the opinions which they may forward to it... 

Native Minister Bryce, 1885

Through the 1870s and 1880s, significant numbers of Māori throughout the country had been asking for reform of both the court and the land laws. Many discussions and analyses of the flaws of the system were brought before commissions of inquiry and in pleas and petitions to Ministers, Parliament, and the Crown. Māori members of Parliament made a number of attempts at reform.

There was also a good deal of experimentation with using traditional structures to determine questions about land, and to resolve disputes about land and resource rights between hapū and between iwi. At a local level, komiti adopted certain European rules and techniques, and there were also a number of attempts at forming pan-tribal structures to deal with shared problems arising from the land laws and Crown policies.

Though a number of officials and colonial politicians recognised that Māori were best-suited to decide their own land ownership questions, and considered them entitled to manage their land, they could not accept the consequences. Officials rightly saw, and feared, that a fundamental purpose of komiti was to retain tribal control over Māori lands. Officials liked the way komiti could assist the court by defusing conflicts, but they could not tolerate the slowing of land purchase.

Native Minister John Bryce actively opposed a Māori members’ Bill in 1881 and 1882. He urged the House to reject it because it required the Native Land Court to take judicial notice of committee decisions. The measure was narrowly defeated, but in 1883, Bryce himself introduced a modified Bill permitting Māori committees to ‘assist’ the Native Land Court. This was passed as the Native Committees Act 1883.

Some leaders in Wairarapa ki Tararua thought this ushered in a new era when Māori would be able to ‘settle all their own difficulties and those between themselves and Europeans’. Others saw Bryce’s Act for what it was: ‘a little portion of what was asked for in Parliament’.

Two years after passing the Act, Bryce spoke against any further extension of powers to Māori committees, justifying Te Mānīhera’s and Te Whakamairū’s scepticism. Komiti were not courts for investigation of title, said Bryce, but were boards of arbitration for small disputes in cases where Māori agreed to be bound by their decisions. He denied that he ever intended to institute a system of Māori determination of title or self-government – a notion he dubbed ‘absurd’. He told the House:

It is true the Native Committees are allowed, as is stated in the Act, to inquire into titles to land, as they may into other things; but they could have done that just the same, and with just the same effect, if it were not mentioned in the Act at all. They have no power in that way to determine Native title, nor is the Native Land Court bound to be guided by the opinions which they may forward to it.

winning post, in Treaty terms. The Māori members’ bills captured the aspirations of their generation – and certainly the aspirations of Māori in our inquiry district. It seemed for a while as though it might all really amount to something, with komiti having the power to make decisions that mattered. But we agree with the Pouākani Tribunal that, instead, the committees under the legislation lacked effective power to manage lands. The central North Island Tribunal went further, condemning Bryce for deliberately subverting the Māori members’ initiatives which, but for him, might actually have delivered substantive power to Māori to determine title and manage lands collectively.499
4.7.5 Native Land Administration Act 1886

The 1886 Native Land Administration Act promoted by Native Minister John Ballance was another short-lived experiment where promises of reform ended in practical failure. It was repealed in 1888, to be replaced once again by free trade in individual interests. This measure went some way towards acknowledging the numerous Māori calls for tribal control in managing lands, but also reflected the Government’s preoccupation with placing control in the hands of Government commissioners.

Wi Mahupuku addressed the Native Affairs Committee examining the proposed Bill in 1885. He told them that Wairarapa Māori would support the measure if ‘the objectionable parts should be taken out’. He wanted an amendment proposed by Wi Pere to be included, which would have given Māori a far greater say in the administration of their land. Mahupuku also stressed that this was the first time a ‘Bill affecting the Natives … has been brought before the Native Affairs Committee and which the Natives have been allowed to take a part in considering’. As a result they were looking at it ‘very carefully’. He was adamant that any committee, board, or official had to take their instructions from the owners so that Māori themselves retained control over the management of their own lands. According to Stirling, this was a theme picked up by others giving evidence on this proposed measure from Ballance as Native Minister.

Ballance did conduct extensive consultation meetings with Māori throughout the North Island in 1886, including a hui at Waipatu (near Hastings) that Wairarapa ki Tāmaki-nui-ā-Rua Māori attended. Those at the hui reiterated to the Native Minister that Māori wanted komiti elected to manage land in accordance with the wishes of the owners.

As enacted, the 1886 measure allowed for the establishment of block committees of owners and empowered them to decide on the sale or lease of their lands, but it also required Māori to hand the land over to a Government-appointed commissioner, who would arrange the alienation and deduct fees. Māori in the Wairarapa, as elsewhere, were not impressed. Stirling notes a number of letters sent to Ballance in January 1887, listing lands and stating that the owners wanted ‘the entire mana (control)’ over the land.

As the central North Island Tribunal found, the 1886 Act contained some laudable features, but was not translated into a system in which Māori had any confidence. This was another missed opportunity for the Crown to act consistently with the Treaty. In any case, it was repealed in 1888.

Though the measure was not taken up at the time, almost twenty years later, Mahupuku lamented its repeal and the reintroduction of direct trading in Māori land. Debating earlier missed opportunities with Seddon before the Kotahitanga assembly, Mahupuku reckoned that ‘Since that Act was abolished, the Natives have been weeping continually ever since, right up to the year 1897.

4.7.6 The 1891 Commission into Native Land Laws

The 1891 Commission into Native Land Laws (otherwise known as the Rees–Carroll commission) met with Māori in many parts of the North Island, including Waipawa and Greytown, and gathered a great deal of evidence. The commission sat at Waipawa on 5 and 6 May 1891. Carroll told those present that ‘confusion and trouble’ had arisen from the native land laws, with injurious effect on both Māori and Pākehā:

It was recognised that the operation of the Native land laws was not good, and that the workings of the Native Land Court was not giving satisfaction. It was then determined, in order to get rid of these difficulties, that fresh legislation should take place. With the view of carrying out that idea, this Commission was appointed to traverse the whole Island, investigating this Native land question, meeting the Natives face to face, and ascertaining from them their views on the question, and eliciting from them their opinions as to the particular points in the various laws that pressed most severely upon them.
There was almost unanimous support among those who gave evidence to the commission at Waipawa and Greytown for Māori committees to be empowered to manage all title matters.

Once again, Hēnare Matua was scathing in his condemnation of the 10-owner rule and the Native Land Court:

I wish to point out that great injury is inflicted upon the Natives, and on their lands, through its operations. From the year 1866 right down to the present time the evils arising from that Court have been very grievously felt by the Natives.507

The remedy, according to Matua, was empowerment of Māori komiti to control all matters concerning land. Te Whatahoro and many other speakers concurred before the commission at its sitting in Greytown on 8 May. Te Whatahoro referred to resolutions passed at a recent Wairoa hui – attended by 4000 Maori from the east coast and other districts – as forming a way forward. These resolutions called, among other things, for the North Island to be divided into a number of districts, each with an elected Māori committee to sit with a district Native Land Court judge. The committee would decide by majority matters involving any land dealings, titles, surveys, partitions, successions, appointment of trustees, and the removal of restrictions on alienation, and the European judge would endorse the committee’s decision. As we noted earlier, Tamahau provided a different slant by pointing out that, in his district, a committee would have little to do as much of the land had already passed through the court. He thought that a committee system was only appropriate where there were more than 20 owners in a block, and that Māori komiti deliberations should be confined to those (unlike himself) who remained ignorant or unaware of court processes.508

Issues of concern were not confined to questions of title determination and tenure conversion. Another was the cost of this process and of transacting lands, and the generally low prices paid by the Crown, especially where it enjoyed a monopoly. Notable was the Crown’s imposition of a 10 percent stamp duty (first imposed under the Native Land Act 1862). This was much more than that payable on general land transfers – and again, a duty from which the Crown excused itself in 1873.509 Māori complained that the high rate reduced the payment that they received for their land. Reduction of the duty and court fees figured among the many resolutions for reform at the Wairoa hui, which Te Whatahoro laid before the commission at Greytown.510

It is important to note that Wairarapa Māori complaints were not confined to the native land legislation operative at the time of the commission in 1891, or just prior to that date. The 10-owner rule, in particular, had rankled for a long time, and its legacy was still being felt in 1891. In addition, Wairarapa Māori wanted to achieve some control over the process of title adjudication and land sales. Widespread opposition to the land laws and Native Land Court, which many witnesses in 1891 saw as highly injurious, was not a product of the late 1880s, but had been consistently and strongly expressed in myriad ways since the early 1870s— including a boycott of the court. Māori of this district had in this sense been remarkably consistent over a long period, because they were still saying the same things at meetings at Waipawa and Greytown two decades later.

The commission’s report noted, among other things, that at every meeting Māori had provided similar evidence about their desire to secure the future management of their land. “Titles, they believe, can be found and determined, boundaries can be settled, and lists of owners prepared, by the Maoris themselves, leaving only a few disputed cases to be determined by the court.”511 These conclusions reflect the evidence given at Waipawa and Greytown. Witnesses were virtually unanimous in condemning the past and present system of land title adjudications, and sought a far greater degree of Māori input and control than legislation had provided. We adopt the central North Island Tribunal’s finding that the Crown’s failure to act on the recommendations of the 1891 Native Land Laws Commission was yet another missed opportunity.512
4.7.7 Kotahitanga

With their attempts to gain meaningful recognition for komiti having failed, Māori throughout New Zealand began to come together in the late 1880s at a more national political level to pursue both their opposition to the Native Land Court and Native land laws, and their desire for local autonomy and unity (kotahitanga). The tribes sought a Māori-controlled process for determining land titles, and Māori self-government – a form of ‘home rule’ – in a Māori parliament (pāremata). ‘Home rule’ in this sense applied to Māori as a distinct people living under their own laws, rather than to a separate geographical territory. The Kotahitanga movement wanted a national Māori body to provide institutional autonomy at a central level, working in conjunction with district bodies and block committees, which would provide communities of owners with collective authority over their lands and other taonga. Kotahitanga was in many respects similar in its essentials to the demands issued in the 1870s and 1880s. The difference was that many, including Wairarapa Māori, became united behind a single institution. Also notable was the extent to which the Government increasingly considered it necessary to compromise so as to defuse and defeat this unprecedented Māori political force.

There were divisions and divergences in what Māori sought from Kotahitanga, but as the central North Island Tribunal observes, there was remarkable unity within the movement, and many of its fundamental aspirations were widely shared. They certainly all agreed that as a minimum the native land laws and the court required radical reform.

The major debate within Kotahitanga was whether a Māori parliament should be equal to the settler Parliament and answerable to the Queen, or whether it should draft laws that the New Zealand Parliament would enact. As Stirling explains, a number of Wairarapa rangatira, including Tamahau and Hoani Paraone Tunuiarangi, allied themselves with the ‘moderate faction’ of Kotahitanga from the mid-1890s. They did not support complete autonomy, but wanted the Pākehā Parliament to recognise the Pāremata. Their preference stemmed from their interpretation of the Treaty, which they concluded permitted a power of assembly only under the authority of the Crown.

The first formal hui of the Kotahitanga movement was held at Waitangi in the Bay of Islands in April 1892. More than 1300 representatives from throughout New Zealand attended. Tunuiarangi attended on behalf of the Wairarapa-based hapū, and delegates were required to provide ‘letters of authorisation’ to prove that they were authorised representatives.

A committee of 18 was elected to develop Kotahitanga structures and turn it into a national organisation. Eight ‘electoral districts’ would put up members for the Māori Pāremata. Two would come from the Wairarapa.

The movement had a number of goals, but key among them were abolition of the Native Land Court and its replacement with Maori committees. Until that happened, all future sittings of the Native Land Court were to be boycotted.

The Pāremata met for the first time at Waipatu, near Hastings, in June 1892. Wairarapa Māori figured prominently. Te Whatahoro was elected ‘Premier’ (Porimia) at the second Pāremata, also held at Waipatu, in April 1893; others, including Nireaha Tāmaki and Tamahau, were very actively involved.

An Act passed by the Pāremata during the 1893 session called for a separate authority for [Māori] to have the right to administer their papatupu lands, land grants, land under certificates or memorial, or confiscated lands, through the authority of a Maori committee, and since the Maori greatly desire to be equal with the Pakeha who are able to arrange their own regulations regarding the sale, lease, or any kind of work whatsoever for their lands, and the property which they hold solely unto themselves . . . and since a great many troubles have grown out of the laws to administer Maori lands.
and the laws of the Native Land Court, the Maori tribes therefore considered finding a way of bringing some benefits to themselves . . .

According to the preamble of the ‘Act’ (which took the form of a petition to the Pākehā Parliament) the work of the court had been flawed from its commencement, especially for its failure to ensure that owners appointed under the 10-owner rule were required to act as trustees for the hapū. After the passage of the 1873 Act ‘the misery and wrongs of the work of the Native Land Court . . . increased and it destroys the people, it does not benefit them’. A major complaint was that individuals were able to ‘create trouble on the tribe’s land’.

The men of the Kotahitanga in the 1890s, with Te Rangihiwini (Major Kemp) in the centre
The Heyday of Pāpāwai, the Pāremata, and the Kotahitanga

Pāpāwai as we know it today owed its beginnings to Grey’s transactions of 1853, when land was reserved for a Māori township. The small church village, which struggled through its formative years, grew to be a remarkable and vibrant place, and a national focal point for Māori political life.

The most important hui of the Kotahitanga movement took place at Pāpāwai. Te Kotahitanga o te Tiriti o Waitangi (The Unity of the Treaty of Waitangi), formally established in 1892, spanned the traditional boundaries of tribal society. It responded creatively to the ongoing loss of Māori control over land, and to token Māori representation in the settler-dominated Parliament. It had two aims: to set up a self-governing representative political body for Māori – called the Pāremata Māori, or Māori Parliament – and to protect Māori land and ownership rights. Pāremata hui were held more or less annually from 1892 to 1902, with three sittings at Pāpāwai, in April and October 1897 and June 1898.

Wairarapa Māori were key to the development of the
Kotahitanga movement. The political fighting skills of some exceptional individuals had been honed in the long struggle against the inequities of the Native Lands Acts. Te Mānihera, Pāpawai's chief rangatira until his death in 1885, had bequeathed to Hāmuera Tamahau Mahupuku the role of leader in matters to do with the people. Like his mentor, Tamahau supported pastoral leases and engagement with Europeans. Suggestions are that Tamahau’s personal wealth, based on considerable land interests, contributed to his enthusiastically embracing all things Pākehā – although not at the expense of his commitments as a rangatira.

Tamahau rolled out a substantial building programme at Pāpawai. New, well-constructed houses appeared in the 1880s alongside the existing flour mill and college. By 1897, when the settlement was in its heyday, the population numbered over 2000, well served by shops, a bakery, stables, a saw mill, and billiard rooms. In 1888, Te Hikurangi Wharenui was opened, a single-gabled meeting house of approximately 18 x 7.5 metres, with a porch three metres high. Although it pre-dated the official formation of Kotahitanga, it achieved a symbolic significance in 1897 when it was presented as a gift to Richard Seddon, then Native Minister. In an address Tamahau compared the ‘Great House of Parliament’ in Wellington with Hikurangi, a house where the Premier could ‘discuss native matters with native people in their proper environment’.

It is doubtful whether Te Hikurangi Wharenui was used for the main Pāremata hui. For these, Tamahau developed the Aotea-Te Waipounamu complex, a large, purpose-built structure in a T shape. It comprised a single-gabled meeting hall (18 x 8 metres) with a dais, suitable for assemblies of up to 1000 people, abutting a two-storey wing with sleeping quarters on
the top floor and a dining room below that accommodated 300 at a sitting. Although it was a weatherboard building, the arch-shaped sash windows and imitation buttresses echoed European masonry, while a porch at the front of the hall evoked the traditional meeting-house.

Its hybrid form was a metaphor, whether intended or not, of the fusion of customs the Pāremata represented. Pāremata Maori shared structural aspects with the colonial Parliament. There were two houses and comparable officials (pika/speaker; minita/ministers; tiamana/chairman), supported by a committee system (like te wahine komiti/women’s committees). Translated records of Pāremata proceedings reveal protocols modelled on the Westminster system, like the formalities of debate, proposal of motions, voting aye or no, petitions, and minutes.

Hosting great influxes of guests was costly. Huge quantities of provisions had to be brought in: tons of potatoes and flour, and mobs of livestock. Notes from a 1900 hui reveal elaborate arrangements, ranging from a detailed breakdown of the formal welcome, to paddocks, fencing and gates for animals, to bookkeeping matters. Even the cups, plates, and knives get a mention.

Preparations for the Kotahitanga Pāremata fell largely to te wahine komiti. Despite some hard-fought family clashes in years gone by, Tamahau worked with his cousin, Niniwai-te-rangi, to establish these in 1894 and 1895. Discussion of women’s issues was a feature at Pāremata. Conversant with traditions and genealogy, Niniwa was a forceful orator and became a leading national figure. Her views were sought by the Government, and she spoke often at marae, an uncommon practice in this region.

By the mid-1890s, a split had appeared in the Kotahitanga movement. Tamahau and Hoani Paroane Tunuiarangi, another prominent Wairarapa leader, allied themselves with a moderate faction that pursued a cooperative, loyalist approach in its dealings with the colonial Parliament. By contrast, a more radical ‘home rule’ faction wanted the Kotahitanga legislature to

> Women wearing piupiu over their European dresses and adorned with moko at the great hui at Pāpawai in May 1898
be independent. In 1896, Tamahau and Tunuiarangi brokered a deal on Wairarapa Moana, breaking a long deadlock. There was a grand picnic to celebrate, which everyone attended, and the two moderate Kotahitanga leaders were clearly positioned as friends of the Government. Tamahau greatly trusted Seddon: ‘He has said that he is the father of the Maori people . . . and I do not believe that he would ever introduce a measure which would be detrimental to the interests of his Maori children.’

For his loyalty, Tunuiarangi was made a captain in the Native Volunteer Force and invited to join Prime Minister Seddon in London for Queen Victoria’s diamond jubilee celebration. He participated in various official parades, and was presented to the Queen, who awarded him a jubilee medal and an inscribed ceremonial sword.

There were other advantages to being a friend of the Government. Along with a loyal address for his sovereign, Tunuiarangi took a petition to England. Prepared at the Pāpāwai Pāremata of April 1897, it called for the remaining five million acres of Māori land to be reserved in perpetuity. Joseph Chamberlain, Secretary of State for the Colonies, called Tunuiarangi to outline his concerns to Parliament. While the British Government could not intervene in colonial business, the matter caused embarrassment to Seddon, who felt obliged to discuss native policy with Chamberlain.

Tunuiarangi’s triumphant return was marked by a ball at Pāpāwai. He renamed his property ‘Ranana II’ (London II), and pursued his interests in things military, later becoming commander of the Wairarapa Mounted Rifle Volunteers. Parades were a familiar sight at Pāpāwai. Although Wairarapa Māori volunteered for action in the Boer War, this was turned down; it was a white man’s cause.

The petition Tunuiarangi took to London was instrumental in bringing about the 1898 Native Lands Settlement and Administration Bill. Seddon and Carroll brought it for discussion to ‘a rendezvous of two governments’ in the receptive environment of Pāpāwai in late 1897 and in 1898. It would pass into law as the Māori Lands Administration Act of 1900.

Two thousand Māori attended the first hui on the draft legislation, and it was vigorously debated. The Bill proposed an end to the Native Land Court and purchasing of Māori land, but the ‘home rule’ faction saw the Native Land Boards that it recommended as paternalistic. This deepened the rift between radicals and moderates in the Kotahitanga movement. Petitions for and against were sent to Parliament, and the argument ruptured the Kotahitanga hui at Pāpāwai in 1898, when the ‘home rule’ faction uncompromisingly walked out rather than debate. The moderates remained engaged, lobbying the Government for amendments.

The debate at Pāpāwai served as a training ground for a new generation that favoured Tamahau’s approach, among them the young Apirana Ngata.

Underpinning the political life of Pāpāwai was something of a cultural renaissance. The wealth and stability of Wairarapa
Māori society provided an environment in which the settlement could flower intellectually, culturally and socially. Care was provided for those in need; regular employment was possible.

Various initiatives were promoted by an extremely literate Wairarapa leadership, who well understood the power of the written word. Te reo Māori was greatly valued. At the turn of the century, three Māori-language newspapers were being published. One was a project of Tamahau’s at Pāpāwai: Te Puke ki Hikurangi. Unable to get the Kotahitanga movement to fund a press, Tamahau went ahead on his own. With the help of Te Whatahoro, a scholar in Māori traditions, he arranged for a kinsman to learn the printing trade as an apprentice at the Evening Post in Wellington – skills he later passed on.

The first issue, described as ‘the ears and voice for us who remain in ignorance of the enormous tasks of Kotahitanga’, appeared in 1897. Publication ceased in 1906, then ran again between 1911 and 1913. Initially, Kotahitanga affairs formed the bulk of the content. Transcripts of significant Pāremata proceedings sat alongside more conventional reportage. The scope soon widened to include general Māori concerns:

▲ The Coffey whānau from Taranaki in their Sunday best on a visit to Pāpāwai. This photograph was probably taken during a hui held there from 20 to 25 May 1898 that was attended by the Governor and the Premier. In those days, Pāpāwai was for Māori a kind of Mecca, and the hui were huge affairs, attended by Māori from all over.

▶ Women at Pāpāwai wearing an amalgam of Māori and European dress
The original gateway to the pā at Pāpāwai and the distinctive inward-facing tōtara pou (carved posts), circa 1920s.

The monument to Tamahau Mahupuku, unveiled in 1911, is seen at the right of the picture.

The marae gatherings, religious matters, rituals, obituaries. Articles and letters would often be written as speeches and include detail such as chants, lending a sense of immediacy. Relevant international news, like the Boer War and funeral of Queen Victoria, was translated from English-language papers.

Niniwa, who took over management after Tamahau’s death in 1904, was a keen proponent of newspapers. Specialising in foreign news and women’s affairs, she was both an editor and translator, and vigorous in her fund-raising via komiti.

Genealogies and tribal rituals also figured, reflecting another important strand of Pāpāwai’s cultural life; Te Puke’s masthead itself drew on a canoe tradition. From the late 1850s, Wairarapa Māori recognised the importance of recording customs for the benefit of future generations. The prolific Te Whatahoro was responsible for much of this work. Actively involved in Kotaitanga, he became a member of the Tāne-nui-ā-rangi committee, a group of learned elders dedicated to the preservation of old manuscript books, an initiative Tamahau launched in Te Puke in 1899.

Affluence allowed for the pursuit of some more idiosyncratic interests. Like Tunuiarangi, Tamahau enjoyed military.pageantry, and he invested in the Wairarapa Mounted Rifle Volunteers. The Hikurangi Brass Band was a special passion, and its uniformed ranks were frequently seen both at Pāpāwai and accompanying Tamahau, resplendent in top hat, on visits elsewhere. In a nice complement to her dynamism, Niniwa enjoyed motor cars and horse-racing.

It is estimated that Tamahau poured more than £40,000 into Pāpāwai between 1894 and 1904, including underwriting Te Puke. Needless to say, all this came at a cost. Debts from the construction programme and hosting the Pāremata and other hui eventually resulted in land sales and mortgages for the Pāpāwai leadership.

Just before he died, Tamahau arranged for a palisade to be built around the marae. This was later decorated with 18 carved tōtara figures, or tekoteko, representing ancestors, mounted on poles. Uniquely in New Zealand, they faced inwards from the perimeter, not outwards to challenge enemies. Here was a startling symbol of the commitment of Wairarapa Māori to peace, and of Pāpāwai as a place of unity.
The Parliament at Wellington simply ignored the petition.522

Pāremata were held in other centres in 1894 and 1895. Te Whatahoro lost his position in 1895, and this may have had the effect of temporarily reducing Wairarapa participation. Nevertheless, Rangitāne based in Wairarapa ki Tararu presented a petition to the Pāremata meeting at Rotorua in 1895 seeking the demise of the Native Land Court, and wanting to put an end to leasing, mortgaging, selling, and surveying their land. Total membership of the Kotahitanga movement was put at 34,000 at this time, and by 1898 it claimed 37,000 adherents.523

(1) The Liberals' proposed reforms

When Premier Seddon and Native Minister Carroll visited Pāpāwai in early May 1898, they brought with them a Bill to ‘provide for the settlement and administration of Native lands’. It proposed an end to the Native Land Court and land purchasing, but new land committees (eventually named Native Land Boards) were to assume many of the powers of the abolished court, and would take over control of leasing ‘surplus’ Māori lands.524 Seddon outlined the main features of his Bill to the assembly, which included the following:

▶ The country would be divided into some 20 land districts.
▶ A petition from 20 native owners would be required to bring the Act into force, with a poll to be taken if equal numbers objected.
▶ A majority decision to bring the Act into force would be followed by the formation of a committee or council of two Europeans nominated by Government, two Māori elected by Māori landowners of the district, and the commissioner of Crown lands as chairman.
▶ All lands including papatu (core tribal) lands would be vested in committees, except such lands as had been bought from Europeans or where in the opinion of the Governor the owners were capable of managing themselves.
▶ Once the Act was operating in a district, ‘no Native owners will be allowed to sell his land or dispose of it otherwise.’525

He then set out the role of the land boards or councils once they were brought into operation:

The first thing the Council or Board will have to do will them be to set apart a sufficient quantity of land which shall be inalienable, and be for the sole use and occupation of the Native owners. It is the desire of the Government that the Council shall be liberal in laying off a sufficient amount of land to provide for an increased number of Maoris. After they have laid off such reserves it will be the duty of the Board to cut them up into convenient and sufficiently sized sections so as to give to each of the owners a piece of land for his own use, so that he may cultivate and live upon his own particular section, just as is done in the case of European settlers. He will there live with his wife and family, who will reap the reward of their labour upon their land. The next thing the Board will have to do will be to lay off land for leasing purposes, and they must give to the landless Natives, or those of the race not connected with the owners of the land, a prior right to lease it.526

Revenues derived from the land would go first to defray the expenses of administration, then to pay off any mortgage on it, and the balance to the owners according to their relative interests.527

As for the Native Land Court, the Premier assured his audience:

Now, if this law is passed, it means the doing away altogether with the Native Land Court. Speaking for myself, I consider that what has happened in the past in connection with the Native Land Courts is one of the darkest blots that has occurred in the history of this colony. Native Land Courts have sat in the European settlements; the Natives have gone to those settlements,
Seddon Tries to Recruit Kotahitanga Support

[W]hat has happened in the past in connection with the Native Land Courts is one of the darkest blots that has occurred in the history of this colony . . .

Seddon’s speech at Pāpāwai, 26 May 1898

Kotahitanga and the idea of a separate Māori parliament posed one of a number of difficult challenges for the Liberal Government in the area of Māori affairs. Seddon sought to defuse the situation by deploying his own and James Carroll’s personal mana to good effect. He met with iwi around the country, and brought in legislation to address a number of general and specific grievances: the Native Land Court and land laws; landlessness; education and promises of schools; and ownership of the Wairarapa Lakes. He addressed the same kinds of local issues in other places.

Many Māori leaders in Wairarapa ki Tararua thought that there would soon be a solution to their many problems. Others were more sceptical.

Seddon and Carroll visited Pāpāwai in 1898 as part of their tour of iwi promoting a Bill to ‘provide for the settlement and administration of Native lands’ that ultimately became the Maori Lands Administration Act 1900.

Seddon addressed the assembly. He began by praising ‘the enterprise you have shown in providing the necessary conveniences for the Ministers to meet you and discuss matters more particularly affecting your race’. He returned to this theme later in his speech:

In years gone by the late Sir Donald McLean and my dear old friend, the late Mr Sheehan, met the Native people in their kaingas, where they explained what was going on, and where an interchange of confidences took place, from which much good resulted to both races. Insuperable obstacles are in the way of the Natives coming to Wellington to meet Ministers. Therefore, as Native Minister, with the Hon. Mr Carroll – who is really a credit to your race, and whom I am sure you are proud of – I have gone from place to place to meet your representatives, with a view of being able to lay your wishes before Parliament in such a way as to meet with its acceptance. Without being egotistical, I say that from such meetings a better feeling has sprung up between the two races than ever obtained formerly. There is now a mutual love and confidence, which I hope will ever exist.

Seddon’s first theme was education. He praised their forefathers for thinking to provide lands in trust to the Church of England for schools, and lamented that none had been built. He promised to introduce legislation ‘in such a comprehensive way as to remove the reproach that at present exists’.

The speeches went on, and then Seddon turned to the main purpose of his visit: winning their approval of the proposed reform of the native land laws. Promising that it would not be forced on them, he went on to argue, in effect, that they had a choice between endorsing this measure or continuing to suffer under the current system. He represented the bill as a first step towards the abolition of the Native Land Court, and a last hope for their survival:

The land is as life to you and without it you must disappear from the face of the earth . . . This [Bill], I think, will give effect to what I believe to be the Native mind, and is in keeping with commands of your ancestors – namely, that you should not sell any more land; that it shall be handed down from generation to generation . . . If you agree to the proposals, and if Parliament passes the Act, then the Government will not buy any more Native land, nor will any European be permitted to do so. If you do not approve of the Bill the Government will have to go on as at present, for they have to carry out the will of Parliament, which is all powerful. I shall be sorry, however, if this happens. I have already said that I deeply regret to find your lands disappearing.

Having acknowledged the doings of the Native Land Court as ‘one of the darkest blots . . . in the history of this colony’, he said:

No one can doubt that, whilst you as a race are disappearing slowly but surely as the snow melts before the
spring sun, your land is disappearing as though carried away by an avalanche down the steep side of a high mountain. I would have Parliament affirm that your rivers and your lakes are necessary for your preservation, and that your forests are wanted so that you may be enabled to catch the birds for food, and, above all, that your land should be retained so that you may grow grain and other articles of food, and be enabled to come back into that honest and proper position in which you were found in the days gone by. In the old times your ancestors grew corn which they shipped to New South Wales and different parts of the colony . . . In those days you were a numerous, prosperous, happy, and ever-noble people. Now only a remnant remains. Why all this change? Because the land that grew the corn is largely gone from you.

and many have gone to their destruction . . . they have suffered in mind and suffered in body . . .

Seddon claimed the Bill would give Māori real control over their lands for the first time, but this was doubtful. Stirling argues that while the end of the court was welcome, there was no more appetite for a return to paternalistic administration in 1898 than there had been in 1886. And while Seddon promised that no more land would be sold, Māori would hold the land they retained in individualised sections so that each man would have his own, like his Pākehā neighbour.

The Kotahitanga movement was divided over the Bill, and as we have already noted, this led to a rift in the movement. Moderates such as Tamahau welcomed the promise of more educational opportunity (which Seddon had emphasised before turning to the question of the land Bill), preferring to work with the Government to improve the measure. The more radical faction continued to seek legislation that would empower Kotahitanga. Tamahau publicly stated that he trusted Seddon, whereas the ‘home rule’ faction did not, and feared that the proposed Native Land Boards would be used ‘rather for the advantage of settlement in general than for the advantage of the Maori owners.' After the Premier departed, over 1000 Maori gathered at Pāpāwai to further discuss the Bill. A fierce debate took place over the degree to which the Kotahitanga would compromise its aspirations for autonomy, or accept an amended version of the Bill. Petitions both for and against the Bill were sent to Wellington; Tamahau’s had 3367 signatures. It supported the Bill, provided the Government would adopt amendments that provided for Māori komiti and block komiti to be appointed to ‘assist the [Native Land] Board and lighten its work’, and to ensure that Maori retained some control over their land. Women should also be appointed to these komiti, ‘for there are many competent women who are quite able to administer the affairs [of] . . . their people’. It was also proposed that the komiti regulate sanitation, promote education, and be involved in other social issues. When presenting his petition Tamahau stated that:

The cementing of the relations between the two races dated back to the Treaty of Waitangi. There, the sovereignty of these islands was ceded to the Queen, and special advantages were given to the Maori people. After this followed the convention at Kohimarama, where matters affecting the two races were further discussed and resolved upon.

Tamahau saw Seddon’s meetings with them as a continuation of this dialogue. At Kohimārama, Māori had asked for the convening of a ‘Maori Federation Assembly’, a body or 100 or so rangatira ‘who should deliberate on matters affecting the Maori people, and Bills which may be forwarded by you [Seddon] to that assembly.’ As Stirling
notes, even though Tamahau and his faction were moderates compared with others, they still insisted on key Kotahitanga demands: a Māori body to work alongside the Pākehā Parliament. Tamahau’s rhetoric was powerful: ‘the land is slipping away by degrees from under our feet, and we realise the necessity of some stringent measures being brought in to put a stop to these proceedings.’

In his first reply, in the meeting of 5 July 1898 in Wellington, Seddon said little about the Māori Federation Assembly, but built on Tamahau’s landslide metaphor when he agreed that Māori land was slipping away ‘like the coach with which the horses have bolted down the hill . . . and unless we put on the brake soon, there will be a general smash-up.’ However, in a subsequent meeting held in the Sydney Street schoolroom, on 1 August, he rejected nearly every proposal. They had all either been thought of and were in the Government’s Bill, were ‘fatally flawed’, or would be unacceptable to the Pākehā Parliament.

The Kotahitanga continued to debate the Bill and the proposed amendments, but the movement remained seriously divided. By 1900 the moderates, supported by Ngata’s Young Māori Party, had gained ground. The Kotahitanga Pāremata drafted a new Bill incorporating a series of amendments, including an end to land sales, the abolition of the Native Land Court, and the empowerment of local komiti to act under the supervision of district Māori Land Boards.

In 1900 the Māori Councils Act and Māori Lands Administration Act were passed, and by 1902 Apirana Ngata had persuaded the Kotahitanga to disband to enable Māori to concentrate on making the legislation work. No more sittings of the Pāremata took place after 1902; they were supplanted by an annual general conference of the Councils. The Kotahitanga fell mainly silent.

(2) The reforms in practice

The Māori Lands Administration Act and Māori Councils Act did empower Māori to take on some functions of local administration. The Māori Lands Administration Act provided for the establishment of Māori Land Councils with a potential majority of Māori members (some elected) and a Pākehā president to lease lands voluntarily vested in them. At first, the Kotahitanga representatives welcomed this, as it seemed to them to represent the first opportunity for testing the capacity of Māori to administer their own affairs. But the reality was far from what the Pāremata and Tamahau had proposed, as evidenced by the comments of Seddon and Carroll when introducing the legislation. They downplayed the significance of the Māori Councils, stating that their powers were few and slight, and that they would give Māori no more than ‘something to occupy their attention, something for them to take an interest in.’ Moreover, they would replace ‘expensive political gatherings’ such as Kotahitanga Pāremata.

Contrary to Seddon’s undertaking, the land court was not abolished. Māori were now empowered to undertake title investigations in respect of the little papatu land that remained, but dissatisfied claimants might still appeal to the court. Nor were land sales halted, for land owned by individual Māori could still be sold. Māori were not compelled to vest their land in the Māori Land Council, and given the dominance of European officials over the Councils many Māori proved reluctant to do so. We agree with Stirling’s assessment that Māori involvement in the Land Councils was far from the komiti-based model proposed by the Pāremata. It is also difficult to escape the conclusion that Seddon was eager to work with the ‘moderate’ arm of Kotahitanga (centred at Pāpāwai) in an effort to isolate the more radical elements and divide the movement, while at the same time only appearing to meet the wishes of Tamahau and other moderates. Again, Stirling: ‘the 1900 legislation should be seen for what it was: a deliberate attempt to diffuse Maori efforts.’

As the Orākei Tribunal found, the concept of tribal self-government and administration of their own lands was acceptable to the Government only if it still produced land for settlers. The 1900 Act failed to deliver on this front, and consequently it was soon amended to allow greater Government influence and the reintroduction of land sales. Indeed, the Liberals came under intense pressure,
and soon abandoned the ‘taihoa’ policy (taihoa means ‘halt’ in Māori, and the policy was aimed at stemming the sale of Māori land). As Stirling explains, in 1905 the Māori Land Settlements Act saw the Land Councils transformed into what were basically European Land Boards to control the alienation of Māori land. Papatupu land could be brought before the court for title investigations, and land was compulsorily vested in the Land Boards for lease or sale without reference to the owners.\textsuperscript{547} Although Māori responded with great energy to the idea of the Māori Councils in the arena of community welfare, they were severely underfunded and lacked legal powers. Ultimately, they proved ineffective. We take up this discussion in chapter 6.

### 4.7.8 Summary

In conclusion, while Māori of Wairarapa ki Tāmaki-nui-ā-Rua responded variably to the Native Land Court in the late nineteenth century, we feel safe in asserting that a very significant body of opinion consistently and overwhelmingly sought major reform of the Native Land Court and the native land laws. Where they favoured keeping the court, it was only to ratify decisions reached by Māori bodies according to procedures they set and controlled. They also asked for a collective title to be made available to them so that hapū could control decisions about the land, and so that the picking-off of individual shareholdings would stop. Purchase monis should be paid, and lands surveyed and brought to the court for title determination, only ‘if the tribe, the hapu and the chiefs consent . . . in accordance with the approval of all’.

These sentiments were expressed in a plethora of petitions, letters, and speeches, and in evidence to the Rees–Carroll commission in 1891. They were also manifest in the Kotahitanga movement. But the Crown did not take Māori demands seriously, and it was not until 1900 that it took action that could really be described as remedial.

Although it is indubitably the case that many Māori did desire some form of title adjudication, the Native Land Court was not seen as suitable for the purpose by a significant section of Wairarapa Māori. Instead, they clamoured for a Māori-controlled title determination process through their own rūnanga or komiti, the retention and control of land in Māori ownership, and real ability to put it to work for them in their pursuit of modernity.

We agree with the conclusion of previous Tribunals that a Māori desire to establish a national body – or Pāremata – to make laws and regulations for their own lands and resources was entirely consistent with the Crown’s kāwanta-tanga, and compliant with the Treaty’s guarantee of tino rangatiratanga.\textsuperscript{548} The obvious willingness of many Wairarapa Māori to compromise with the Government was, moreover, laudable and within the spirit of the Treaty. Tamahau and other Wairarapa chiefs studied the Treaty, and the assurances made at Kohimārama. They concluded that a Māori Federation composed of senior chiefs from throughout New Zealand who would review and amend legislation relating to Māori was consistent with both the Treaty’s terms and the undertakings made at Kohimārama by Governor Gore Browne.

The Kotahitanga movement was a positive development, highly compatible with loyalty to the Queen, the rule of law, and Māori self-management. It was not ‘separatism’, but a desire to act in partnership on the basis of mana Māori motuhake (the unique authority derived from being Māori). When Māori set up their own elected body, self-funded and with an elaborate electoral system, rules, and a very large degree of popular support, the Crown should have worked with it, encouraged it, and empowered it. Seddon’s submission of draft legislation to the Kotahitanga Pāremata points to the correct attitude – an approach that could easily have become permanent and institutionalised. The Crown’s failure to do so was another critical missed opportunity, and a serious breach of the Treaty. Even Seddon’s apparent respect for the Kotahitanga looks in retrospect to have been cynical. He curried favour with the movement’s moderate arm, engineering a split that marginalised its radical voice. Ultimately, he dealt
with the proposals put forward by Wairarapa Māori to change the 1900 legislation in a way that strongly suggests that Tamahau’s trust in him was misplaced.

Even if the Crown’s 1900 reforms were an improvement on what had gone before, their dismantling so soon after – restoring Pākehā and Government control of Māori land, the full powers of the Native Land Court, and Crown purchasing of Māori land and of individual interests – was a terrible breach of faith, and of the Treaty. We concur again with the central North Island Tribunal, which found that ‘This dismantling of much that Māori had been seeking since 1870, without giving it a real chance to work, and in combination with the resumption of active purchasing, was a very serious breach of Treaty principles’.549

Above all, the Crown missed one of the most important opportunities to effect a Treaty partnership and institutionalise Māori autonomy at the central and local level. The central North Island Tribunal also considered that there was a failure of vision on the part of the Crown which resulted in a 'triumph of settler self-interest that subverted and defeated ... Māori endeavour':

In failing to incorporate Kotahitanga into the machinery of state, and share power with Māori in a meaningful way at the central level, the Crown acted in serious breach of the principles of the Treaty.550

We agree.

The central North Island Tribunal could not find any ‘reason of logic, principle, or theory, either at the time or now’ that would preclude a national tier of law-making for the land and internal affairs. The breach occasioned by the Crown’s dismissal of this possibility is exacerbated when we consider that the Crown was willing to provide a wide range of separate institutions for Māori – including the land court itself, separate land laws, and bodies (land boards) – when they facilitated the purchase of Māori land. But the settler governments would not permit a Māori-elected body to make rules concerning Māori land: 'It was as simple – and as devastating – as that'.551

Counsel for Ngā Hapū Karanga had it right when he said that all of those Māori initiatives we have discussed – their attempts to boycott and reform the Native Land Court; their active involvement in the Kotahitanga and the Repudiation movement; and their continual requests for komiti and rūnanga to be legally recognised – illustrated their opposition to the Native Land Court system ‘and their ongoing search for an alternative mechanism that better suited their needs.’552

4.8 Findings and Recommendations

4.8.1 Crown concessions

We begin by noting the concessions that the Crown made in this inquiry concerning the Native Land Court:

- The Crown conceded that it failed to ensure that Seventy Mile Bush reserves, which were set up under the Volunteers and Other Lands Act 1877, came under the Native Equitable Owners legislative regime. This Act was designed to remedy ill-effects of the 10-owner rule (implemented under section 23 of the Native Lands Act 1865). The Native Equitable Owners Act provided for the identification of the trust inherent in titles where the few named on the title were there in a representative capacity, and enabled all the right holders to be named.553

- The Crown admits that it breached the Treaty to the extent that Crown officials ‘used unreasonable pressure’ to obtain the remaining signatures in favour of sale of certain Seventy Mile Bush blocks.554

4.8.2 Why did the Crown establish the Native Land Court and were the reasons consistent with the principles of the Treaty?

Previous Tribunals generally agree that while there were a number of reasons for introducing the native land laws, the main one was to facilitate the purchase and settlement
of Māori land. Colonial politicians were looking for a means of breaking the deadlock that had brought purchasing virtually to a halt by 1860.

In the Wairarapa ki Tararua area, the last purchase of the period in which the Crown was still asserting its right of pre-emption was in 1864. Many of the transactions up to that time were supposedly ‘complete’, but in fact they had problems outstanding. These went to fundamental aspects of the purchases, like boundaries, price, whether the right people had been paid, and whether they had even agreed to sell that land at all.

A critical aspect of this policy of instituting a land court was the transformation of collectively-held tenure with a view to facilitating assimilation; this necessarily involved diminishing the importance in Māori lives of tribal structures.

Another important feature of instituting new laws for Māori land was to promote colonisation by providing for settlers to purchase land directly from Māori.

We accept and follow the findings of the Hauraki Tribunal on the origins of the Native Land Court. They accept that many settler politicians genuinely believed that Māori would benefit economically and socially from converting their customary tenure to a title from the Crown, but their ‘civilising mission’ was secondary to that of facilitating land acquisition. Although some undoubtedly had benevolent intentions, we agree with the Hauraki Tribunal that legislators’ primary motivation was not encouraging assimilation by enabling Māori to deal as they saw fit with their land, or ensuring equality with Europeans by promoting their participation in the franchise. Much of what was said in Parliament about how Māori would benefit was window-dressing, because very little was done to give substance to statements made. Where was the discussion with Māori about what they wanted and needed, and how it might be achieved? If the object was to ascertain title properly, why were they not given power to determine their own title according to their customary laws? Why was no proper inquiry made or carried through as to what land Māori could and should retain so that they could advance in tandem with the settlers?

Instead, outsiders defined and prescribed the kinds of title to which Māori customary tenure would be converted. Their design was ‘ethnocentric and paternalistic’, and did not involve Māori. Even if intentions really were good, intentions are ‘not enough for adequate fulfilment of the Crown’s Treaty obligations to Māori’, as the Hauraki Tribunal said.

We note that although Donald Loveridge highlights the importance of the humanitarian thinking in the origins of the Native Land Court, both he and Hayes conceded under cross-examination that if the land court had not served to facilitate land acquisition, some other mechanism would have been found that did.

4.8.3 Was a Native Land Court necessary for Wairarapa ki Tararua? Was it necessary for customary tenure to be changed for settlement to proceed?

There were good reasons for the Crown to establish a tribunal, independent of the Executive, to determine intersecting and disputed claims to Māori customary land, and to administer legislative modifications to customary tenure to meet new needs.

It seems to us that some modification of customary tenure was required if settlement was to proceed and Māori were to engage fully in the economic opportunities it brought.

As we discuss further below, it is clear that many Māori in our inquiry district wanted a Crown-guaranteed title that would enable them to deal with their land, and saw the value in a Government-endorsed forum where disputes over land and resources could be resolved.

The Hauraki Tribunal sensibly noted, and again we concur, that:

Māori land tenure could not remain static, frozen in 1840 modes. To meet both Māori and settler needs,
it had to evolve in response to demographic change, population movements, the requirements of mining, commercial agriculture and other land uses, including its sale, lease, or development, both in townships and rural districts.\textsuperscript{558}

The Tribunal noted an important caveat, however. It was not necessary for all customary lands to be converted (or indeed to be purchased from Māori) for settlement to proceed after 1865. Manifestly, this was not required in the Wairarapa, where an estimated 1.5 million acres of freehold land had already transferred out of Māori hands for settlement purposes. The option of holding on to some lands in customary tenure ought to have been available to Māori, but in practice it was not, because the court undermined collective decision-making and the law did not provide an appropriate form of title.

We accept the Crown’s point that, well before the introduction of the court, the Wairarapa had seen many changes in how lands were utilised, in tenurial relationships, and in the exercise of chiefly authority. In our view, however, Crown agents were instrumental in these changes, because when they negotiated land purchases they deliberately (to save time) took shortcuts that contravened established practices for gaining full, informed consent. Although colonisation – Christian ideas, western science, technology, and economics – did modify Māori beliefs and social structures, we saw much that was resilient. In particular, evidence pointed to the period from the 1840s to the early 1850s as a time when land was still held and occupied collectively under traditional tribal structures and in accordance with custom. Clearly, however, by the time the Native Land Court was introduced, the combination of extensive Crown purchase, dealings with favoured chiefs, the influx of settlers, and continuing morbidity had stretched the social and cultural fabric of Māori society in Wairarapa ki Tararua.

The Native Land Court exacerbated the strain on customary processes. Its new, alien forms substituted traditional dispute resolution and usurped traditional roles in allocating use rights in resources and land according to tikanga. Nor was proper consideration given to what land Māori really needed to retain, nor respect when Māori very deliberately made decisions to keep certain land back from the Crown. At the same time, Māori who wanted to engage with the modern economy, as so many in Wairarapa ki Tararua did, had no choice but to go to the court.

\textbf{4.8.4 Did Māori in Wairarapa ki Tararua have any input into the introduction of a Native Land Court?}

Findings of previous Tribunals have concurred on the point that it was essential for any institution empowered to determine questions of custom and right to be designed and implemented with Māori consent and cooperation. This did not occur in the districts into which they were inquiring.

It was no different in this district. Such ‘consultation’ as occurred was at Kohimārama in 1860, and the model that Governor Gore Browne proposed there differed fundamentally from the court introduced in 1865. Although little evidence has been presented to us about how Grey’s new institutions were promoted in our district, if any discussions took place they would likely have included emphasis on the role of rūnanga as an appropriate title adjudication body. Certainly, this was what Crosbie Ward’s report on his discussions about how to settle questions of rents in the southern Hawke’s Bay indicated.

The Native Lands Act 1865 signalled profound and far-reaching changes, and there is no question that a Kohimārama type of hui should have been convened to discuss the Act with Māori before it went to Parliament. The Crown’s duty of active protection implies that the full understanding and consent of Māori was required, as the Hauraki Tribunal found.\textsuperscript{559}

Is this a presentist view? It can be seen that way, especially if jargon words like ‘consultation’ are used. However,
we think that the proposition that those in government should engage with Māori on law changes that would profoundly affect them and their chief asset (land) is a reasonable one, even in the nineteenth century. The Kohimārama hui shows that Pākehā of the day understood that Māori were profoundly concerned with issues about land title and their role in determining ownership and that they ought to engage with them directly about it. Then, this was the only way to ascertain Māori opinion on a reasonably large scale, because although Māori had parliamentary representatives from 1867, there were only four and they were heavily outnumbered. In this situation, it was incumbent on Pākehā in power to find some means of involving Māori in, or at least informing them about, legislative changes that would affect them profoundly.

4.8.5 Did Māori in Wairarapa ki Tararua want a land court?

Particularly in its early years, the number of Māori applications to the court suggests to us that there was considerable interest in title backed by the Crown, and for a Crown-sanctioned institution to determine ownership and define rights in Māori land. Equally, subsequent efforts to avoid using the court suggest that Māori were soon disillusioned with it. From then on, it was apparent that significant sections of Māori opinion in Wairarapa ki Tararua favoured communal decision-making on land matters, and sought to have their own institutions empowered for this purpose. Some wanted beefed-up Māori entities to assist the Native Land Court, while others wanted them to replace it altogether.

On the Native Land Court, the Hauraki Tribunal said it was ‘in many respects unsatisfactory, particularly because of the kind of role that Maori were limited to playing in it.’560 We concur. Nor do we think that the force of this conclusion is diminished either by initial Māori enthusiasm for using the court to gain the sort of title they needed to engage in the colonial economy, or the court’s willingness to allow Māori to come to their own arrangements outside the court for its sanction within it. Neither does the presence of assessors who were subordinate to a European judge. The competency of assessors, the knowledge of judges, and the availability of translations were matters that were understandably important to Māori leaders at the time, yet we see these issues as secondary to the central concern: the failure of the Crown to involve Māori and incorporate their understandings in the process. Again, we cite the Hauraki Tribunal:

The legislation (1862, 1865, 1873) aimed at simplifying custom for the purpose of dealing in or developing the land. This would not be inconsistent with the Treaty provided it involved reasonable Maori input at the planning stage in the tenure changes proposed and the introduction of tenures suited to Maori needs and purposes and a genuine choice for the owners as to whether they put their land through the system. In neither respect was this case.561

4.8.6 Did Māori in Wairarapa ki Tararua want an individualised title?

While Māori of this district expressed clear interest in gaining an officially recognised title to the lands they had left after Crown purchasing, it is less clear that they sought individual title – that is, one that individuals could deploy without reference to the rest of the community.

It would not be particularly surprising if some rangatira wanted individual properties held in their own names, because this kind of property tenure was actively promoted as the only way to participate successfully in the modern economy. Thus, after the Kohimārama Conference, where the question of title determination was discussed (along with other important issues), a number of Wairarapa chiefs wrote to the Governor. They complained that reserves set aside for them from the Crown’s purchases ‘so that each man may have his own’ were not ‘clear’ or ‘settled’, because they had received no document to confirm their titles.562 But we do not think that these sentiments amount to chiefs
wanting individually-owned property with the unfettered right to alienate. For example, only two years later, Crosbie Ward was writing about how Māori in the southern Hawke’s Bay had well-defined occupation rights that were exercised by individuals and sanctioned by custom and usage that might be readily converted into fee simple. Still, they envisaged a district rūnanga retaining control over all land decisions, and smaller rūnanga still involved in local matters.565

The Tūranga Tribunal warned against misconstruing initial enthusiasm for the court as enthusiasm for individualised title:

The Crown argued that . . . Maori flocked to the Courtroom in great numbers. That demonstrated, it was said, that the new title was not only acceptable but welcome. There is no question but that Turanga Maori wanted a state sanctioned and certain title so that they could engage in commerce. This is not the same, however, as saying that they wanted an individual title. It is certainly true that Maori did take their land to the land court . . . However, the Crown has, we believe, conflated two arguments. The question of whether Maori wanted a new secure and certain title, and the question of what form it should take are related but not the same. Demand for the former should not be read automatically as demand for individualisation.564

It is clear, too, that no rangatira wanted all lands to be held in individual fee simple – not even those who were particularly well-disposed to adopting Pākehā ways. As time went on, some rangatira recognised that it was not possible to turn back the clock, and were more concerned with how to engage with land development and finance than with finding means of enabling collective decision-making. Tamahau commented to the 1891 Native Land Laws Commission that in the Wairarapa, boundaries were settled, their individual portions were already known, and they were ‘occupying their land in a similar way to that which obtains among the Europeans’. But though he saw no need for it himself, he still thought Māori should have the option of corporate title where there were more than 20 owners. ‘For such cases as that the Committee would be the right thing.’565 Tamahau later supported Seddon’s Māori Councils Bill against more radical proposals, but still thought that komiti should be empowered to replace the court.

4.8.7 What were the effects of the 10-owner rule? Were they prejudicial?

Crown historian Paul Goldstone, during a discussion of the Ruamāhanga blocks, concluded that customary interests varied. Sometimes, in the blocks that formed the basis of his research, claims to land interests were limited to only one person, or a whānau, or a small community, especially where ownership resided in small descent groups. In many instances, small kin groups in the Wairarapa cultivated quite limited areas, and in such cases the award of title to 10 or fewer owners may have been appropriate. In other words, depending on circumstance, customary ownership can be reconciled with the legal title that the Native Land Court issued under the 10-owner rule.566 Goldstone agreed under cross-examination that the area in his study may indeed have been distinctive rather than typical of the situation elsewhere.567

We certainly consider that there is a wider picture in this inquiry district. Goldstone’s analysis does not apply to the Tāmaki-nui-ā-Rua or Ngā Waka ā Kupe blocks, for example. The land in these blocks was sparsely populated, and was utilised mainly for mahinga kai by multiple hapū who, although linked by whakapapa connections, maintained identifiable hapū rights that were broadly-based and complex. Yet the Tāmaki-nui-ā-Rua blocks were awarded to fewer than 10 owners, just as the Ruamāhanga blocks had been. What this tends to show is that if there were situations where the 10-owner rule and customary land tenure coincided, this occurred more by good luck than good management. There was no such happy coincidence in the northern part of our district. As Crown coun-
self noted in closing submissions, 'the 70 Mile Bush and Tararuas have a distinctive history'.

We note, however, that we are not altogether satisfied that Goldstone's conclusions even for the Ruamāhanga valley are necessarily correct. His analysis for our inquiry district reiterates views already presented to the Rēkohu and Tūranga Tribunals. Those Tribunals concluded that Goldstone misunderstands the fundamental nature of customary tenure: though every person had rights to use particular resources in particular ways, and those rights had to be recognised and respected by the wider community, no man could stand alone. It was the contribution of effort to the community good, under the direction and authority of their leaders, that gave people rights in lands, in the catch of eel and fish, in the timber felled, in the wharenui (meeting house) that was built, and in the monies made by selling wheat, pigs, and potatoes. Accordingly, ‘individual’ or rather ‘whānau’ use rights were conditional upon the continuation of that contribution.

The Rēkohu Tribunal comments:

There are elements of individualism, of communism, and of state-like controls in the traditional structure, just as there are in any society. . . . To compare societies, what is mainly required is to weigh the relative emphasis that each gives to these different structures and ways of doing things. We think that, amongst Māori, the sense of corporate identity most prevailed and was a major constraint on the exercise of individual land rights.

We see all three elements at work in our inquiry district – that is, individualism, communism, and state-like controls. Community recognition of the mana of rangatira played an important part in the assertion of claims to interests in land, and in land sales. But we think that this was really an expression of the corporate identity that still prevailed. Corporate identity was also evidenced in efforts to set up rūnanga structures, partly to rein in individual chiefs, as Crosbie Ward described for example in 1862, and it continued throughout the nineteenth century.

We cannot know whether corporate identity or individual reward would have dominated in the further economic development of land and resources, because the matter was taken out of Māori hands by the land laws.

The Tūranga Tribunal noted that Goldstone said he was looking at customary tenure in a ‘very localised way’. The Tribunal commented that all lands, whether allocated to whānau or not, were held as a substrate of tribal (hapū) title vested in all members in common. While particular rights or interests could vest by descent lines at whānau level, it was the role of the hapū to allocate and maintain those rights in accordance with tikanga. That is why witnesses in the land court almost invariably cited hapū affiliations to demonstrate their customary connections with the land. This was the fundamental difference ‘between English and Māori tenure’. Stirling says, quoting Ballara, that:

the land that people made use of on a day to day basis was comprised of a ‘patchwork of dispersed, inherited, individual rights’, the wider communal resources were under the overriding control of leading rangatira and their immediate whanau who . . . would affiliate to many hapu.

Stirling adds that this is why representative bodies, such as rūnanga or committees, were the appropriate bodies to deal with land matters. We agree.

4.8.8 What options were available to Wairarapa ki Tararua for legal recognition of their interests in land and resources?

The system created under the native land laws made it very difficult for Māori to keep any of their land under customary tenure. Whether or not they wanted the court, whether or not they wanted individualised tenure, if they sought a title that they could use in the commercial world, there was only one route to obtaining one. Because they did want to participate in the colonial legal, political and economic system, they were obliged to take that route, which was via
the Native Land Court, with all its appurtenant costs and consequences. Where lands were claimed by some right holders who wanted their claims clothed in legal title, and by others who did not want the land investigated and given title, the nay-sayers still had to participate in the Native Land Court process, or risk their interests going unrecognized altogether. We saw this clearly in the hearings for the southern Bush blocks in 1871.

Crown counsel argued that the native land legislation, except for a brief period, did provide the opportunity to select a ‘form of communal title’. Such titles were available under the Native Lands Acts of 1867 (s.17); 1873 (47); the Native Land Court Act 1880 (ss.26, 33); the Native Land Court Act 1886 (ss.20, 22); and the Native Land Court Act 1894 (s.122).

However, neither in the legislative history nor in what we saw in this inquiry did we find anything that persuades us to resile from our view, or that of prior Tribunals. No effective corporate title was made available under the land laws until the twentieth century. None of the measures detailed by counsel provided a real form of communal title, nor for effective communal control, which is what many Wairarapa Māori sought. This is evident in the case of Mangatainoka. In any case, there was very little opportunity for Māori to explore those options because they were not clearly offered (as later court judgments about Piripiri and Tāmaki blocks made clear), or were soon amended out of existence.

In our inquiry district, much of the land still remaining in customary ownership was brought through the court under the 1865 and 1867 legislation. Section 23 of the Native Land Act 1865 provided for tribal title but, according to the evidence before us, it was used only rarely over the whole country and never in our inquiry district, where the court simply ignored it. Then came section 17 in the 1867 Act. Like a later generation of Māori leaders, we think that this was an important step in the right direction, providing for tribal title and recognising the injurious impact of the earlier Act. But again, the court did not use it. It had obvious application in Tāmaki-nui-ā-Rua, but was deployed only in relation to Mangatainoka – and there, the court chose to create 56 individual interests that were later sold rather than conferring title on the corpus, which was surely what Rangitāne whānui (the broad sweep of Rangitāne people) wanted, and would have allowed them to retain control for longer. Then this option disappeared altogether when the 1873 Act merely provided for the compilation of a list of owners.

The Native Land Court Act 1894 provided for Māori block owners to be incorporated by the Native Land Court, and potentially provided for the sale or lease of Māori land to be managed by elected committees of owners. A ‘heavy and controlling’ overlay of Government control, exercised largely through the Public Trustee, accounts for the fact that few Māori chose to use it. Instead Māori sought full control of their lands. As the central North Island Tribunal found, the 1894 Act was so deficient in this regard as to render incorporations ‘useless as a vehicle for the collective tribal management of tribal lands’. The Act failed to meet the Crown’s Treaty obligations. In any case, by this stage, many Māori in our inquiry district saw no practical application for this sort of title.

We note Crown historian Bob Hayes’s argument that naming all owners under the system introduced by the 1873 Act represented a form of ‘community title’. The Tūranga Tribunal disagreed. It concluded instead that the 1873 Act rendered community decision-making irrelevant, and made Māori titles usable in colonial commerce only through sale or lease, and only by the transfer of individual undivided interests. This was precisely what Māori did not want, and they kept saying so.

We adopt the conclusions of the Te Tau Ihu Tribunal:

The Treaty may have permitted Maori to alienate lands if they wished, but it also guaranteed ongoing ownership without qualification or equivocation for however long this was desired. A title system profoundly weighted towards making it easier to sell lands than to retain them can hardly be considered anything other than a serious breach of the Treaty.

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4.8.9 How did the costs of the Native Land Court process affect Māori?

There were always going to be costs associated with transforming traditional Māori interests in land into a title cognisable by the law. But should Māori have had to pay for the costs of producing a title that invariably delivered more benefit to transferees than to them?

We accept the Crown evidence that shows expenses – and their impact – were not as great in the early years of the Native Land Court’s operation in the Wairarapa as in some other regions, or indeed, for our inquiry district in the post-1880 period. The nature and location of many of the blocks concerned, and the shorter duration of hearings, produced a more limited range of fees and costs than elsewhere. That said, however, there is a significant differential in the overall figures provided, which raises questions about the averages calculated and the conclusions that may be reached. The examples Goldstone and Hayes give do not encompass the whole range of costs involved in title adjudications or subsequent land transactions. Nor do they capture all survey charges but only those entered on the certificate title at the first title investigation. Not only are the charges in other blocks not known, or not provided, but what was recorded might be the amount that was still outstanding rather than the whole. Both Goldstone and Hayes acknowledged this under cross-examination.578

Moreover, the tables are deficient in a number of ways. For example, they do not include any of the Tāmaki-nui-ā-Rua blocks. Nor do they include Ākura – an example from Wairarapa where it is known that 52 acres were given up by prior agreement (rather than by lien) to meet survey and court costs. They do include survey charges for Te Kawakawa. The figure stated is £378, the sum mentioned in the declaration to the court, but this takes no account of the further £296 survey costs that Pharazyn paid prior to the grantees leasing the block to him in July 1870.579 Also, a survey charge of £20 at Te Köpi 2 (1871) seems to have been included in the £378. What is obscured is the greater cost that would be required to get title to the rest of that block in order. Māori could not afford to undertake the survey of this hilly and broken bush land at the time, and this was not undertaken until 1890.580

Evidence before the 1871 Haultain inquiry into the Native Land Acts showed what the costs really were; even in the earlier ‘cheaper’ period they could be considerable and far greater than what was originally recorded. According to Goldstone and Hayes, Mātaikona’s 18,000 acres were surveyed at 4½ pence per acre (a total of £330),581 which was a relatively low rate for this sort of rugged country.

The evidence of contemporaries gives quite a different impression and one which we consider closer to the truth of the matter. Dr Grace told the commission he had been approached by a surveyor who had been asked by Māori to find a tenant for the block to advance them the survey costs at 9 pence per acre, though Grace noted ‘5d or 6d’ would be sufficient if the country was not ‘difficult’. Grace advanced a sum of £382 but when the case was called the plan was not ready so there was no title as security for the debt. According to Grace, another £270 was required before the block passed through the court. He then began adding up the rest of the expenses that had been or would need to be paid before the land could be transacted:

The Court fees, expenses of witnesses, &c., came to about £80 more, and at least £50 was paid to the interpreter to witness signatures under the Act, &c. He had asked £5 5s a day, but a contract was made with him. Altogether, £730 was paid for survey and preliminary expenses – about 10d. per acre.

The Natives wanted to sell a portion of the land to pay this debt off and avoid the interest, but as the owners are numerous, this cannot be done without bringing the land again into the Court, and subdividing it; and if it cost upward of £730 to effect a survey of the outer boundaries, and to pass the one block through the Court, what will it cost to individualise the claim?

There is also one-tenth of the rent, or £20 a year, to be paid to the Government, besides a sum of not more
than 6d. an acre, a possible £450, for examining the survey. With such expenses, Native lands are depreciated fully 50 per cent.\textsuperscript{582}

The Mātaikona Komiti later calculated the total costs at £931 1s 6d.\textsuperscript{583}

We noted earlier that what was recorded as a lien was the amount outstanding, not necessarily the total amount expended. Hayes said under cross-examination that what was attached as a debt to the land by mortgage (after mortgages on Māori land were permitted) included other sorts of costs than those incurred directly, implying that the figure could not be relied upon as reflecting court-related costs.\textsuperscript{584} But even if we were to challenge Grace’s figures as exaggerated for effect, the core of his evidence is unassailable: survey and court costs comprised only part of the total expenses involved in getting a usable title, and having lands partitioned out. Although absence of opposition reduced costs, interest-holders might still be obliged to attend the whole of the sitting to ensure their interests were protected.

Though we were not offered a parallel study of the period after 1865–1880, we can be certain that in the 1890s the costs of the court process and of transacting land multiplied, and their ill effects worsened. Notably, the 1882 Stamp Act imposed stamp duty on all transfers of Māori land to 10 percent – and this was all conveyances, not just the first one.\textsuperscript{585} Hearings became more protracted, rugged hill country (which was mostly what was left) was more difficult and thus dearer to survey, and partitions – which all required survey – dominated court sittings. If we accept Niniwa’s 1894 figure of £10 per week for food and accommodation costs during court sessions, this would comprise very considerable expenditure across a community whose land was going through the court for any reason.

Māori in Wairarapa ki Tararua suffered extra and unnecessary hardships as a result of the Native Land Court’s selection of where and when the court would sit. Some communities were forced to travel long distances to court sittings in Pākehā towns, and sometimes this interrupted the economic cycle of rural life. We note the Crown’s argument that any system – including a rūnanga-based one – would have entailed attending hui and would have generated costs for participants. We follow the reasoning of the Tūranga Tribunal, however, and think that:

Had Māori been allowed to significantly participate in the design and running of forums to determine land titles, rather than having a court imposed on them by the Crown, it is hard to imagine that they would have placed the pressure on people and their economic and social well-being to the extent that the court did.\textsuperscript{586}

We reject the Crown’s argument that expensive cases were not the norm and therefore general costs not excessive. As we see it, the combination of fees, surveys, costs of attendance, and the toll that absence took on normal economic activities, is likely to have contributed significantly to the hardships faced by Wairarapa ki Tāmaki-nui-ā-Rua Māori in the late nineteenth century. This is consistent with contemporary complaints about how difficult court and related costs were for Māori to bear. The burden is unquantifiable partly because the records do not allow an exhaustive analysis in every case, but examples of the impact of different types of cost are available. Counsel for Ngā Hapū Karanga argued that the Crown had an obligation to keep such records as part of its protective function in monitoring the court and its effects, and we agree that the Crown cannot advance the unavailability of such evidence to support its case that costs were not excessive. Nor do we think it is necessary for the claimants to show that costs were always excessive and inevitably resulted in immediate alienation to demonstrate that costs were part of an inequitable system that undermined Māori capacity to exercise rangatiratanga over their lands and resources.

The Hauraki Tribunal looked at some of Hayes’s arguments about the survey lien system, and sections 33 to 35 of the Native Lands Act 1867. It found that these sections, by authorising survey and title investigation costs to be charged against land, and by permitting intending purchasers to advance money on mortgage to cover the
debt, ‘went far towards ensuring that entrepreneurs who advanced money for surveys were likely to secure a lease or purchase from Maori owners. From this time on, survey debts were an important reason why Maori owners alienated significant portions of the land they had just put through the court’. The same general conclusion applies to this inquiry district.

4.8.10 Did the Crown use the court process to encourage purchases, and did this ever amount to collusion?

We saw no real evidence of collusion between Crown land purchase officials and the court, but in the case of the southern Bush blocks, their whole process through the court and then acquisition by the Crown involved serious Treaty breaches. Instead of making ‘groundbait’ payments to selected chiefs, the Crown should have convened open hui, where proposals for purchase were put to the full community of assembled owners – as McLean did in the late 1840s and early 1850s. Consensus could have been achieved either for sale or retention of the land, and the interests of non-sellers could have been excluded from any subsequent negotiation. In a region such as Tāmaki-nui-ā-Rua, where different customary rights, usufruct (that is, relating to use) or otherwise, tended to be particularly inchoate and diverse, open hui were especially necessary in order to define and establish the nature and extent of competing and overlapping interests. Opposition to the survey should have reinforced the need to consult more widely and openly. Paying ‘groundbait’ to selected individuals as a means of luring the right holders into sale before they had the opportunity to make that determination for themselves was a particularly egregious breach of article 2. The owners never gave their full and free consent to sell the land, and the Crown deliberately undermined their rangatiratanga.

The hui at Waipawa prior to the court sitting did not satisfy the requirement for transparent dealing. Advance payments had already been made to a number of individual claimants, and clearly the land was destined to go before the court irrespective of the outcome of this meeting, given that the native land laws permitted an application by any Māori. As it turned out, the hui came to no firm decision, and the issue was taken to the court. But as we have already noted, the court was an inappropriate forum for determining customary rights. Māori would probably have made the necessary decisions themselves in early September 1870 had the court not been present. This very inquiry illustrates how kōrero (discussion) in an environment where there is fair participation and an overlay of tikanga can settle competing customary claims. Counsel for Ngāti Kahungunu told us that:

It would be unreal to ignore the competing claims to tangata whenua status of large sections of the Tararua District by Rangitane and Kahungunu. At their highest and somewhat emotional level, each tribe claims that the other have no rights. However, over the course of this inquiry the more extreme positions of some participants have evolved and to a significant degree there is, at least from the Kahungunu claimants’ perspective, an acceptance of a real and customary place for Rangitane in the Tararua District.

By contrast, the Native Land Court was an adversarial environment where claims were likely to be advanced in a competitive and divisive way.

From this distant point in time, it is impossible to disentangle the rights and wrongs of competing claims of resident and non-resident Rangitāne, and Ngāti Kahungunu. Suffice it to say that the Native Land Court was an inadequate and flawed arbiter of custom, and its decisions on the Bush lands are not necessarily reliable. Rogan’s application of the 10-owner rule undoubtedly resulted in prejudice to the wider community, in terms of both the sale of land and ownership of land that was retained. As McBurney remarks, the court ‘dispossessed the great majority of owners, which caused bitter and enormously expensive legal proceedings between close relatives for decades afterwards’. This is particularly blameworthy because the court had available to it, and failed to use,
alternatives that would have allowed all those entitled to be recognised on titles.

McBurney and Mitchell also identified a number of ‘questionable practices’ on the part of the Crown in this later period – namely:

- the payment of commissions to purchase agents, which discouraged any assessment or consideration of whether vendors had sufficient lands left;
- the payment of influential members of the local Māori community as agents to convince individuals to sell – for example, Karaitiana Te Kōrou was paid 20 shillings per signature in 1882–83;
- the pursuit of signatures in public houses;
- holding negotiations with owners in Wellington, in the case of the Seventy Mile Bush and Tararu blocks; and
- prioritising land purchase above honouring reserve status and/or restrictions on permanent alienation (over half the blocks purchased by the Crown in this period, Mitchell notes, fell into this category).\(^{90}\)

As to the last of these practices, we think the Crown’s failure to respect the choice of Māori to keep certain lands sacrosanct was a cardinal Treaty breach in this district. Locke emphasised the necessity for Māori to retain land at the Waipawa hui in September 1870. He said that, while the Crown was concerned to acquire large blocks, Māori must keep enough land to reap the benefits of future development. As a consequence, two blocks (Tāmaki and Piripiri) were made inalienable, and four others were not included in the subsequent sale – Ōtanga, Tipapakuku, Tiratū, and Wharawhara. These blocks totalled just over 55,000 acres. In addition, there were the blocks that went through the court in 1867 but remained in Māori ownership, reserves set aside from the lands sold in 1871, and other lands that had not yet gone through the court, including the large Mangatainoka block (of 62,000 acres). These lands can be said to have formed the remaining Māori estate, which comprised the springboard for their participation in the economic development of the region.

Crown counsel asserts that their retention of these lands demonstrates the ability of Tāmaki-nui-ā-Rua Māori to control the process of land alienation. We strongly disagree, and reiterate that Māori were able to retain lands only in so far as they remained outside the ambit of the Crown’s immediate land purchase objectives and the interests of settlement. When the Crown decided to embark on further purchasing, alienation of more land inevitably followed. The Mangatainoka block had been mostly acquired by the 1890s, and the same fate befell Tāmaki and Piripiri by the end of the century.

### 4.8.11 Were protections adequate to ensure Wairarapa ki Tararua Māori could retain land for their present and future needs?

Here and in other inquiries, the Crown points to its nineteenth century dilemma of needing to protect Māori, but at the same time having to avoid inappropriate paternalism that would rob Māori of the ability to make choices about their own land. We do not consider that these were starkly opposed options, though. It is clear that Wairarapa ki Tāmaki-nui-ā-Rua Māori desired to retain sufficient lands to enable them to engage with the economic opportunities that would arrive with the settlers. Grey prefigured this in Wairarapa, and Locke much later in Tāmaki-nui-ā-Rua. Māori appear to have tried to take his advice. But as one Pākehā witness (Mr De Latour) told the Rees–Carroll commission, it was not individuals but communities that needed to have the power of decision-making.\(^{91}\) We agree. There is nothing paternalistic about the Crown working with Māori communities to agree what kinds of protections were required, and how they would work to avoid the collective being hijacked by the actions of individuals, and to give communities a real chance of using their land to prosper in the new dispensation. The Crown did not do this. Instead it set up a system that individualised land – awarding titles to 10 or fewer owners – and provided no other effective choice of tenure.

Protection by means of restrictions on alienation was always clumsy, and easily circumvented. The concept had
been that protections would be in place at least until Māori were in a position of 'self-reliance', but there was no means of assessing this reliably for individuals, or systematically on a hapū-wide or regional basis. And at the point when one might expect the rules to have been vigorously applied – as landholdings were reduced to the minimum required as a sufficiency – the whole system began to be dismantled.

This breaches the Crown's duty of active protection. We concur with the Tūranga Tribunal, which found that the legislation failed adequately to protect Māori land interests, while significantly complicating their land transactions. In fact, the system ‘was so complex, inefficient and contradictory as to be inconsistent with the equal treatment guarantee under article 3 of the Treaty’. In its view:

Protections clearly failed in many cases, both because they were inadequate per se and because the passage of time and conflicting legislation allowed them to be evaded. The end result was that Māori were safeguarded neither in their land dealings . . . nor in the retention of their lands.

. . . the system failed to meet the Crown’s obligations of active protection of the Maori interest under the Treaty in that the system did not provide a reasonable level of protection to Maori landowners in the administration of their lands. In particular, it did not protect Maori landowners from unfair or inappropriate land transactions and it did not prevent Maori landlessness.

Further, the colonial Government's focus on ensuring that Māori did not become landless but retained a sufficiency calculated as a minimum number of acres was unlikely to address Māori needs. It took no account of cultural identity and well-being and, in our view, represented a retrograde step from the Crown's initial promises of ample reserves and future prosperity.

The Crown could not reasonably be expected to predict all new economic opportunities. However, it was reasonable to predict, and the Crown did so, that the fertile Wairarapa Valley lands were likely to be a major asset for present and future needs. The Crown argued, for example, that the blocks studied by Goldstone comprised a smaller but strategically important estate located close to European settlements: ‘To the extent that Maori progress in the modern world would depend upon the possession of land, the history of these blocks assumes considerable importance.’ We agree. It was essential that Māori were able to keep and develop reasonable areas of these lands. Yet, throughout this inquiry district, and despite clear acknowledgements that Māori were becoming landless, Crown agents set about purchasing ‘inalienable’ lands as cheaply as possible. Such behaviour was the antithesis of active protection.

4.8.12 How effectively did the Crown respond to Māori criticisms of the land court’s role?

We have found that many of the later legislative reforms were simply ineffective as applied to the Wairarapa ki Tararua district as they were introduced too late to have much impact. The crucial period for Crown action in this district was early on in the history of the court’s operation.

Fenton later claimed that the impact of the Native Land Act and the 10-owner rule had been unexpected, but the reforms that were instituted in response did not successfully address the key shortcoming of the Act. In fact Fenton discouraged the use of the first solution proposed in Parliament: the 1867 section 17 amendment. It was rarely applied, even though the law required the court to do so where Māori were unwilling to subdivide and place representative owners into the title. And where it was utilised, Māori found that the Act failed to provide for the real interests of communities; instead, those named on the title were simply treated as a larger group of individuals who could be picked off singly without prior reference to the group of owners as a whole.

The 1873 Act was also promoted as a reform, but as we see it – and as many saw it at the time – it was a retrograde step. McLean’s efforts to give Māori rūnanga a greater role
did not get off the ground. The system instituted under the 1873 Act did not reflect Māori wishes at the time. Thereafter, it became easier rather than harder to partition out individual interests and though some Māori may have wanted that ability, the overwhelming weight of Māori political opinion was in favour of acquiring substantive powers for komiti in title determination and the management of lands. Successive governments demonstrated that they were not prepared to support this, but reluctantly enacted minor legislative reforms as a sop to Māori feeling. While Māori leadership in Wairarapa ki Tararua seized on the opportunity of Government-sponsored native committees in the early 1880s, they also saw that what was on offer was only ‘a little portion of what was asked for in Parliament’; that insufficient power had been given to ‘cure all the sorrows and troubles’ (as Te Mānihera phrased it), and that it was ‘too late’ for lands ‘in this part’.595 ‘This was a common response to Government proposals in our inquiry district. Tamahau said as much to the Rees–Carroll commission, as did Tōmoana in discussions with Seddon at Pāpāwai over the Māori Lands Administration Bill.

The Native Equitable Owners Act 1886 was specifically intended to provide remedies for owners dispossessed of their rights as a result of the 10-owner rule, but turned out to be limited in practice. Giving evidence for the Crown, Goldstone conceded that ‘relatively few blocks’ were subject to the Act’s provisions.596 ‘The rights of purchasers and lessees who had entered arrangements in the blocks were carefully protected, and the Act did not apply to any blocks that had been sold, or otherwise alienated. This was most of the district, and included cases such as Te Ohu, where partition to excise the Crown’s minority interests left most of the block reserved to the ‘non-sellers’. It also excluded blocks with titles issued under the Volunteers and Others Lands Act 1877, and it is to cases affected by this exclusion that the Crown’s concession is limited.597

We note that the application of the Act to the titles of the Tāmaki and Piripiri blocks did nothing to help Māori retain or use them. If anything, it undermined any remaining chance of effective leadership in this matter, and breached the Crown’s guarantee of te tino rangatiratanga.

4.8.13 Did the Crown fulfil its duties in relation to survey?

In our view, the Crown ought to have taken a much more active role in providing proper surveys through its public-good provision of a nationwide triangulation. Stirling points out that the Inspector of Surveys, Heale, repeatedly warned the Government of the many dangers of surveying blocks in isolation in terms of costs and ‘hopeless confusion of titles’ which ‘worked disastrously, especially towards the natives’.598 We heard detailed evidence on the problems at Mangatainoka–Kaihinu, which entailed so much expense and trouble for Nireaha Tāmaki in his effort to retrieve the missing 5184 acres, but this was not a unique instance of survey difficulties. Survey problems impacted especially on reserves.

The underlying problem in the Native Land Court system was that surveys were of different kinds and for different purposes. It was fine to have a sketch survey if it was simply to confirm a hapū’s ownership and to allow leasing. It was when sketch surveys were used to define exclusive ownership and exclude others, or as a base for permanent alienation, that problems arose. Te Rōpiha complained early after the hearings for the northern Bush blocks, in 1870, that no surveyor had visited the various settlements and discussed proposed block boundaries with the people, and so there was no agreement on proportionate interest or indeed the extent of land to be sold.

Though the plans placed before the court at Tāmaki-nui-ā-Rua were rudimentary, and though neither Mangatainoka nor Kaihinu had been surveyed at the time of title investigation, the Crown proceeded to purchase at Kaihinu on the basis of sketch plans, based on natural features and the block boundaries of prior Crown purchases. The Crown acknowledges that ‘accurate surveys were fundamental to the integrity of the system of title determination
and registration, especially the Torrens system of registration with its Crown guarantee of title.\textsuperscript{999} We think that Māori were entitled to accurate surveys before any land was permanently transacted – or actually even negotiated.

In the case of Nireaha Tāmaki, which stemmed from transactions having been completed without survey, compensation was paid. But the settlement reached did not afford Māori the potential benefit of the result he achieved in the Privy Council, because the colonial Parliament removed the capacity of Māori to challenge the legality and validity of the Crown’s extinguishment of native title in the New Zealand courts.

As well as being constitutionally dubious, this breached Treaty principles. A cornerstone of article 2 is the guarantee that Māori can keep all land they do not freely wish to sell. Legislation that takes away the courts’ power to interrogate whether land was legitimately sold derogates from this guarantee. It also breached article 3, which guarantees Māori the rights and duties of citizenship, because it removed the right of Māori to have their claims heard in court – and the motivation was to ensure that land titles of Pākehā, however dubiously acquired, were not put in jeopardy.

4.8.14 What ought the Crown to have done?

For the Crown to have promoted the peaceful settlement of the colony in a manner consistent with the Treaty, it ought to have ensured that Māori were in a position to manage and utilise their lands as effectively as settlers. We discuss this more fully in the next chapter, but as far as the Native Land Court is concerned, the Crown’s chief failure was that it did not legislate to empower the Māori collective to hold and manage their lands. As we see it, this failure goes a long way to explain why land sales were both unmanaged and unmanageable. As Seddon put it to the Kotahitanga assembly, land sales were like a coach and horses out of control, even as their estates dwindled almost to nothing.

There were mechanisms available in law that could have been adapted to Māori collective title had the political will existed. This would surely have slowed down the pace of land sale – a result feared by settler governments, and for that reason avoided.

Slowing land sales need not have spelled the destruction of the colony, though. Pastoralism could and had proceeded without the need for the extinguishment of native title at all. More importantly, the whole basis of the extension of settlement into Wairarapa ki Tararua had been that Māori would be participating equally with Pākehā. Officials and policy makers assumed that title would have to be individualised for this to happen, and then Māori would expend labour on their individual properties for land value to rise. Why it was assumed that individualisation was required is not exactly clear to us; after all, Māori had been participating quite successfully in the early economy while they still held land and organised their labour collectively under their traditional leadership.

We accept, however, that even under an alternative scenario in which lands were held communally there would still have been a need for some kind of forum for ascertainment of title, legal proof of title, and a code to govern land transactions in the nature of both leases and (more limited) sales.

The question was what that forum and that code would be. We do not think that it was necessary to favour a court over a rūnanga system when it came to determining title. As McLean himself acknowledged a few years after the introduction of the court, Māori were ‘themselves the best judges of questions of dispute existing among them . . . and they could arrive at an adjustment of the differences connected with the land in their own Council or Committee, very much better than it would be for Europeans to do’. Had this been done – which would have involved the Government supporting and endorsing Māori institutions – Māori would have believed themselves to be working in partnership with Europeans. This was not the case when
komiti decisions could be put aside, when Māori presence on the Bench diminished rather than grew, and Pākehā conception became ever more dominant. These circumstances were bemoaned not only by prophets and rebels, but by people like Te Whatahoro, who knew European ways and had considerable experience and expertise in the Native Land Court.

However complex the conveyancing system, we see no justification for the stamp duty surcharge of 10 percent introduced on initial purchases of Māori land in 1862. This could not fail to adversely affect the consideration that Māori would receive for their lands, even though it was payable by the buyer. The Crown could not credibly justify the extra charge on grounds of the opportunity that had been extended to Māori to change their customary titles. It was the colonial law that required inchoate customary rights to be defined and fixed, and anyway Māori were already paying in court fees and survey costs.

Any regulated system of leasing would also have difficult issues to resolve regarding interest holders, compensation for improvements, liability upon default, and distribution of rents. Nevertheless, like the Hauraki Tribunal, we think that the Crown took on obligations when it encouraged Māori to move from subsistence to a commercial economy that would reward investment of labour and capital yet provide for the continuation of tribal identity and heritage. It had to find an equitable system, and we agree that there was an alternative available to it in developing a system of leasing that mediated tenure conversion and engagement with settlers. Undoubtedly changes in customary tenure would have resulted, civil cases of debt and damage would have arisen, and some land might have transferred outright. But we also think that the pace of transfer of the freehold would have slowed, and its extent would have been much reduced. Also, it seems likely to us that Māori economic and social engagement would have been on a basis of greater equality in the district (and throughout New Zealand) if the Crown had supported Māori leasing capability and collective land management in at least some of their landed estates, rather than actively seeking to undermine it. There would also, we think, have been means for the Crown to extract revenue from management of the leasing system.

4.8.15 Did the Crown provide for informed community consent about court processes and sale?

There is evidence that Crown officials acknowledged the need for Māori to be able to discuss land management decisions collectively.

In the Wairarapa valley, discussions among Māori occurred both before and during court investigations. The court, in turn, relied on the ability of Māori to reach compromises by their own means and sent some issues out of court for further arrangement.

Hui were held before court investigation of the northern Bush and many of those attending hui were also involved in southern lands being taken to court a year later.

Use of komiti and rūnanga also suggested that customary-based institutions were still operative and, in these instances, the court was used to ratify Māori decisions. But what happened when land was taken to court was also important. In some cases, judges refused to ratify decisions reached by komiti. Māori also found that they had little control over how the investigation proceeded, and in some key cases, they found that they could not change their minds and withdraw from the court. They also had little control over what form of title would result. They were told that there could only be 10 names placed in the title. They complied without comprehending until too late what the legal effect would be. We see the ‘tribal’ title under the 1867 amendment as having been introduced with the intention of addressing the problems created under the earlier regime, but its intention was largely thwarted by the court’s continuing preference for the old rule. The court did not bring the option to the attention of Māori appearing before it, in the same way that it did the need to comply with the 10-owner system.
A big hui beforehand was not in itself sufficient for the Crown to be able to claim that there was adequate consultation and an informed, self-managed process of consent to land alienation. We have already seen this in the case of the komiti nui in 1853, and the big Waipawa hui in 1870 was no different. It was simply not possible to reach consensus in one meeting when many interests were involved, and especially when the details of the purchases were entirely at large. Māori often complained about lack of information as well as lack of powers for their own customary institutions. They were being asked to trust the Crown rather than work with it in partnership as a self-governing people, but the Crown did not reciprocate that trust by real protection. Nor do we see collective control as being satisfied by rules for majority consent when it came to partitioning out interests. Majority decisions in land dealing were introduced in 1869, and later minorities or even individuals could make binding decisions in certain circumstances. Māori always railed against the collective being hijacked by the binding decisions of individuals. Even known moderates and modernisers such as Tamahau insisted that komiti be empowered to manage land in multiple titles, and also to run the community. Majority consent did not equate to collective consent when it was cobbled together by piece-meal dealing with individuals, and without open debate.

4.8.16 Did the Crown conduct purchases so as to prioritise its own and settlement interests over those of Māori?

The Crown concedes that undue pressure was placed on some owners to complete purchases. This involved entering into purchases with a portion of the owners, then later making payments to others to ‘complete’ a purchase to which they had not necessarily consented. Inevitably, this resulted in confusion and complaints about unfair practices. Such practices included paying advances, and deploying the Crown’s privileged position to prevent competition and to pressure owners into completing transactions. It also involved the Crown moving into lands it knew had been deliberately set aside either as reserves out of purchases, or outside of purchase negotiations altogether. This was particularly evident as the century drew on and even though the problem of Māori landlessness became more evident. Though pre-title transacting was not illegal, other Tribunals have found that it breached the Treaty, and we see no reason to depart from that general finding. Also in some cases it appears that advances were made after title was investigated but before purchase deeds were agreed and signed. In these instances, the individuals were legally known and legally entitled, but there was still a failure to discuss the transaction with all present so that hapū could make a decision before any payment was made. As individuals, too, owners could not possibly be in full possession of all relevant information as to details of purchase areas, boundaries, reserves and price when they accepted advances, although they bound them to sale.

Although Crown officials acknowledged the need for hui to make careful decisions that could be ratified by the court, and that significant areas would need to be reserved for present and future community needs, the need for haste and a good bargain supervened. The result was:

- the implementation of purchase pressure even before an investigation was undertaken;
- a failure to adequately discuss boundaries of lands involved on the ground;
- a failure to obtain any real consensus soundly based on the nature and extent of customary rights and tikanga or the extent of land to be alienated; and
- a rapid Native Land Court hearing where in many cases the 10-owner rule was used to facilitate the speedy purchase of very large areas of land.

In our opinion, the Crown advantaged the purchase process and purported settlement needs over reasonable and necessary protections for Māori. This was a far more serious breach of the Treaty than the Crown has conceded. There may not have been collusion over names in title but there was considerable pressure on individuals who were
representing, but were not legally responsible to, their hapū, to encourage alienation of very extensive areas at the lowest possible prices. This was done with very little care to ensure owners were in position to make informed and careful decisions on behalf of others about their present and future needs.

We find these acts and omissions to be in breach of article 2 guarantees and the Crown's duty of active protection.

Notes

Epigraph: Paora Pōtangaroa and others to the editor of Te Wananga, 15 September 1877, pp 365–366 (doc A51(f) (Stirling supporting papers), pp 2853–2856)
1. Document 18 (Rangitāne closing submissions), p 69; doc 11 (Ngā Hapū Karanga closing submissions), p 44; doc 11(b) (Ngā Hapū Karanga closing submissions), p 4
2. Document 18 (Rangitāne closing submissions), p 69; doc 11 (Ngā Hapū Karanga closing submissions), p 44
3. Document 11(b) (Ngā Hapū Karanga closing submissions), p 4
5. Document 11(b) (Ngā Hapū Karanga closing submissions), p 54
6. Ibid
7. Ibid, p 56
8. Ibid, pp 56–57
9. Ibid, p 57
10. Ibid, pp 55–56
11. Ibid, p 56
12. Ibid
13. Ibid, p 57
15. Document 11(b) (Ngā Hapū Karanga closing submissions), p 58
17. Ibid
18. Document 11(b) (Ngā Hapū Karanga closing submissions), pp 46–48
20. Document 11(b) (Ngā Hapū Karanga closing submissions), p 49
22. Document 18 (Rangitāne closing submissions), p 102
23. Ibid, p 103
24. Document 11(b) (Ngā Hapū Karanga closing submissions), p 40
25. Ibid, pp 8–9
26. Document 18 (Rangitāne closing submissions), pp 73–74
27. Document 117(f) (Crown closing submissions), p 6
28. Ibid, p 7
29. Document 117(f) (Crown closing submissions), p 9
30. Ibid, p 10
31. Ibid, p 23
32. Ibid, p 11
33. Document A86 (Goldstone), p 186
34. Document 117(f) (Crown closing submissions), p 29
35. Ibid
36. Document 117(f) (Crown closing submissions), p 8
37. Document 117(a) (Crown closing submissions), p 25
38. Ibid
39. Ibid
40. Ibid, p 26
41. Document 117(j) (Crown memorandum), p 5
42. Ibid
43. Ibid
44. Document 117(a) (Crown closing submissions), pp 28–29
45. Ibid, p 29
46. Ibid, pp 29, 31
47. Document A70 (Small and Ellis), pp 20–21
48. Document 11(b) (Ngā Hapū Karanga closing submissions), p 64; doc A26 (Gawith and Hartley), p 21
49. Document A48 (Stirling), p 226; ‘Conference of Maori Chiefs at Kohimarama, on the 10th July, 1860, Maori Messenger; Te Karere Maori, 14 July 1860, p 4
50. ‘Conference of Maori Chiefs at Kohimarama, on the 10th July, 1860, Maori Messenger, 14 July 1860, pp 5–13
51. Ibid, pp 17, 28
52. Raniera Te Iho reply to the Governor’s address, not dated, Maori Messenger, 30 November 1860, p 42
53. ‘Proceedings of the Kohimarama Conference, Maori Messenger, 3 August 1860, p 1
55. Ibid; see also Waitangi Tribunal, Turanga Tangata Turanga Whenua: The Report on the Turanganui a Kiwa Claims, 2 vols (Wellington: Legislation Direct, 2004), vol 2, p 409
56. ‘Message No 2’, Maori Messenger, 31 July 1860, p 32
57. ‘Proceedings of the Kohimarama Conference, Maori Messenger, 3 August 1860, p 2
58. Ibid
59. Document A49 (Stirling), p 8
60. Searancke to McLean, 21 February 1860, AJHR, 1861, C-1, p 288
61. ‘Replies to the Governor’s address, Maori Messenger, 30 November 1860, p 43
62. Ibid, p 45
63. Ibid, p 40
64. Wardell to Native Secretary, 20 September 1861, AJHR, 1862, E-7, p 32; doc A49 (Stirling), p 10
65. Document A48 (Stirling), p 223
66. Document A48 (Stirling), p 209
67. Ibid, pp 196, 199–200
68. Ibid, pp 196, 213–214
70. Document A48 (Stirling), pp 196, 236–237
71. Ibid; Ward, A Show of Justice, p125
74. Ibid, p 239
75. Native Lands Act 1862, s 20
77. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 413
78. Ibid
79. Ibid, pp 413–414
80. Document A113 (Loveridge), p 212
82. Waitangi Tribunal, He Maunga Rongo, vol 2, p 498
84. Ward, A Show of Justice, p 213; Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 399. Though Hayes argues that reforms in the 1860s and 1870s significantly restricted the grounds for imprisonment for debt and the numbers of persons imprisoned fell dramatically, he acknowledges that the penalty was not uncommon: see document H5 (Hayes), p 14.
85. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 438
86. Waitangi Tribunal, He Maunga Rongo, vol 2, p 523
87. Bob Hayes, evidence, 26 October 2004, seventh hearing (transcript 4.5, p 12)
88. Ward, National Overview, vol 2, p 231
89. Document A86 (Goldstone), p 163
90. Ibid, p 165
91. Ward, A Show of Justice, p 216
92. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, pp 432–433
93. Ward A Show of Justice, pp 216–217
94. Bob Hayes, evidence, 26 October 2004, seventh hearing (transcript 4.5, p 6)
95. Ward, National Overview, vol 2, p 232
98. Waitangi Tribunal, Hauraki Report, vol 2, p 716
99. Ibid, p 715
101. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 399
102. Ibid, pp 400–401
103. Ibid, pp 400–401, 440
104. Ibid, p 426
105. Ibid
106. Waitangi Tribunal, Te Tau Ihu o Te Ika a Maui: Report on Northern South Island Claims, 2 vols (Wellington: Legislation Direct, 2008), vol 2, p 783
107. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 443
108. Waitangi Tribunal, He Maunga Rongo, vol 1, pp 309–312
109. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 444
110. Waitangi Tribunal, Te Tau Ihu o Te Ika a Maui, vol 2, p 783;
Waitangi Tribunal, He Maunga Rongo, vol 2, p 521
111. Document A86 (Goldstone), pp 9–12. It appears only one Wairarapa block, Whangaehu 2, was investigated by the Native Land Court in 1873. The certificate of title of 15 December 1873 granted title under section 17 of the Native Lands Act 1867.
112. Document A86 (Goldstone), pp 17–18
113. Ibid, p 22
114. Ibid, pp 22, 24
115. Ibid, pp 25–28
116. Ibid, p 25; Williams, Te Kooti Tango Whenua, p 151
117. Document A86 (Goldstone), p 33
118. Ibid, p 40
119. Ibid, pp 43–54
120. Ibid, p 31
121. Ibid, p 66
122. Ibid, p 146
123. Document A49 (Stirling), pp 128–130
124. Ibid, pp 231–233; doc A86 (Goldstone), p 103
125. Document A49 (Stirling), p 233
126. Document A86 (Goldstone), p 79; doc A49 (Stirling), p 233
127. Document A86 (Goldstone), pp 82–83
128. Ibid, pp 38, 84
129. Ibid, p 118
130. Ibid, p 128
131. Ibid, p 130
132. Ibid
133. Document A49 (Stirling), p 273
134. Document A86 (Goldstone), p 131; doc A49 (Stirling), p 274
135. Document A49 (Stirling), p 274
136. Document A86 (Goldstone), p 132
137. Document A86 (Goldstone), p 77
138. Ibid, p 132
139. Ibid, p 77
140. Document 117(f) (Crown closing submissions), pp 7–8
141. Document A49 (Stirling), p 231
142. Ibid
143. Document A30 (Mitchell), p 87
144. Document t17(f) (Crown closing submissions), p 6
145. Document A49 (Stirling), pp 175–201
146. Trust Commissioner Heaphy’s minute book, 1872–1879, p 58 (doc A49 (Stirling), p 105)
147. Document A30 (Mitchell), pp 93–94
148. Ibid, pp 100–101
149. Document A47 (McBurney), p 10
150. Ibid, p 17. The figure provided by Small and Ellis is similar: 1,077,714 acres (doc A70 (Small and Ellis), p 18).
151. Document A47 (McBurney); doc A27 (Robertson)
152. Document A47 (McBurney), p 134
153. Ibid, pp 11–12
154. Ibid, pp 106–113
155. Document t7 (Ngāti Kahungunu closing submissions), p 58
156. Document A47 (McBurney), p 12
157. Ibid, p 13
158. Document t17(a) (Crown closing submissions), p 11
159. Ibid, pp 29, 31
160. Ibid, p 29; doc t17(j) (Crown memo), p 4
161. ‘Minutes of Evidence, Henare Matua, Tamaki, Case No XXV’, AJHR, 1873, G-7, pp 135–137
162. Document A47 (McBurney), pp 18–19; doc A27 (Robertson), p 11
164. Document A18 (Ballara and Scott), p 7
165. Document A47 (McBurney), pp 69, 71
166. Ibid, p 33
167. Ibid, pp 79–80
168. Ibid
169. Ibid, p 81
170. Ibid, pp 81–82
171. Ibid, p 81
172. Ibid, pp 354–355
173. Document A39 (Berghan), p 155
174. Document A47 (McBurney), p 95
175. Ibid, p 80
176. Ibid, p 110
177. Locke to Native Minister, 11 November 1873, MA-MLP 1872/1935 in MA13/82a and b, ArchivesNZ (doc A39 (Berghan), p 7)
178. Te Waka Maori o Ahuriri, 20 September 1870, pp 59–61 (doc A97 (Meredith), p 2)
179. Ibid (p 3)
180. Ibid (p 4)
181. Te Waka Maori o Ahuriri, 20 September 1870, pp 59–61 (doc A97 (Meredith) (pp 4–5)
182. Ibid (pp 4–8)
183. Ibid (p 8)
184. Document A47 (McBurney), p 107
185. Ibid
186. Document A18 (Ballara and Scott), pp 23–30. Ballara and Scott state that the hearings went from 8 to 11 September 1870 with judgments being handed down on 10 and 11 September 1870.
187. Napier minute book 2, 9 September 1870, p 181
188. Document A47 (McBurney), pp 105–6
189. Ibid, p 86
190. Ibid, pp 11–12
191. Document t8 (Rangitāne closing submissions), p 87
192. Document A39 (Berghan), p 321
193. Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, p 442; Waitangi Tribunal, Hauraki Report, vol 2, pp 711, 719; Waitangi Tribunal, He Maunga Rongo, vol 2, p 590
194. Document A27 (Robertson), pp 54–55
196. Ibid
197. S Locke, ‘Summary of receipts’, not dated, MA-MLP 1870/1843 in MA13/82a and b, ArchivesNZ (document A39(a) (Berghan supporting papers), pp 287–308); see also doc A47 (McBurney), pp 97–98
199. Ibid, p 98
201. Document A47 (McBurney), p 87
202. Ibid, p 107
203. Ibid, pp 86–87
204. Ibid, p 87
205. Ibid, p 88; Napier minute book 37, 22 January 1895, p 18 (doc A39(k) (Berghan supporting papers), p 5088)
206. Document A47 (McBurney), pp 107
207. Paora Ropiha to FD Fenton, 14 October 1870, NA387, Tamaki Correspondence file, Hamilton Māori Land Court (doc A39(k) (Berghan supporting papers), pp 5328–5330)
208. Document A47 (McBurney), pp 109–110
209. Ibid, p 110
210. Ibid, p 106
211. Ibid, pp 105, 107
212. Ibid, p 121
213. Te Waka Maori o Niu Tirani, 8 November 1871, pp 6–7 (doc A97 (Meredith), p 16)
214. Ibid
215. Document A47 (McBurney), p 84
216. Ibid, p 114
217. Document A27 (Robertson), p 57; doc A47 (McBurney), p 116
218. Document A47 (McBurney), pp 84, 117
219. Ibid, p 119
220. Document A27 (Robertson), pp 57–58; Te Waka Maori o Niu Tirani, 8 November 1871, pp 6–7 (doc A97 (Meredith), p 13); doc A47 (McBurney), p 121
253. Ibid
254. Ibid, p.136
255. Document A27 (Robertson), p.61
257. Document A27 (Robertson), pp.67–79
259. Document A50 (Stirling), p.9–17
261. Document A27 (Robertson), p.67

262. Wairarapa minute book 2, 7 September 1871, p.13
263. This stipulation was applied to all the southern Bush blocks adjudicated on at this hearing.
264. Document A27 (Robertson), p.69
265. Ibid
266. Ibid, p.70
267. Ibid, p.71
268. Ibid, p.72
269. Ibid, p.77
270. Ibid, pp.77–78
271. Ibid, pp.78–80; Wairarapa minute book 2, 12 September 1871, p.35
272. Wairarapa minute book 2, 12 September 1871, p.34; Wairarapa minute book 2, 13 September 1871, p.46
273. Document A27 (Robertson), pp.67–79
274. Ibid, p.63
275. Ibid, p.65
276. Ibid, p.82
277. Ibid, p.65
279. Ibid, p.137
281. Document A27 (Robertson), p.65
282. Ibid, pp.82–83, 86–87, 89
283. Ibid, pp.89–96
284. Ibid, p.92
286. Rogan to Walsh/Halse, 15 November 1871, BAdW A588/536, ArchivesNZ (doc A47 (McBurney), pp.95–96)
287. Document A27 (Robertson), p.96
289. Ibid, p.139; doc A27 (Robertson), pp.65–66
290. Document A27 (Robertson), p.81. Note that there are 11 blocks. Locke refers to ‘10’ blocks in June 1872. It is likely that Locke was referring to the 10 blocks which were purchased, forgetting that the Mangatainoka block also passed through the court in the September 1871 hearing, but was awarded to 56 owners and retained in Māori hands.
291. Document A47 (McBurney), pp.139–140. The reserves were Te Rerenga o Whiro and Te Potae and still exist: see doc A100 (Turton’s Deeds), deed 190.
292. Document A27 (Robertson), p.8
293. Document A46 (McCracken), p.248
294. Ibid, p.247
295. Document A100 (Turton’s Deeds), deeds 183, 184, 185, 186
296. Document A100 (Turton’s Deeds), deed 139; Searancke to Chief Commissioner, 20 August 1860, AJHR, 1861, C-1, pp.295–296; doc A46 (McCracken), pp.79, 135, 248–255
297. Document A46 (McCracken), pp.249–255; doc A100 (Turton’s Deeds), deeds 193, 194, 196. No deed of sale for Whangaehu 2 was
signed, however, the Native Land Court awarded title to the Crown for Whangaehu 2 in 1881 under section 6 of the Native Land Act 1877: see Wairarapa minute book 3, pp 274–276.

298. Maori Land/Wellington District plan 2978; Wairarapa minute book 17, pp 356–357; Certificate of Title 61/234 (Land Information New Zealand Deeds Registry, Wellington); doc A70 (Ellis and Small), pp 4, 13; doc A46 (McCracken), pp 301–302

299. Document A46 (McCracken), pp 250, 255; Hill to Heaphy, 29 February 1876, MA-MLP 1/1883/303, ArchivesNZ (doc A46(a) (McCracken), pp 1242–1244); Heaphy to Native Under-Secretary, 13 March 1878, MA-MLP 1/1883/303, ArchivesNZ (doc A46(a) (McCracken), p 1232); Maunsell to Land Purchase Under-Secretary, 3 June 1881, MA-MLP 1/1881/224, ArchivesNZ (doc A46(a) (McCranken), pp 1168–1171); Native Under-Secretary to Maunsell, 7 December 1877, MA-MLP 1/1883/303, ArchivesNZ (doc A46(a) (McCranken), pp 1234–1236)

300. Document A47 (McCranken), pp 251–253, 256; Maunsell to Land Purchase Under-Secretary, 3 June 1881, MA-MLP 1/1881/224, ArchivesNZ (doc A46(a) (McCranken), pp 1168–1171); Native Under-Secretary to Maunsell, 7 December 1877, MA-MLP 1/1883/303, ArchivesNZ (doc A46(a) (McCranken), pp 1234–1236)

301. Document A47 (McCranken), pp 12, 141–142

302. Ibid, pp 141–143

303. Ibid, pp 143–144

304. Ibid, pp 144–145

305. Ibid, p 143


308. Ibid, pp 145–146

309. Nireaha Tāmaki and others to the Editor, 21 February 1875, Te Wananga, 1875, p 74 (doc A51(f) (Stirling), p 2753)

310. Document A47 (McCranken), pp 146

311. Ibid


313. Document A50 (Mitchell), pp 92

314. Waitangi Tribunal, Hauraki Report, vol 2, p 746

315. Ibid, p 747

316. Document A50 (Stirling), pp 244–245; Waitangi Tribunal, Turanga Tangata Turanga Whenua, vol 2, pp 419–420

317. Waitangi Tribunal, He Maunga Rongo, vol 1, pp 380–381

318. Native Land Act 1873; Native Land Act 1873 Amendment Act 1878; Native Land Act Amendment Act (No 2) 1878

319. Native Land Act Amendment Act 1877, s 6

320. Native Land Act Amendment Act (No 2) 1878, s 11

321. Native Land Laws Amendment Act 1883, s 13

322. Native Land Purchases Act 1892, s 14; Native Land Purchase and Acquisition Act 1893, ss 9, 32


324. Waitangi Tribunal, Hauraki Report, vol 2, p 778

325. Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt Hon R J Seddon, Premier and Native Minister, and Hon James Carroll, Members of the Executive Council Representing the Native Race and the Native Chiefs and the People at Each Place, Assembled in respect of the Proposed Native Land Legislation and Native Affairs Generally during 1898 and 1899 (Wellington: Government Printer, 1899), p 29

326. Loveridge, Maori Land Councils and Maori Land Boards, p 18

327. Ibid, p 126. By that date the ‘District Maori Land Board’ consisted of the District Judge of the Native Land Court and his registrar.

328. Sir Robert Stout, 4 June 1886, NZPD, 1886, vol 54, p 303

329. Document A86 (Goldstone), p 186


331. Native Land Court Acts Amendment Act 1889, s 18

332. Waitangi Tribunal, He Maunga Rongo, vol 2, p 522

333. Document A86 (Goldstone), p 187


335. In re Piripiri Block (1892) 10 NZLR 629 (SC)

336. Ibid, p 635 (doc A47 (McBurney), p 236)

337. Ibid, p 237

338. Munro to Locke, 26 September 1870, AGG-HB 1/2, ArchivesNZ (doc A39(a) (Berghan supporting papers), p 3)

339. Mackay to Chief Judge, 7 February 1895, 1 1/1900/911, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp 5350–5351)


341. Judge Gudgeon, 28 January 1897, Napier Native Land Court minute book 41, p 312 (doc A39(i) (Berghan supporting papers), p 3737); doc A47 (McBurney), pp 243–245

342. Document A47 (McBurney), p 244

343. Document A30 (Mitchell), pp 24, 59


345. Document A86 (Goldstone), p 207; doc H5 (Hayes), pp 45–47

346. Document H5(a) (Hayes summary), p 5

347. ‘Schedule of Fees which may be Charged at Judge’s Discretion’, New Zealand Gazette, 29 November 1880, no 114, vol 2, p 1706


349. Document A86 (Goldstone), pp 193–194, 196

350. Ibid, p 193

351. We note that all but one of these blocks were put through the court before 1872.

352. Document H5 (Hayes), p 45

353. Ibid, pp 38–39
Ngā Waka ā Kupe is used for the whole of Barton Report on Matapuha, 11 November 1886, Matapuha documents. Native Land Court Act 1886 Amendment Act 1888. Section 6

Document A49 (Stirling), p 176

Ngāwakaākupe proper was sometimes used in the records for the smaller partition which became Ngāwakaākupe A and B.

These rivers drain westwards into the Ruamāhanga River north of Martinborough.

Other than ‘Wereta’s Pahaua’ and ‘Te Awaiti and Pahaua’, these were Āwhea, Mākara, Wharekākā, Paeroa, Ahiaruhe, and Tūpāpokea.

Pāhaoa 1C and 1D were created out of Pāhaoa 1B, rather than following the usual system of designating such partitions as 1B1 and 1B2 (doc A59 (Stirling), p 166).

Pāhaoa 1C and 1D were created out of Pāhaoa 1B, rather than following the usual system of designating such partitions as 1B1 and 1B2 (doc A59 (Stirling), p 166).
421. Document A42 (Walzl), p. 78
422. Document A121 (Batson), p. 113. In 1974, 13 people were owners in Kehemane 7B (doc A121(a) (Batson supporting papers), p. 182). There may be others for which no documentation has been found. However, most block files in the supporting papers have either ‘General Land’ or ‘European Land’ pencilled across the cover.

423. Document A39 (Berghan), pp. 74–75
424. Preece to Land Purchase Under-Secretary, 28 November 1882, MA-MLP 1/82/456, MA13/82a and b, ArchivesNZ (doc A39(a) (Berghan supporting papers), pp. 35–37)

425. In re Whitiatara Block (1906) 9 GLR 109 (doc A39(m) (Berghan supporting papers), pp. 6406–6409)

427. Document 117(j) (Crowd memo), p. 4; doc 117(a) (Crowd closing submissions), p. 29

429. Ibid, p. 322

430. Document A100 (Tutron’s Deeds), deed 190 for Kauhanga 1 and 2, 16 April 1873; doc A78 (Oliver), p. 172

431. Document A47 (McBurney), pp. 141–143

432. Wairarapa minute book 5, 22 April 1885, pp. 57–58

433. Document A27 (Robertson), p. 79; Wairarapa minute book 5, 22 April 1885, p. 58

434. Wairarapa minute book 5, 22 April 1885, pp. 57–58


436. Munro to Locke, 26 September 1870, AGG-HB 1/2, ArchivesNZ (doc A39(a) (Berghan supporting papers), pp. 1–5)

437. Lewis to Native Minister, 10 October 1882, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5413–5414)


439. Bryce to Butler, 21 October 1882, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5406)


441. Mair to Sheridan, 25 February 1893, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5383, 5385)

442. Kelly to Sheridan, 16, 17 May 1893, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5377–5379)

443. Sheridan to Minister of Lands, 29 June 1894, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5367–5368)

444. Sheridan to Chief Judge, 26 November 1894; Sheridan to Minister of Lands, 26 November 1894, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5357)

445. Napier minute book 37, 21 January 1895, p. 3 (doc A39(k) (Berghan supporting papers), p. 5076)

446. Document A39 (Berghan), p. 266
447. Ibid, p. 269

448. Document A39 (Berghan), p. 271


450. Seddon to Rose, 4 July 1882, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), pp. 5427–5428)

451. Sheridan to Native Minister, 5 November 1903, MA-MLP 1/1903/38, ArchivesNZ (doc A39(k) (Berghan supporting papers), p. 5448)

452. Document A39 (Berghan), pp. 179–180


454. Document 11(b) (Ngā Hapū Karanga closing submissions), p. 5

455. Ibid, p. 6

456. Document 11(f) (Crown closing submissions), pp. 15, 18–21

457. A boycott of the Masterton Court was also attempted in September 1871.

458. Wairarapa Mercury, 12 August 1871 (doc A50 (Stirling), p. 10)

459. Document A50 (Stirling), pp. 15–16

460. Ibid, p. 16

461. Wairarapa Mercury, 24 December 1873; Te Mānihera to Native Under-Secretary, 16 March 1875 (doc A50 (Stirling), p. 17)

462. ‘Petition of Tikawenga and 171 other Natives of Wairarapa and Hawke’s Bay’, 11 October 1872, AJHR, 1872, H-11, pp. 4–5 (doc A50 (Stirling), p. 35)

463. AJHR, 1873, 1–7, p. 1

464. Ibid

465. Ibid, pp. 1–2

466. Document A50 (Stirling), p. 39

467. Ibid, p. 30

468. Ibid, pp. 41–42

469. Te Wananga, 8 April 1876, pp. 168–170 (doc A51(f) (Stirling supporting papers), pp. 2764–2766)

470. Ibid

471. Ibid

472. ‘Meeting of Chiefs at Pakowhai’, 2 June 1876, Te Wananga, June 1876, p. 235 (doc A51(f) (Stirling supporting papers), pp. 2773)

473. ‘Petition of HM Rangitākaiwaho and Others’, 29 August 1876, AJHR, 1876, 1–6, p. 2 (doc A50 (Stirling), pp. 51–53)

474. Document A50 (Stirling), pp. 54–56, 61

475. Ibid, pp. 63, 66

476. Tikawenga Te Tau, Hikawera (Wi) Mahupuku and others of Komiti o Wairarapa, 7 October 1876, Te Wananga, 1876, p. 395 (doc A51(f) (Stirling supporting papers), p. 2791)

477. Paora Pōtangaroa and others to the editor, not dated, Te Wananga, 1877, pp. 365–366 (doc A51(f) (Stirling supporting papers), pp. 2853–2856)

478. HT Whatahoro to the editor, not dated, Te Wananga, 28 July 1877, pp. 311–315 (doc A51(f) (Stirling supporting papers), pp. 2844–2846)

479. Ibid

480. Ibid

481. Ibid

482. Document A50 (Stirling), pp. 84, 89

483. Whatahoro to the editor, 28 February 1878, Te Wananga, 20 April 1878, pp. 179–180 (doc A50 (Stirling), pp. 150–151)
571. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 434–436
572. Document A49 (Stirling), pp 28–30
573. Document I17(f) (Crown closing submissions), p 23
574. Waitangi Tribunal, *He Maunga Rongo*, vol 1, pp 381, 385
575. Bob Hayes, evidence, seventh hearing, 26 October 2004 (transcript 4.5, p 20)
576. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, pp 445–446
577. Waitangi Tribunal, *Te Tau Ihu o Te Ika a Maui*, vol 2, pp 783–784
578. Paul Goldstone, evidence, seventh hearing 26 October 2004 (transcript 4.7, p 34); Bob Hayes, evidence, seventh hearing, 26 October 2004 (transcript 4.5, p 5)
579. Document A59 (Stirling), p 223
580. Document A59 (Stirling), p 221
581. Document A86 (Goldstone), p 197; doc H5 (Hayes), p 43
584. Bob Hayes, evidence, seventh hearing, 26 October 2004 (transcript 4.5, p 5)
585. Section 173 of the Stamp Act 1882 retained the 10 percent stamp duty on every first conveyance of native land, and 10 percent on every subsequent exchange of native land with a person other than a native.
586. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 518
588. Document I7 (Ngāti Kahungunu ki Tararua closing submissions), p 7
589. Document A47 (McBurney), p 95
590. Document A30 (Mitchell), pp 60–69, 77–78
591. Waitangi Tribunal, *He Maunga Rongo*, vol 2, p 635
592. Waitangi Tribunal, *Turanga Tangata Turanga Whenua*, vol 2, p 468
593. Ibid, pp 468–469
594. Document I17(f) (Crown closing submissions), p 6
595. *Wairarapa Standard*, 16 November 1883 (doc A50 (Stirling), p 172)
596. Document A86 (Goldstone), p 186
597. Document I17(j) (Crown memorandum), p 4; doc I17(a) (Crown closing submissions), p 29
598. Heale report, 5 July 1871, AJHR, 1872, F-3A, pp 4–6 (doc A49(a) (Stirling), p 5)
599. Document S01 (final statement of issues), p 82

**Sidebars**


**Page 411:** ‘Rāniera Te Iho’s Letter to Governor Gore Browne, Kohimarama Hui, 14 July 1860’. Source: Reply from Ngatihungunu 4 *Raupatu Document Bank* 33970a 33970b.


**Page 493:** ‘Niniwa-i-te-rangi: tāna ngawe mō te kooti’. Sources: *Haua Tangata Kotahi, Hatarei, i Thema* (1 December 1894), p 4 (note that the letter is dated 7 Noema (7 November) 1894); doc A118 (Gilling), p 163.


Page 525: ‘Seddon Tries to Recruit Kotahitanga Support’. Source: Notes of Meetings between His Excellency the Governor (Lord Ranfurly), the Rt Hon RJ Seddon, Premier and Native Minister, and Hon James Carroll, Members of the Executive Council Representing the Native Race and the Native Chiefs and the People at each Place, Assembled in respect of the Proposed Native Land Legislation and Native Affairs Generally during 1898 and 1899 (Wellington: Government Printer, 1899), pp 39–47.

Tables


CHAPTER 5

SUFFICIENCY: HOW MUCH WAS ENOUGH?

I want to see every Native supplied with an ample extent of land and with all the means of turning it to account . . .

Henry Sewell, New Zealand’s first premier

5.1 Introduction

So that they could participate in the new colonial world, Māori needed access to new assets – both personal and material – and protection for many of the assets they had already.

Māori communities had human capital, and land, and resources like fisheries – assets they knew all about. They needed to retain them, and required help to do so because the European conception of property was entirely novel and strange. The settlers’ law gave the Europeans’ conception force, and the State backed the law. It was all thus tremendously powerful, and threatened to engulf everything Māori knew and valued.

As well as retaining important assets they already had, Māori needed access to new forms of knowledge and new technologies. They would need new experiences in order to understand what things were done differently, and why things were done a certain way. They would also need access to training, so that they could acquire the skills to use the new techniques and technologies themselves.

Māori also needed the stock-in-trade of the commercial world: sound title to what they owned, and ownership structures that allowed them to control and manage their assets. We discuss title and governance in other chapters, but we mention them here because they bear on the ability of Māori to retain land and to raise capital.

Our focus in this chapter is on land. How much did Māori need to retain in order to participate fully in the new colonial world that was visited upon them? What other circumstances needed to be obtain in order for them to ‘turn it to account’, as Sewell said? And if we can answer these questions satisfactorily, do the same answers apply as the nineteenth century drew to a close, and the twentieth brought diversified means of achieving prosperity? Did Māori now need less land? And what about other imperatives for retain-
ing land: is it possible to calculate what Māori needed to retain for purposes of cultural identity?

5.1.1 What the claimants say
The claimants contend that the Crown failed to follow through on its early promises of partnership and equal access to the benefits of settlement, resulting in a downward spiral for Māori. Counsel for Ngā Hapū Karanga put it like this:

The failure of the alliance, compact or new understanding that Māori believed would be established and maintained at Turanganui, the cumulative loss of land through Crown purchases, the Native Land Court and twentieth century alienations, rapidly resulted in the complete social, political and economic marginalisation of Wairarapa ki Tararua Māori. The failure of the Crown to even attempt to mitigate this loss [and that this] compounded that loss is confirmed in the evidence of Mr Stirling and Dr Gilling.¹

The claimants argue that the Crown should have ensured that Māori retained land sufficient in quantity and quality to give them a real choice about how to participate in the new economy. It should have been apparent to Crown officials – a number of whom were themselves involved in sheep farming – that a few acres would not be enough for either immediate or future needs. ‘[A] substantial amount of land would be required even given the relatively small Māori population . . . ’² Counsel for Ngā Hapū Karanga said that the evidence shows that, as early as 1861, Wairarapa Māori could afford to lose no more land.³ Counsel for Ngāti Hinewaka said that this was certainly the case for them by 1865, and critically contrasted the Crown’s assiduity in acquiring land with its ‘particularly lax approach’ to securing sufficient reserves for present and future needs.⁴

Even by the early 1860s, the Crown might have called a halt to purchasing; instead, two decades after the opening of the Native Land Court and a new system of purchase, there was a ‘growing and compounding scarcity of resources as blocks were alienated or became increasingly fragmented.’⁵ By 1900, there was ‘little or no prospect that the Māori population of the Wairarapa as a whole would have sufficient land to fully participate in the European agricultural practices of the time that underpinned the developing settler economy.’⁶ By this point, Māori were virtually landless, with remaining land assets having to meet cultural needs, and of marginal quality for new opportunities. Even in the northern part of the inquiry district, where land alienation came later in the nineteenth century, by the beginning of the twentieth century Rangitāne o Tāmaki-nui-ā-Rua retained only 11 per cent of their land.⁷ They became ‘spectators in their own takiwa [tribal area], condemned to a subsistence lifestyle.’⁸

Counsel for Ngāti Hinewaka emphasised that a key aspect of the quality of land is the ability to access it easily. Ngāti Hinewaka have been plagued with their inability to get to their reserves, because others own all the surrounding land and are unsympathetic to their plight. Counsel argues that, given the many reserves without legal access, it is unsurprising that Māori owners have sold their land.⁹

The speed at which the circumstances of Wairarapa Māori changed so dramatically influenced how badly they were affected. Counsel for Ngāi Tūmapuhia-ā-Rangi submitted that the Crown’s ‘minimalist’ and inconsistent reserve policy¹⁰ left Māori vulnerable:

It is the suddenness of the change in Māori circumstances that makes the region so different from other regions. It is the suddenness that indicates the causative link between poverty that Māori experienced and the Crown’s initial land purchases. Whereas the Crown in other inquiries has argued that Māori poverty . . . is caused by an amalgam of factors, in this inquiry, the speed, the severity and the contrast with the leasing economy highlights the causative role of the initial Crown purchases.¹¹

As a result, counsel said, Māori were disproportionately affected by outside economic factors because ‘they were
already worse off . . . had fewer cash reserves and fewer productive lands to fall back on.12 They also had more difficulty than Pakehā in raising loans and accessing development assistance.13

5.1.2 What the Crown says
The Crown concedes that it ‘failed actively to protect the lands of Wairarapa Māori to the extent that today Wairarapa Māori are virtually landless and that this was a breach of the Treaty of Waitangi and its principles’.14 It also agrees that the weight of evidence suggests that the potential for insufficiency in this district should have been apparent to it either by the 1890s, or upon receipt of the Stout–Ngata report in 1907.15 From that point on, further land loss would mean that Māori no longer had a sufficient land base for their sustenance and welfare.

But counsel tendered arguments to mitigate the breach and the resulting prejudice. The Crown’s submissions:

- emphasise the Crown’s inability to control the processes of colonisation;
- look at how much land was thought to be sufficient at the time, and query whether the pace of land purchase was as calamitous as the claimants argue;
- question whether land was, in fact, still necessary for prosperity by the late nineteenth century; and
- ask what a realistic framework of Crown policies for providing what Māori needed would look like.

The Ngāi Tahu Tribunal devised a list of considerations to help calculate how much land Māori needed in the nineteenth century. Their approach looks at land loss over time, and takes into account factors like the changing tribal demographic and lifestyle, patterns of land and resource use, and economic opportunities available to Māori in the district.16 However, the Crown rejected a direct comparison with Ngāi Tahu, submitting that conditions in this inquiry district meant that its breach in failing to ensure that Wairarapa ki Tāmaki-nui-ā-Rua Māori retained sufficient land had substantially less impact. Counsel submitted that Ngāi Tahu, who lost most of their land very early on, were in immediate crisis. Here, though, iwi were buffered by the fact that they still retained 40 per cent of their land base after the first wave of Crown purchase, and by a more managed process of land transfer in the Native Land Court period. Unlike Ngāi Tahu, Māori of this district were not left generally unable to earn ‘an adequate livelihood’ either from their landholdings, their activity in other sectors, or a combination of the two.17

The Crown also questioned the link between land ownership and prosperity. Counsel argued that landlessness was only significant to prosperity if Māori were not fully integrated into the economy, and were to remain a rural people. In the nineteenth century, the Crown told us, well below 20 per cent of the New Zealand workforce obtained their livelihood from farming.18 The Crown did not accept that hapū and iwi ‘could or reasonably would rely on a land base’ for the ‘economic sustenance of all their members’.19 By the end of the nineteenth century, the Crown asserted, the New Zealand economy was town-based, and prosperity no longer depended on land ownership.

The Crown downplayed the link between its policies, landlessness, and the impoverished circumstances of the Māori people of Wairarapa ki Tāmaki-nui-ā-Rua. Counsel submitted that contemporary comment on poverty, in the 1860s, applied to individual chiefs only and was ‘flamboyant’. (The reference here is to Searancke’s correspondence.)20

Counsel for the Crown told us that it is anachronistic to expect nineteenth-century governments to determine what was best for their citizens.21 According to economist Gary Hawke, on whom the Crown relies, the role of the State in the laissez-faire nineteenth century was to provide the conditions in which private business could be competitive, and which would allow for ‘an optimal outcome for society as a whole’. Governments ‘were not expected to “look after individuals”, they were expected to try to ensure that individuals had opportunities to look after themselves’.22 Any protections that were put in place (like restrictions on alienation of reserves) were not intended to be permanent; they would be dismantled or rendered
irrelevant once Māori were capable of participating in the settler economy.

While acknowledging that Māori score poorly on all socio-economic indices, the Crown questions its role in that outcome, and its connection with land loss.\(^\text{23}\)

5.2 The Waitangi Tribunal on ‘Sufficiency’

5.2.1 Previous Tribunals’ approach

Waitangi Tribunals before us have, of course, looked closely at the Crown’s duty to ensure that Māori kept enough land in order for their welfare to be assured.

The discourse proceeds on the basis that the Treaty envisaged Māori sharing with settlers the prosperity of the new colony. It was recognised that Māori would not necessarily be able to participate fully in its economic life as a matter of course. To ensure they could, Māori needed first to keep (and be helped to keep) the essentials they already had: human capital, land, resources. But they also needed to acquire new assets to help them succeed in a fast-changing world: new knowledge, technologies, skills, and ways of organising themselves and their property. That Māori would need assistance to make these transitions was recognised from earliest periods of settlement; it was part of the Crown’s obligation to protect Māori from the potential devastation of colonisation.

The Muriwhenua lands Tribunal had this to say:

Under the Western economy by which future development could be measured, Māori had two of the prerequisites for growth, as we see it, the people or human capital, and the resource of the land. However, they also lacked two of the essentials: the technology, and knowledge of the necessary infrastructure – knowledge, for example, of the nature of property ownership in the Western economic system. Basically, as we see it, it was for lack of that knowledge, and because they understood an alternative economic regime, that Māori lost most of the land, the essential resource base.

It was also for lack of knowledge and technology that they were unable to develop such land as they retained for pastoral farming . . . \(^\text{24}\)

The Tribunal then identified some questions that would enable it to ascertain whether the Crown had fulfilled its responsibility to ensure that Māori were adequately equipped to meet the new economy:

what steps were taken to ensure that Māori retained sufficient land that a free choice in agricultural development might be exercised in future? What profits did the Government get from the on-sale of Māori land, and how much was put back into arming Māori with the knowledge and technological skills needed to develop the lands remaining to them? . . . In brief, once again, a settlement plan that was sensitive to Māori people was needed if Māori interests were to be provided for.\(^\text{25}\)

The Ngāi Tahu Tribunal inquired into a geographical area that the Crown substantially purchased before 1850. It described the Crown’s duty there in the following terms:

In negotiating with the Ngai Tahu chiefs, the Crown was obliged to have regard as best it reasonably could to the range of demographic factors we have mentioned. Its duty was to ensure that Ngai Tahu were left with sufficient lands for their present and future needs, when settlers arrived in their midst and the land was subdivided. While it might be contemplated that over time Ngai Tahu would become increasingly involved in the new economy, it should have been apparent that this would occur only gradually and over a relatively lengthy time span. In the meantime, generous provision of land and guaranteed possession of eel-weirs and other sources of mahinga kai would be needed. Since it was the Crown’s intention to acquire Ngai Tahu land as cheaply as possible, there was a correlative duty to ensure that adequate land of good quality was left in their possession so that they would, as Lord Normanby

\[\text{Page 559}\]
contemplated, later enjoy the added value accruing from British settlement. Sufficient land would need to be left with Ngai Tahu to enable them to engage on an equal basis with European settlers in pastoral and other farming activities.26

The factors that the Ngāi Tahu Tribunal said should be considered in assessing what extent of land would be sufficient were:

- the population of the tribe;
- the land occupied by the iwi/hapū, or over which it had rights;
- the principal food sources and their location – involves an assessment of the level of dependence on fishing, seasonal harvesting, hunting, mahinga kai (traditional food gathering), and so forth;
- the location of wāhi tapu (sacred places);
- the likely impact of European farming practices;
- the tribe's needs at the time;
- the tribe's reasonably foreseeable future needs; and
- the need for the land to comprise contiguous blocks in areas the tribe customarily occupied.

The Hauraki Tribunal asked what might reasonably have been done at the time of the events under consideration, because: 'Notwithstanding the perennial quality of Treaty principles, historical contexts cannot be ignored.'27 Even so, they were able to find many nineteenth-century acknowledgements that Māori needed to be protected from the fate that befell most indigenous peoples under European colonisation. The Hauraki Tribunal argued that although the Crown's early idealism was compromised by settler politics, there was nothing to prevent governments from intervening to ensure Māori also benefited from the new economy; they were, after all, perfectly ready to intervene to promote economic development on behalf of settlers.28

They found that in Hauraki, the Crown failed

- to ensure access to market prices;
- to establish trusts and appropriate management structures;
- to ensure that Māori retained sufficient land for earning income;
- to provide opportunities for Māori to gain commercial experience – the Tribunal argues that Māori 'could not gain relevant knowledge and skills as economic managers unless they had experience as landlords, or entered into joint venture arrangements with colonists.'29
- in providing only short-lived assistance for Māori trade and agriculture – this failure included not helping Māori to acquire skills, but is conditioned by the generally limited Government involvement in technical and commercial education in this period.30

The Tribunal acknowledged that a good deal of the land in the Hauraki district would not support successful commercial enterprise or give 'good livings' for all Māori, particularly when population increased. But because they became landless so quickly, there were few communities able to 'maintain a core of customary life and values on papakainga land.'31

The Tauranga Tribunal also considered that the Crown's duty to ensure that Māori retained sufficient land could require it to help them take up the opportunities presented by the new economy:

However, the principle of active protection goes beyond the Crown's obligation to protect specified resources, as spelled out in article 2 of the Treaty. As several Tribunal reports have argued, the Crown also needs to ensure that Maori retain a sufficient endowment of land and other resources, and receive effective Government aid to fully develop them in order that they can share in the economic benefits that have flowed from colonisation. The fiduciary obligation also applies to other aspects of Government policy, such as providing for the health and welfare of Maori. Such affirmative action is not a modern invention but was explicit in Normanby's instructions to Hobson and in both the preamble and article 3 of the Treaty.32
5.2.2 Our approach
Reflecting on other Tribunals’ opinions, and on the evidence and argument we heard in this inquiry, we think that in order to have sufficient land, Wairarapa ki Tāmaki-nui-ā-Rua Māori needed to retain enough so that:
- they would be in a position to benefit from its increase in value to make up for what they sold at low prices;
- it could be used in new commercial activities, either directly or as security for raising capital;
- it would meet communities’ ongoing cultural and resource needs; and
- retained or reserved land near new Pākehā settlements would provide Māori communities economic opportunities to trade and provide services to new settlements, along with opportunities to acquire new skills, new ideas and new technologies.

In other words, the location and extent of retained land would be such that Māori communities could engage fully with the colonial economy if they so wished.

These are not modern notions of sufficiency, and nor do they retrospectively impose unreal expectations on nineteenth-century governments. Colonial law-makers articulated these very ideas – but other views ultimately prevailed. And so it was that by the early twentieth century, Māori communities in our inquiry district were reduced to the state that many officials and commentators had predicted for the previous 60 years. They were poor, owned land of only marginal quality in an unsatisfactory tenure, and were often heavily encumbered by debt. People depended for survival on itinerant wage labour, or, increasingly, were forced to leave the area altogether for employment.

5.3.1 What was the Government’s duty?
Well before 1860, the Crown acknowledged that it had a duty to ensure that, when purchasing land, enough remained in Māori hands to meet their own needs. Such acknowledgements continued into the twentieth century. But right from the beginning, there was a failure to define what Māori needs might be and for what purposes protections might be implemented. Despite this lack, as we saw in chapter 38, there was much early talk about Māori needing to retain ‘ample’ land for future as well as present needs. Governments also acknowledged on occasion a responsibility to help Māori turn their resources to account, and to improve their living situations, knowledge, and skills so that they were ready to meet the challenge of participating in expected new opportunities.

When negotiating the opening up of this district for settlement, ‘ample lands for their present and future needs’ was very much the language the Crown deployed. Chapter 38 explained how it was envisaged that this would be achieved by reserving land from purchase. The colonial legislature made similar assurances as it became more directly involved in matters of land purchase and Māori governance.

As the colony developed, some colonial policy-makers continued to recognise the need for Māori to retain ample land for both present and future needs. But at the other end of the scale, they also held the view that ‘sufficient’ might mean only ensuring that Māori did not divest themselves of their entire tribal estate. Certainly, there was concern to protect Māori from inadvertently selling too much. But it was often motivated less by the conviction that they needed land so that they could participate on equal terms in the future development of the colony, than by self interest. Settlers did not want Māori to be a burden on the new society – or, even more worryingly, a threat. Thus, it was accepted that protections of some kind must be put in place, for otherwise Māori would inevitably succumb to the very great pressure on them to sell, and would unwittingly pauperise themselves. And if Māori lost everything and had no stake in the future of the colony, might they not undermine its stability?

How much land was enough, and how Māori should be protected from selling too much, were much debated.
It was generally thought that reserving areas – especially valued sites – from large-scale purchase of ‘waste land’ would help to civilise Māori, and would also reduce possible threats from them. They would progress if they used land in more acceptable ways. Settled on a limited and defined property, they would work to improve it, and experience the reward of its enhanced productivity and rising capital value. For many colonists, the key was for Māori to give up hunting and gathering, and to congregate permanently in one spot instead of migrating seasonally. This view is articulated clearly in this extract from the address of acting Native Secretary Francis Dart Fenton, who would later lead the land court, to the Board of Native Affairs inquiry in 1856:

Though at present the Maori cultivator is possessed of three or four small patches of land, generally removed at considerable distances from each other, amongst which his time is divided, yet the obstacle presented by this custom will not be difficult of removal. Having an object before him, and the means of attaining it, he will readily concentrate his exertions on the spot from which the prospect of speedy and ample recompense appears most certain. This will be achieved by fixity of residence. And the success of the small body of new farmers will quickly raise up imitators, many of whom will settle in the immediate vicinity of the exemplar farm, and thus will gradually be secured the thickening of the population. [Emphasis in original.] 33

5.3.2 Native Territorial Rights Bill 1858

Crown historian Bob Hayes explained to us the strategy of the Sewell ministry when, in the late 1850s, it wrested responsibility for Māori governance from the Governor and worked to speed up the process of European settlement. Resolution of Māori land claims – that is, determining who owned exactly what – was seen as essential to that process, and was accompanied by an acknowledgement of the need for protections of some kind. Hayes pointed to the Native Territorial Rights Bill 1858 as an important indication of the thinking of the time.

The authors of the Bill intended to establish a means of investigating Māori land claims, a native title register, and a way of issuing Crown grants when certain criteria were met. 34 Native Minister Richmond mentioned, in introducing the Bill to the House, that the Government had originally intended to establish a ‘Native Court’ but had decided against the idea, favouring the more ‘prudent’ option of the Governor-in-Council deciding what claims it would investigate and for which land it would issue grants. 35 Once this had been done, and land had been granted, surveyed, and registered, certain areas were to be permanently set aside for Māori, leaving the rest available for Crown purchase. Section 10 of the Bill empowered the Governor to prohibit or restrict the alienability of any land held under Crown grant. Richmond explained to Parliament why such a provision was necessary:

The estates created by these grants might be alienable or inalienable. To speak first of the latter class. It is thought that in some cases it might be desirable to restrict sales by natives of lands comprised in these grants. Great evils would arise should there grow up in this country a wandering and lawless class of Natives, occupying a position like that of the gypsies in Europe, without fixed habitations, and uninfluenced by those principles and institutions which would gradually civilize them, and prepare them for the enjoyment of their rights and privileges as British subjects. 36

Thus we see that Richmond recognised a duty to control the process of colonisation. It is clear, though, that his primary motivation for creating protective mechanisms for the land Māori retained was to prevent their becoming landless. Sewell’s vision went further, though. The following year – 1859 – Sewell spoke about the desirability of every Māori having land of ‘ample extent’ and ‘all the means of turning it to account’ (as quoted at the beginning
of this chapter). There is a future focus here that goes well beyond simply a concern to protect Māori from poverty, or to sustain them (as the Hauraki Tribunal commented) ‘in a bare subsistence’. This was so even though his policy was still predicated on the idea of opening ‘waste lands’ for settlement.

### 5.3.3 The Governor’s approach, 1859–60

Governor Gore Browne shared the general assumption that Māori tenure had to be changed, but compared with Sewell, he had a narrower view of what sufficiency might involve. He expressed support for ‘tribes, families, and particular individuals’ being able to ‘define and individualise their properties’ while being protected from pauperising themselves. At the same time, he too emphasised the need to avoid possible harmful social effects. In a ‘memorandum of replies by the Governor to a deputation of gentlemen’, published in the *Southern Cross*, Gore Browne explained:

> That in adopting such a system it would be necessary to make safe provisions against individual improvidence, and to guard society against the consequences to which it would be exposed if natives were permitted to pauperize themselves, and consequently to become reckless. I have long entertained this opinion and have expressed it more than once, but legislation is necessary to enable me to carry it into effect.

The Native Territorial Rights Act was disallowed, and Hayes told us how, over the next year, colonial law-makers devised a number of other schemes generally in keeping with its objectives, but they came to nought.

Governor Gore Browne himself proposed a native council, comprised of two members nominated by the Colonial Government and five nominated by the Governor. The council would be empowered to ‘secure to individuals of the Native race under Crown title of a sufficient extent of land’ that would be ‘inalienable except by the consent of the Governor in Council; and where such a course appears necessary, to clothe well ascertained native title with a Crown grant, which shall be alienable in the usual manner’. Land not secured in this way would be available for purchase.

By this time, however, the colony had moved to war, and the Sewell Ministry would not accept a native council with executive powers, insisting that responsibility had to be vested in Government Ministers. So Gore Browne’s proposal went nowhere, and Hayes told us that the Native Council Act that the New Zealand Parliament later passed was a ‘significantly modified’ measure. This council had power only to advise on questions of title and what land should be kept for Māori.

### 5.3.4 Protections under the Native Land Court

When a land court was finally introduced in 1862, there were protections against excessive sale of Māori land, but not of a very absolute kind. This was a measure of the ambivalence that characterised the thinking of colonial politicians.

The Governor was empowered to enter a restriction against sale in a certificate of title after the court’s investigation, whenever it should ‘appear to him requisite for the future benefit of the Native proprietors or their descendants so to do’. However, the power of the Crown to revoke any such restriction was very carefully and fully protected:

> the Governor may at his discretion make such Grants and settlements accordingly [to be reserved from sale] and any such Deed of Grant or settlement may contain powers revoking all or any of the estates or interests thereby limited or created and of appointing or creating new estates of interests in lieu thereof either for the purpose of resettling the Lands comprised in such Grant, or any of them or for effecting any sale exchange mortgage or lease thereof or for any other purpose whatsoever, such powers being exercisable by or at the discretion of any
person or persons to be appointed or designated in that behalf by such Deed of Grant or Settlement.42

The 1865 Native Lands Act also acknowledged the need to include protections for land by providing for the imposition of restrictions on land alienation. In the first instance, however, the Court was empowered, but not actually required, to take evidence on the ‘propriety or otherwise of placing any restriction on the alienability of land’ and could only recommend that this be done. This system remained in place (with modifications) for the next forty years or more. We have discussed the shifting responsibilities and powers for recommending and removing restrictions in chapter 4.

5.3.5 An uneasy tension
Succeeding decades saw this pattern continue. Legislators and legislation spoke the language of protection, but in practice leaned towards flexibility. Clear standards were never enacted that would have enabled anyone to identify the circumstances where Māori land simply could not (and would not) be sold. Restrictions against alienation could always be got around in some way, and this was no accident: the preference was always for discretion to be available to allow land to be sold.

There were obviously a number of competing imperatives at play.

As we have seen, it was clearly understood where permitting the indiscriminate purchase of Māori land might lead. Everyone agreed that those adverse consequences were to be avoided. But at the same time, there was the constant pressure to supply more land for settlers. Promoting settlement and purchasing land from Māori went hand in hand. But where protection and purchasing should begin and end was never really resolved. The minimal requirements that became standard were a kind of default position, because the essential contradiction between meeting settlers’ demands for land and protecting Māori interests was never honestly confronted.

Another element was the preparedness of Māori landowners to sell. Presumably, this readiness arose from a combination of desire and need for money, and a failure fully to appreciate the consequences of divesting themselves of their major asset. So should the Government, who could see the consequences, step in? On this question, too, there were factors pulling in opposite directions. On one side were the imperatives of protection, motivated by concern for Māori welfare, and for the long-term health of the colony. On the other side was philosophical commitment to individual ‘free agency’ that militated against stepping in, and promoted instead the right of Māori to deal with their own land as they saw fit. This was articulated by Justice Minister Stafford, who explained to the Legislative Council when passing the Native Lands Frauds Prevention Act 1870:

We must not attempt to take the Natives under our protection, controlling their free agency in dealings with their own lands. That would be equally resisted by Europeans and Natives. On the other hand, it was necessary to extend to the Natives the same protection which we provide for ourselves in our own tribunals.43

It is notable, though, that the ideological commitment to free will and Māori exercise of it applied only to the right of individual Māori to sell land. It did not extend to a right to decide to lease it instead, or to the right to exercise free will as part of a collective.

These tensions played out in protective mechanisms that were less than wholehearted, because there was always another agenda that was seen as more important than the protective one. On balance, the drive towards European settlement prevailed, and Māori inevitably gave way to the very strong pressures that policy makers knew they would face, and to which they knew Māori were likely to succumb.
5.3.6 Debate continued

While protections continued to be duly included in legislation, debate continued about what they were intended to achieve. Such ambivalence was, of course, a disincentive to developing more effective implementation and oversight.

For example, Sir William Martin wrote to Donald McLean in 1871 about the operation of the Court, saying that there were still:

different theories . . . current. Some think that the object of the Court should be to create a body of wealthy Native proprietors, through whom the Government may influence the mass of the people. Others think the sooner all alike are brought to the condition of day-labourers the better.44

Colonel Theodore Minet Haultain, professional soldier and politician, fell into the first camp. Reporting to McLean on the working of the Native Land Court in the same year, he mused that ‘it would be no bad rule to lay down that each Maori chief should have amply sufficient to maintain himself like an English gentleman, supposing him to put forth the necessary industry and energy for its cultivation’. But Māori should not retain so much land that they would be able to ‘live in competence and ease, without exertion or stimulus to healthy industry’. And, quite certainly, segregation of Māori and Europeans would be the option ‘most fatal to the [Māori] race’.45

So prominent people were debating how much land Māori should retain and what the consequences were likely to be of greater or lesser retention. But really, it seems that the questions were mainly theoretical, because the dominant view was that Māori should not be able to live predominantly as landlords. Thus, although the terms most often used to describe protected land – for example, as being ‘sufficient’ for ‘maintenance and support’, or ‘occupation and cultivation’ – were capable of a wide range of interpretations, in practice they came to mean land adequate for subsistence living.

Another theme of the discourse about protection was whether Māori could be, or should be, saved from their own profligacy. The legislative provisions set up to ensure that Māori retained some land never went as far as conferring absolute protection on reserves, and so inevitably the purchase of remaining Māori landholdings continued. Criticism of this state of affairs tended to focus not on the system itself, but on Māori – even though the consequences of not implementing comprehensive protection of Māori tenure of land were foreseen decades earlier. Nevertheless, some commentators claimed to be surprised. Fenton (then chief judge of the Native Land Court), for example, said that it was unexpected that Māori should respond to the land laws by flocking to the Native Land Court with improvident plans to sell. One could not expect the State to ‘make people careful of their property by Act of Parliament, so long as their profligacy injure[d] no one but themselves.’46 Even the more sympathetic Pākehā commentators, such as Haultain (who criticised the costs of the Court system, and the dispossession of those excluded by the 10-owner rule), thought the culpability for land loss lay largely with Māori. Rangatira (chiefs), he said, were ‘almost pauperised, having in their improvidence and extravagance made away with the greater part of their landed interests’.47

In similar vein, Native Minister John Bryce – always unwilling to give native committees effective powers when it came to the management of land – was quick to lament that Māori so often wished ‘to satisfy their present desire for money or what it will procure . . . never I think considering the requirements of succeeding generations in view of which the restrictions are no doubt specially imposed.’48 At the same time, Bryce was attempting to ‘open up’ large areas of Māori land to purchasing. Concern about future impoverishment did occasionally lead to reluctance to sanction the removal of restrictions. But consent would usually be forthcoming somewhere along the line, and landlessness was very rarely raised as a reason for refusal, even though politicians like Bryce and Richard Seddon were already perceiving it to be a local problem in the late 1880s.
However, it was left to decision makers to determine the meaning of key concepts like sufficient land and maintenance; whether land was sufficient of course turned on what was comprised in ‘maintenance’. Maintenance can be either minimal or ample. And what was the context for the decision? Were the needs of individuals to be assessed in relation to their hapū or otherwise? And what about rangatira? Did they require a different level of maintenance? The legislation left all these critical questions unanswered.

It was not long before fresh criticisms of abuses in the land purchase system renewed the discussion about possible reforms. In the early 1870s, Crown purchase agent Donald McLean requested that Sir William Martin, formerly the first chief justice of New Zealand, draft two bills – one concerning native reserves, and the other the Land Court. Under his reserves measure, current and future reserves would be ‘inalienable except by authority of an Act of the General Assembly’. This was more stringent protection than seen before. In his explanatory notes, Martin commented that ‘if the Native people are to be quiet and contented subjects, they must have assured possession of settled homes, and of a sufficient quantity of land for cultivation’. He saw that Māori would require help: ‘If the Natives are to advance in civilization, or even to maintain their present position, there must be some provision made for these general purposes which cannot be fully attained by private efforts and resources, and for which we commonly have recourse to endowments and public funds.’

When McLean introduced the Native Land Bill, he emphasised the need to retain land for Māori communities (not just for individuals):

the chief object of the Government should be to settle upon the natives themselves, a certain sufficient quantity of land which would be a permanent home for them, against which they could feel safe and secure against subsequent changes or removal; land, in fact, to be held as an ancestral patrimony, accessible for
occupation to the different hapu of the tribe, to give them places they could not dispose of, and upon which they would settle down and live permanently.\textsuperscript{51}

Unfortunately, these admirable aspirations were lost on the way through to enactment. The Act conveyed a different concept of ‘sufficient land’ altogether, requiring retention only of a bare minimum acreage, calculated on a per capita basis. This was not conveyed in the preamble to the Act, which emphasised retaining sufficient land for Māori support and maintenance, and providing their ‘permanent general benefit’:

Whereas it is highly desirable to establish a system by which the Natives shall be enabled at a less cost to have their surplus land surveyed, their titles thereto ascertained and recorded, and the transfer and dealings relating thereto facilitate: And whereas it is of the highest importance that a roll should be prepared of the Native land throughout the Colony, showing as accurately as possible the extent and ownership thereof, with a view of assuring to the Natives without any doubt whatever a sufficiency of their land for their support and maintenance, as also for the purpose of establishing endowments for their permanent general benefit from out of such land.\textsuperscript{52}

This was misleading; in fact, what it all boiled down to was requiring retention of a bare minimum acreage that became fixed in law from this time forward:

no land reserved for the support and maintenance of the Natives, as also for endowments for their benefit, shall be considered a sufficiency for such purposes, unless the reserves so made for these objects added together shall be equal to an aggregate amount of not less than fifty acres per head for every Native man woman and child resident in the district.\textsuperscript{53}

Although district officers were supposed to set apart – in consultation with Māori – a ‘sufficient quantity of land in as many blocks as he shall deem necessary for the benefit of the Natives of the district’, the minimum provision became the benchmark. And unlike earlier legislation, this Act did not require the court to look into whether restrictions on alienation should be entered on the title. The Native Reserves Act passed in that same year, and it too failed to enable the new commissioners for native reserves districts to restrict alienation proactively. If Māori wished to set aside new reserves, they could do so, but were required to convey the land concerned to the native reserves commissioner of the district.\textsuperscript{54}

So the regime as enacted ensured the retention in Māori hands of only 50 acres per capita, and the likelihood that titles would restrict alienation diminished.

This was at a time when viable farms in our inquiry district ranged from 5000 to 30,000 acres for sheep, while dairy enterprises outside the fertile valley areas needed ‘scores to hundreds of acres’.\textsuperscript{55} Historian Bruce Stirling describes the 50 acres as a ‘nominal requirement’ and says that the district officer scheme outlined in the Native Land Act 1873 ‘remained essentially a dead letter’. In our inquiry district, he found no reports from a district officer regarding reserves. It may be that no district officer was ever appointed in the Wairarapa to administer the 1873 Native Land Act.\textsuperscript{56}

The language of the early purchase period, with its assurances of protections for ample lands, was already very much a thing of the past by the late nineteenth century. However, it is worth noting that there was a brief period in the 1880s when such language anomalously reappeared. This was when governments were trying to reassure Rohe Pōtæ peoples that they could safely open their land to settlement. So, for instance, the Native Reserves Act 1882 provided that where a native reserve was subject to any restriction, and the Public Trustee applied to have that restriction removed, the Native Land Court had to be satisfied that there was ‘a final reservation amply sufficient for the future wants and maintenance of the tribe or hapu’. The measure appears to have had little effect.

During the Native Land Laws Commission 1891, Native Under-Secretary Lewis suggested that ‘liberal reserves’
should always be set aside from Crown purchases, and should be granted to Māori with titles ‘as nearly as possible . . . assimilated to our own’. In his view, ‘if a Maori was reduced to 50 or 100 or even more acres, and it was known that that was all the land he had, assuming it was land of fair quality, he should not be allowed to dispose of any of it’. But colonial politicians were not prepared to go so far.

5.3.8 Looming landlessness

In 1893, the Native Land Purchase and Acquisition Act set a new standard for acreage to be retained and placed responsibility for ensuring it was met squarely on the Crown. This Act also took some account of the quality of the land to be retained – the first time the quality of the land was factored into how much land people would require. Thus, section 15 provided:

Before the completion of any sale and conveyance to Her Majesty, the Governor shall ascertain whether any of the Natives having shares and interests in the block . . . proposed to be acquired have other land, sufficient for their maintenance; and if not, then there shall be reserved for the use of the said Natives who have no other land such area of the whole of the block . . . as the Governor thinks sufficient; or the Governor may acquire the whole block, and . . . set apart out of Crown lands such land as he thinks fit for the maintenance of such Natives:

Provided always that no land reserved for the support and maintenance of the Natives shall be considered a sufficiency for such purpose if the quantity so set apart for every Native man, woman, or child is less than twenty-five acres per head of first-class land, fifty acres per head of second-class land, and one hundred acres per head of third-class land.

Then, as the new century approached, Māori criticism of the diminution of their landholdings became more strident. Māori member of Parliament James Carroll warned Parliament that the likely result of the crippling debts of Wairarapa Māori would be landlessness. This would violate ‘one of the most important principles which we have allowed to govern our native land legislation for ages . . . that the native were not to be entirely denuded of their land’. Seddon took up the issue in his discussions with the Kotahitanga Assembly in 1898. His Government then prohibited new purchases until it could introduce legislation acceptable to Māori and to the Colonial Legislature. The result was two companion measures: the Maori Councils Act 1900, which set up local councils at a tribal level to deal largely with social issues, and the Maori Lands Administration Act 1900.

Seddon had assured the Kotahitanga Assembly at Pāpāwai that, when it came to reserves, the new legislation would be characterised by a spirit of generosity. This is not easily discerned in the legislation as passed, though. We go into more detail about these legislative measures in the next chapter, which is on the management of Māori land in the twentieth century. Suffice to note here only that, once again, elevated language about what each Māori needed for support and maintenance in practice boiled down to the same minimum acreages as in the 1893 Act (25 acres of first-class land, 50 acres of second-class, or 100 acres of third-class). Then legislation in 1905 again facilitated the removal of restrictions on alienation, though the basic minimum for a sufficiency was retained.

By this time, though, reforming the legislation concerning how much land was sufficient was increasingly of only academic interest to Māori communities in this inquiry district, for their landholdings were insufficient already (as the Crown has conceded). It is not hard to see why. Even in 1907, when the Stout–Ngata commission assessed the whole state of Māori land, there was still a ‘pressing demand’ to purchase it. Also unsurprisingly, they identified clearly the ‘danger of the Maori, if unchecked, divesting himself completely of his interests in land’. They also knew that this danger had ‘long been recognised’, and that no government had really been intent upon doing much about it. Even while Stout and Ngata were busy investigating
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Claimant witnesses told us of Māori farming that was at a subsistence level. Their memories go back as far as the first half of the twentieth century, and dwell fondly on a slower and happier time. Poverty and physical hardship, although present, do not predominate in the recollections we heard.

People supplemented low wages by being self-sufficient in food, and by living as part of a cooperative community. Whānau hunted and fished, and kept a vegetable garden, an orchard, and perhaps one cow to provide milk and a little butter for barter. Milking for town supply or market gardening was the exception rather than the rule.

Kingi Matthews spoke of being from a big family and having ‘everything provided by the land’:

We were self-sufficient. We would catch eel from the rivers, and food from the forests. We all had different areas where we fished. Later on when we were wealthier . . . Jack Matthews gave us one cow. From that cow we got the butter, which we would take to the shop and swap for things. We also had acres where we grew potatoes. But all those days are gone now. There is not enough land to be self-sufficient if we wanted to be.

Charmaine Kura-o-Tahu Kawana recalled the day-to-day routine:

When we lived with our grandparents, we had chores to do on a daily basis. The boys collected buckets of water from the well down the bank to fill the copper for hot water and we also collected milk from our neighbour. We had a huge vegetable garden and most of us at some time worked with our Poua in the garden. We all had an important part to play. The system worked well. The Māori families shared what they produced off the land and gathered from the river and although we lived our own lives, we shared in a communal way, which gave support to each other.

Tikitikiorangi Vernon (Dick) Te Whaiti remembered tough times:

We never had enough land to make a living on at Kohunui. My father milked some cows but he had to run a shearing gang to keep enough money coming in for the family. The land that our people had at the Coast . . . was all very poor farmland.
dwindling Māori landholdings, the Government – under considerable political pressure – began to abandon the link between land and maintenance for Māori individuals or tribal entities. It passed another Native Land Settlement Act in 1907, and then the major Native Land Act 1909. This defined a ‘landless Native’ as a ‘Native whose total beneficial interests in Native freehold land . . . are insufficient for his adequate maintenance’. But then section 425 allowed the Governor, acting on a recommendation of a Maori Land Board, to confirm alienations of land causing landlessness if the owner was able to maintain himself by his own means or labour. Section 91 of the Native Land Amendment Act 1913 (a Reform Government measure) continued this trend, simply providing for confirmation of alienation where the person alienating was ‘qualified to pursue some avocation, trade, or profession, or is otherwise sufficiently provided for with a means of livelihood’.

5.3.9 Summary
Looking back over this period, then, we can discern some clear patterns in how the Crown dealt with the issue of ensuring that Māori retained a ‘sufficiency’ of land. Over time:

- what ‘sufficiency’ meant reduced, falling ever nearer to the minimum required for subsistence;
- sufficiency was assessed in terms of an individual’s minimum requirement, with no consideration for the needs of the community;
- the need to protect an additional store of land for future opportunities was no longer recognised;
- permanent protection of some land gave way to the idea that land needed to be protected only for a limited period; and finally
- the unflagging enthusiasm for purchasing Māori land eroded any real commitment to genuinely protecting Māori landholdings, although the rhetoric of protection persisted and even strengthened as landholdings diminished.

5.4 What Comprised ‘Sufficient Land’ in Wairarapa ki Tararua?
5.4.1 Introduction
The Crown asserted that, by the late nineteenth century, Māori communities of our district no longer needed or expected to rely on land for their livelihoods or prosperity, and this mitigated the effects of landlessness.

To examine this assertion, we turn first to an assessment of what land was retained by Māori in our inquiry district at the beginning of the twentieth century. The Crown conceded that there was landlessness by this time, so we need only to outline the contemporary circumstances that ought to have made the situation evident to the Crown then. We investigate what was really required for Māori to be able to participate in the developing Wairarapa ki Tararua economy, and compare this with the minimum acreages laid down in law.

5.4.2 Enough land left to run sheep?
We argued in chapter 2 that the economic development of the region was based on large-scale pastoralism rather than small farming. Yet as at 1865, Māori in Wairarapa ki Tararua had already lost almost 60 per cent of their landed estate; those in the southern portion of the inquiry district, a staggering 76.7 per cent. Nor was that the end of it. By the turn of the century, as noted above, only 10.7 per cent was left (10.6 per cent in the south and 11 per cent in the north). In 1901, the Māori population were 5 per cent of the total population in the Wairarapa ki Tararua district, excluding Mauriceville County. By 2003, Māori still comprised 5 per cent of the population, but by then only 1.5 per cent of the land was Māori land. As already noted, most of the land in the remaining blocks is poor, often with difficult access and other problems: awkward location, shape or size, and too many owners.

According to historian Tony Walzl, the total land owned by Wairarapa Māori in 1900 was ‘168,950 acres in almost 101 blocks’. This left them few options. Walzl comments: ‘For a number of blocks by 1900, there was very little utility
for the owners to keep them. This might be because the blocks were too small, too isolated or too marginal in quality.\textsuperscript{64} He gave examples, such as the 15-acre block remaining from the original 500 acres reserved at Mangapōkia. The block had no road access, and was too small to be of any use to anyone except the Pākehā owner of the adjoining property (and although it seemed in 1900 that 15 acres remained, in 1913 it became clear that actually it was only eight: as the other seven were sold in 1897.\textsuperscript{65} Then there was Waikopiro 2B2C to the south-east of Norsewood, which, according to the valuer's report of 1916, was of very poor quality, lacked road access, and had a carrying capacity of one sheep per 10 acres;\textsuperscript{66} Waikopiro B15, which the commissioner of Crown lands assessed in 1927 as 'not sufficient by itself for a person to make a living off',\textsuperscript{67} and one of the remaining Mangatoro subdivisions, which the owner had to sell in the 1930s because the cost of its upkeep exceeded income.\textsuperscript{68}

We find it difficult not to conclude, also, that the reason the one really large block (at Mātaikona) was still in Māori hands at the turn of the nineteenth century was because no one – not even the Government – wanted it. It was third-class land that would prove unsuited for development. Yet, for its owners, it was better by far than nothing. It gave them their only substantial landholding, opportunity to participate in the land development scheme in the twentieth century, and guaranteed access to what coastal resources remained.

As we shall see in chapter 6, the land management innovations of the twentieth century did not succeed for Māori, and sales of their remaining landholdings continued until relatively recently. Historian Dr Bryan Gilling gives examples from the 1960s, when owners reluctantly sold blocks because they were too small, scrub-covered, lacked access, or were a mix of the three, making them viable only as part of larger properties – which, by then, were invariably owned by Pākehā. Such blocks included Hinana 2A (152 acres), Hinana 1B2 (32 acres), Hinewaka 3B (34 acres), Waipuna (61 acres), Ahirara (45 acres), and Mangatoro 1A3C4, 1A3C5, and 1A3C7 (56 acres each).\textsuperscript{69}

### 5.4.3 Large-scale pastoralism

The data provided in the previous section show that, as early as the 1860s, the extent of Crown purchasing meant that whatever future was in store for Wairarapa Māori, it would not be primarily as owners of large sheep runs.

The Crown says that because Māori still had 40 per cent of the land in the wider district after the initial waves of purchasing, they were left with a ‘buffer’. But what does a ‘buffer’ mean in this context? We think the core question remains: was the land they retained enough, or wasn’t it? And the next question must be, enough for what? We think the obvious answer to that question is ‘enough for large-scale pastoralism’, because:

- at the time, large sheep runs were the land use of choice in this district;
- as landlords in the early leasehold arrangements, Māori were involved with and around people engaged in sheep farming; perhaps they even provided labour from time to time. Presumably this was really all they knew of European-style agricultural activity and commercial farming;
- as far as we can see, Māori were not introduced to other land uses that might have enabled their engagement with the new economy.

Those few Māori who did manage to move into sheep farming were all leading rangatira – men who had dominion over larger landholdings. We note in particular Te Mahupuku, H P Tunuiarangi, Iraia Te Whaiti in partnership with a Pākehā man, John Sinclair (whose sister, Mary Sutherland, succeeded him), and Nireaha Tāmaki.\textsuperscript{70} Otherwise, Māori participation was ‘minuscule’, Gilling told us.\textsuperscript{71} His assessment relies on the official sheep returns for counties in the period from 1880 to 1930, which listed every flock owner and their holdings. Gilling’s analysis shows that the very minor Māori involvement was concentrated in the south of the district, and was shortlived: ‘to the extent that they did establish a toehold’, they were unable ‘to preserve and develop that niche more than a few years into the twentieth century.’\textsuperscript{72}
5.4.4 Small farming?

We have said that the real question about sufficiency in the nineteenth century should have been whether Māori retained enough land and resources to enter the sheep farming industry. But we must of course consider other agricultural alternatives. What else might they have done to derive an income from their land?

First, it is important to register that no assistance was offered to Māori to establish themselves in agricultural ventures. Only very rarely could they participate in the small settlement schemes that were developed for their Pākehā counterparts.

The clearing of land for small farming ventures had met with some success in Wellington and the Hutt Valley. In 1853, the Wairarapa Small Farm Association was formed to attempt the same. The association negotiated with the Government for a 25,000-acre block to be set aside for development, but the political influence of the squatters proved too strong, and the association ended up with two smaller, less desirable blocks of bush land. These formed the basis for the settlements of Greytown and Masterton. Each prospective small farmer was allocated one town acre and 40 ‘suburban’ acres. ‘Rural’ allotments of up to 100 acres could be purchased at a fixed price.\(^{72}\) The Wellington Provincial Government subdivided another 10,000 acres into sections of five to 50 acres at Featherston. Carterton followed in 1857. Each settler received a 10-acre block. The idea was that they would clear and farm the 10 acres when they were not working on making a road through dense bush to Greytown. Mauriceville, established in 1872, was similarly intended to promote road construction and bush clearance, with each settler employed on these tasks getting 40 acres.\(^{74}\)

The expectation was that the suburban acres would support the farmers’ families, while the larger ‘rural’ farms

\[\text{The Waiohine River in the 1870s, when the land was being cleared for farming. The photograph emphasises the difficulties of transportation when the roads were rudimentary and the rivers were untamed.}\]
Sufficiency.

How.

Much.

Was.

Enough.

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would supply the Australian market that had developed with the gold fields. These plans were, however, soon shown to be overly optimistic. The Australian market dried up. Only cereal production showed promise.\(^{75}\) It was realised, by the late 1860s – especially in the more isolated northern settlements – that farms would have to be at least 100 acres to support a family, and this figure edged upwards after that. Settlers on ‘small farms’ depended on wages for economic survival.\(^{76}\) Despite Government assistance, most of the Small Farms Association projects had folded by the 1870s, providing ‘an object lesson concerning the amount of land that was needed to make a farming property viable in the inquiry district at that time’. Even with farming knowledge and assistance, 100 acres was not enough.\(^{77}\)

Why did governments not apply these lessons to calculate how much land Māori needed? Gilling asks this question, pointing out that 100 acres seems to have been the very minimum for settlers to succeed (not to mention technical and farming education, roads, and surveys). Yet the amount of land considered sufficient for Māori was set much lower, as we have seen, and it reduced rather than expanded in the 1890s, while survey costs, even of reserves, often fell on Māori themselves.

There was no readily apparent place for Māori in assisted small-farm development of this era. Only Ihāia Te Whakamairū managed to buy his way in. He purchased a 45-acre section at Masterton and was registered on the property-based electoral roll by 1859.\(^{78}\) Ihāia’s family retained property in the town, but this did not translate to social standing; at the turn of the century, his son’s occupation was listed in the Valuation Department’s Masterton register as ‘Nigger’.\(^{79}\)

Gilling sums up the state of dairy farming throughout the district by the 1890s as ‘stunted and largely ineffective’.\(^{80}\) Prospects for achieving returns beyond a subsistence level were extremely limited. Gilling notes a case study of one small farmer working a 50-acre property in 1890. The farmer ran 11 cows, making an annual income of £38 8s from butter and another £11 14s from vegetables – slightly less than £1 per week. The author of the study considered this sufficient to support a family of four adults and one child, although in conditions of some hardship; it was enough only for the necessities of life.\(^{81}\)

In the early twentieth century, the viability of small dairy ventures and services associated with farming such as employment in dairy factories improved dramatically. This transformed the Wairarapa from the 1890s onwards, and here Māori had a real chance to take their share in the prospering economy, as originally envisaged.

On the basis of the evidence we received, we cannot make a detailed assessment of how Māori responded to the new era of small dairy ventures, but it is clear that it did not prove to be a bonanza for them. Their land was often ill-suited and had title problems. They also lacked the necessary capital.

There were several Government initiatives to assist small farmers, but when they were first introduced in the 1890s, Māori often did not qualify. Later schemes were generally directed to returned servicemen, and although Māori might theoretically have benefited here, Gilling saw nothing to indicate that any Māori were assisted as settlers on Wairarapa land in any of these schemes.\(^{82}\) So although smallholders in the settler population thrived during this period, Māori farming – such as it was – actually contracted.

### 5.4.5 Dairy farming?
Dairy farming was seen, from early on in the colony’s history, as an option for bush-covered areas considered unsuitable for large-scale pastoral production. Was this viable for Māori in our district?

### 5.4.6 Other opportunities?
What other possibilities were there for Māori to develop their land?
(1) Timber
Although not sustainable development, obtaining income from timber as ‘timber royalties’ might have worked in the short term. This is what some Māori in the inquiry district did. But of course, this kind of commercial exploitation of native forest was only a one-off opportunity, and it could conflict with using the land for customary practices.

Gilling gives an example from the twentieth century: the case of Ōkōura 1A, where the owners were able to gain royalties from a licence to cut timber valued at just under £486. The Ikaroa Land Board hoped that a way could be found to ensure that the money conferred ‘some lasting benefit upon the vendors’. However, Mrs Sutherland, whose family had had a long association and business partnership with the Te Whaiti whānau, questioned the likelihood of this happening. She said that the bush had been retained to provide wood for fuel on an ongoing basis, and complained that the new generation was interested only in ready cash. Mrs Sutherland, not being an owner, had no legal standing, and the transaction went ahead. The bulk of the royalties, doled out by the Land Board, went towards living costs (house repairs, debt repayment, medical bills, and clothing) rather than any improvement of remaining land or a new business.

(2) Flax
Flax milling was another option available until the mid-twentieth century. There were a number of mills operating in the district throughout the period – more or less profitably, depending on market conditions. Gilling suggests that there was likely to have been ‘significant Māori participation’ in the collection of flax because Pākehā preferred Māori to do this sort of work; furthermore, Māori were less likely to have drained the swampy land where flax grew. Gilling also speculates that the ‘small boys’ employed on the stripping machines may have been Māori. No further information is available, and we can say no more than that the flax industry might have provided employment for Māori. In practice, it must have been quite limited, because little was reported about it. It clearly did not provide the springboard into prosperity that Māori needed, and probably could not have done so unless they owned and ran the mills themselves, rather than working as mill hands.

(3) Fishing
There was no more potential in fishing. Customary fishing continued to be important (see ch13b), but there was no local fishing port in the nineteenth century, which was a serious barrier to setting up a commercial fishing venture – not to mention the difficulty of access to capital. Even in the second half of the twentieth century, there was little Māori involvement in the local commercial fishing industry.

We note that, in the Murihiku (Southland) area of the South Island, Māori did participate in commercial fishing from very early on. This came about because intermarriage between Māori women and Pākehā whalers led to Māori owning boats. No such circumstances applied in this inquiry district.

5.4.7 Wage labour
Because this inquiry district was substantially rural, and in the period under review Māori were mainly not well educated in the Pākehā sense, a wage provided the only means of supplementing the subsistence living derived from the land. But available waged work was limited: farm labouring, shearing, or domestic service. From the 1930s, people began to leave the district for town employment.

Our assessments are tentative because, again, information on Māori rural employment in the nineteenth century is sketchy. (Records did not consistently document ethnicity.)

(1) Employment on the big sheep runs
What is clear, however, is that an economy based largely on sheep farming was not going to provide much long-term employment for anyone. Indeed, this was one of the inherent failings of the development schemes in the Wairarapa in the twentieth century. Except for the relatively short
a worker could earn an average of £1 per 100 sheep, but rather less (17 shillings and sixpence) from the late 1860s until the twentieth century. At Akitio Station in the 1880s, an experienced shepherd could earn £2 per week. By 1890, this figure increased by less than 10 per cent, but rates for the less skilled were static. Most workers were paid between 25 and 30 shillings per week, plus board and lodging. Lower-paid farm occupations (such as exterminating rabbits and breaking in horses) earned 20 shillings per week, although that income could be supplemented by bonuses, sale of skins, or shearing work during the high season. Most workers were hired on a monthly basis, or were taken on casually at shearing time, or for projects such as scrub-cutting, drainage, and sowing grass. 89

A key question, too, was how many of these jobs went to Māori? The answer, Gilling notes, was dependent in part on the ‘prejudices and preferences of owners and managers’. For example, the majority of employees on Whāngaiamoana Station, after the initial years of operation, were Māori. There was also a high proportion of Māori employed on the Akitio South Station in the late 1860s, but Akitio Station itself seems to have employed none at all in the 1880s and 1890s. Gilling cautions, however, that the records are indicative only, since Māori were often known by anglicised names by this time. 90 Nor is there any way to tell whether these workers were drawn from local iwi. (From the 1870s onwards, the census shows that an increasing number of Māori living in the Wairarapa ki Tararua region were not born there.) 91 It does seem, however, that the people who owned Akitio Station in the 1880s and 1890s were less willing to employ any Māori (whether local or not) than their predecessor had been. Indeed, it seems that Māori generally found it harder to get work on sheep stations because, according to writer John E Martin, ‘most of the available casual work was snapped up by the struggling settlers’. 92 This meant that by the late nineteenth century, Māori were an increasingly marginal workforce, employed only at times when labour was in short supply, such as harvesting and shearing. 93

Nor did the stations require much in the way of a service industry, being largely supplied from outside the district. Thus, according to Gilling: ‘The problem for Maori was that pastoralism on their former lands simply cut them off from another opportunity to be financially successful.’ 88 Because of the limited possibilities offered by an economy founded on big sheep runs, Māori employment was concentrated in seasonal and casual work. In the nineteenth century, they rarely featured in the records as skilled or even as permanent employees on the Wairarapa stations.

When engaged in shearing in the 1850s and 1860s,
(2) Other jobs
Nor, except in the early years of settlement, were Māori generally employed as domestic servants on the sheep stations. Most such positions were taken up by recent British immigrants.

Similarly, State-sponsored employment on roads, railways, and public works in the Tāmaki-nui-ā-Rua district mainly went to newly arrived, Government-assisted immigrants. 94

In our view, then, large-scale pastoralism was the only real avenue to prosperity open to Māori in our inquiry district in the nineteenth century. It was certainly the one Pākehā settlers took up, at least until the 1890s. Other possibilities were more apparent than real, offering economic opportunity only at the most marginal and unskilled level. The local economy did not expand and diversify to any marked extent, but anyway Māori were unlikely to benefit all that much as employees, because of the preference for engaging European workers. Real prosperity depended on their having the resources, capital, and training to be owners, investors, and managers, not labourers.

Dairy farming, which required less land, became less marginal as the end of the century saw technological advances. But most Māori retained only small quantities of poor land in difficult title. This, together with the inaccessibility of State assistance increasingly available to the general population, meant that they could not usually take advantage of the developments in small farming to which we now turn.

5.5 Developments in Small Farming and the Need for Capital
5.5.1 Introduction
It is well known that New Zealanders adopted refrigeration technology in the 1880s and 1890s, opening the way for modern farming based on growing meat and dairy products for the export market. 95 In our district, although older forms of more extensive pastoralism continued along the rugged coastal fringe, the new farming model – based on smaller landholdings – came to predominate, generating major new economic opportunities for small landowners. For example, the small farms and their associated communities that started up at Dyerville and Tāwaha (near Martinborough) in the 1910s and 1920s were made viable by local dairy factories, centred on cheese production. By 1915, there were 22 dairy factories in the Wairarapa and, by 1925, 19 dairy co-operatives, but we do not have comparable figures for the Wairarapa ki Tararua inquiry district 96

This new opportunity arrived at a time when landlessness was becoming a serious issue for Māori communities in Wairarapa ki Tararua, so that those already without sufficient land were effectively excluded. It was not just that Māori often had too little land; it was also a question of land quality. Its suitability for dairying – and for other purposes – was compromised by factors we have mentioned already: isolation, low fertility, steepness, no or poor access, and being split into lots that were too small to be useful or viable. Even where there was plenty of land, as at Aohanga Station (Mātaikona), the land was very isolated and of marginal quality. 97 As well, Māori landowners had difficulty managing land in multiple ownership, and the state of titles was poor. We have already commented on another issue for Wairarapa Māori in the late nineteenth century: high levels of debt. All of these factors militated against Māori successfully entering the new small-farm economy.

Other small landowners also faced challenges. Governments, keen to encourage new settlers into farming, quickly identified problems common to most: the need to acquire knowledge and skills that would ensure the quality of meat and dairy products for export markets; and the need to gain access to reasonable forms of rural credit to develop the new pastures and stock breeds required.

5.5.2 Credit on reasonable terms
In the 1890s, small landowners had difficulty getting credit from private sources because they were regarded
as high-risk lenders. What credit was available to them was on terms and conditions that were too harsh, making debt unsustainable. If small farms were to develop to take advantage of the new opportunities, improved credit facilities were needed.

Government responded by instituting the Government Advances Scheme, which operated from 1894. It aimed to help landowners struggling under a burden of harsh lending to restructure their debt on more reasonable rates and terms. The Scheme was described in an official publication of 1903 as affording relief to ‘a numerous class of colonists’ who had been struggling under a ‘burden’ of high interest rates and heavy legal expenses in obtaining private mortgages. This was echoed in another much later description of the scheme as initially designed to ‘bail out farmers, and later others, who were in financial strife, or could not develop their land because of high interest rates.

Government intervention in lending had two important consequences. First, it directly assisted a substantial sector of the settler community when other avenues were closed to them. This brought a whole class of small landowners into farming at a critical time. Secondly, although the quantity of rural lending by the State never matched that from the private sector, the Advances fund influenced opinion on what terms and conditions were acceptable. Private lenders reformed accordingly, rural lending became more reasonable and responsive to farmers’ needs, and small farmers began to be seen as altogether more credit-worthy.

Māori were not in a position to reap the benefit of many of these improvements, though.

5.5.3 State lending available to Māori?
Māori too needed access to rural credit if they were to develop their land. Claimants in our inquiry argued that a lack of development capital and an increasing debt burden meant they were unable to take up opportunities to make their remaining land assets work for them.

The Crown responded that the reasons for the increasing debt burden were unclear. It did agree, though, that owners of Māori land with multiple shareholders would have experienced difficulty in accessing the finance available to settlers, although a legislative change in 1897 enabled owners of such land to use it as security for loans. The Crown also pointed to evidence indicating that sole owners of Māori land in Wairarapa ki Tararua could obtain advances to settlers loans.

The question is therefore whether the system of State lending was also reasonably extended to Māori landowners of our district so that they, too, could participate in new farming opportunities.

The central North Island Tribunal also addressed this issue. It found that although Māori land was not specifically excluded from State lending, the lending criteria did not correspond with the circumstances of Māori land tenure. Thus, the Tribunal found that the Crown had failed to take reasonable steps that would have extended access to rural lending to owners of Māori land, thereby allowing them to participate in farming opportunities. It could have met Māori landowners’ needs either through the State advances to settlers scheme or through alternative sources of State funding more targeted to Māori needs, but did neither.

On the basis of the evidence we heard in this inquiry, we support the findings of the central North Island Tribunal about the availability of rural lending to Māori. A want of detailed evidence meant that Tribunal could not inquire into how the policies and criteria were implemented, and evidence in this inquiry is similarly limited. Nevertheless, the evidence we do have suggests, we think, that particular circumstances in at least some parts of our district may have meant the system of rural lending was divergently implemented – especially where Māori land had one owner. Also, Stirling noted that some of the legislative provisions that the Crown cites in possible mitigation came into existence as a result of events in our district. Thus, we think it necessary to explore some of these issues a little further.
5.5.4 The Government advances to settlers scheme, 1894
In 1894, when the scheme was introduced, a number of State agencies could lend money. The Public Trust was probably the best known. There was also the Government Life Insurance Office, established in 1869, and the office of the commissioner of Crown lands could also sometimes engage in certain kinds of lending. State agencies tended to have restrictive conditions for their lending and were generally conservative in the use of their funds. Nor were they particularly geared to the needs of would-be farmers. It was easier for them to lend for specific objectives, like surveys and roads, but their funds for lending were relatively small. The Government Advances to Settlers Office, established to administer the 1894 scheme, focused Government lending for the first time on the needs of a large group of small landowners who wished to enter farming. And the funds at its disposal were vastly more significant than those of previous agencies. The Government Advances Office rapidly became by far the largest State lender of funds. In its first 32 years it lent out over £56 million, with profits of £1.5 million. Estimates indicate that it lent to between 35,000 and 40,000 eligible farmers.

Not farmers of Māori land, though. The central North Island Tribunal found that it does not seem to have been contemplated that the scheme would lend on Māori land. Rather, it was expected that most Māori were likely to be excluded from the scheme. State lending for Māori land stayed with the smaller and more conservative State lending agencies – mainly the Public Trust. These agencies remained less focused on farm development, and still had fewer funds and more restrictive criteria. The evidence in our district shows, as it did in the central North Island, that lending on Māori land came through the Public Trustee rather than the Government Advances to Settlers Office.

5.5.5 Limited lending facility specifically for Māori
In the same year, 1894, the Government also made its first tentative steps toward providing limited lending facilities specifically for Māori. Statutory provision for Māori incorporations had just been introduced, and incorporations were the target of the new lending. Legislators were still working on creating the Government advances fund, so this lending was to be provided through the Public Trustee.

Lending to incorporations does not feature in our district, probably because of the many obstacles to getting incorporations off the ground in this period. Certainly, Stirling gave us one example in our inquiry district where the owners’ efforts to establish an incorporation were completely stymied by a cumbersome and expensive process. This happened at Te Kōpi–Waitutuma in 1907.

5.5.6 State lending criteria
Section 117 of the 1894 Native Land Court Act effectively limited new lending on Māori land to State lending agencies. This was not necessarily a problem, because as we have said, private lending at the time tended to be on harsh terms. Indeed, the central North Island Tribunal noted how Māori leaders sought Government assistance with financial advice and expertise, and delivery of these services perhaps should have been through State agencies. But if the Government was the only source of rural lending for Māori land, it had to ensure that Māori lending needs were properly addressed. In fact, the opposite was the case. Criteria established for all lending on Māori land – involving practical restrictions and technicalities that Māori leaders sought to have changed – severely limited the kind of lending that occurred.

Māori leaders wanted the Government to take steps to bring more lending to Māori within the Government advances scheme, but that scheme too was applying the same restrictive criteria to lending on Māori land. Multiply owned land was not suitable, which alone excluded most Māori land. By 1906, other conditions included:

- The land to be offered as security had to be held in fee simple in the applicant’s own name;
- The applicant had to have other land sufficient for their support;
The land on which the advance was to be made had to be leased under a registered lease to a European, with a copy of that lease furnished to the office and rent equivalent to the repayment amounts assigned;

- If a lessee failed to make a rental payment, the applicant had to agree to the office retaining a proportionate amount of the loan to ensure repayments were made during the period the rent was anticipated (a sinking fund);
- Any loan granted had to be subject to the office being satisfied as to the applicant’s title and power to mortgage.\(^{(121)}\)

This was all a far cry from the encouraging and flexible set-up for lending to other small landowners.\(^{(122)}\) There is certainly no acknowledgement here of a State responsibility to Māori as their only source of lending.

### 5.5.7 The Native Land Laws Amendment Act 1897

The Crown told us that although the exclusion of multiply owned land from eligibility for lending did make it virtually impossible for Māori to borrow money against their land from 1878, the law changed in 1897. Sections 3 to 5 of the Native Land Laws Amendment Act 1897 provided for lending on multiply owned Māori land.\(^{(123)}\) The Crown described this change as growing out of, and attempting to mediate, concerns about the restrictive lending regime.\(^{(124)}\)

The Crown also drew this amendment to the attention of the central North Island Tribunal. That Tribunal found, relying mainly on parliamentary debates, that this amendment in fact did not appear to extend eligibility for lending to include multiply owned Māori land. Instead, the amendment was a specific response to particular problems identified at the time. It was very limited and conditioned, and seems to have been relatively rarely used; by 1907, it was considered to have little application.

The central North Island Tribunal did not have before it actual examples of lending under the Native Land Laws Amendment Act. In this inquiry, though, evidence presented to us suggests that this may have occurred in Wairarapa ki Tararua.

Evidence provided to us also indicates that the legislation was passed in direct response to events at land at Mātakitaki-ā-Kupe, in southern Wairarapa (see sidebar).\(^{(125)}\)

### 5.5.8 What did the Native Land Laws Amendment Act 1897 achieve?

The Native Land Laws Amendment Act 1897 did make it possible for the State to lend on multiply owned Māori land, as well as on Māori land with sole owners. But conditions had to be met. First, owners had to show that the land they were borrowing on was not their only land – they had to have other land sufficient for their maintenance. Sections 3 to 5 of the Act required the land concerned to be conveyed by way of trust to the Surveyor-General or local commissioner of Crown Lands, or some other ‘fit person’ appointed by the Governor in Council. This trustee might then borrow on the land upon such terms for sale, lease, improving, or raising money as might be agreed by the parties (or declared by the Governor in Council). The Public Trustee could lend Public Trust funds for the purpose, including to himself where he was appointed such a trustee, and regulations could be made for the effective implementation of this provision.

The central North Island Tribunal noted that although the legislation made it possible to lend for improving land, its real objective was to save Māori land from the consequences of serious debt, and especially from the risk that the land would be lost. The decisions about the land were effectively put into the hands of a trustee, most likely a Government official, and this may have been appropriate where debts were crippling, and the trustee might well be required to manage the land for some time in order to discharge the debt and save the land for future generations. But this was effectively the only source of lending available to owners of multiply owned land, and there would surely have been many situations where the owners should have
The Whatarangi Estate and the Native Land Laws Amendment Act 1897

Bruce Stirling told us about a case that appears to have led directly to the Native Land Laws Amendment Act 1897. The following account relies on his evidence.

The Whatarangi estate

Charles Pharazyn (senior) was a long-established run holder in our inquiry district, who leased land at Mātakiti-ā-Kupe from the mid-1840s. By the 1870s, his son Charles Pharazyn (junior) was employing men to run what had become the Whatarangi estate, while he lived elsewhere. By the mid-1870s, the station supported one of the largest sheep flocks in the district.

Whatarangi estate was a mix of freehold and leasehold land. Like other run holders in the district, the Pharazyns and their agents developed long-standing credit relationships with local Māori, who were their landlords and neighbours. The station acted as a store and depot, with a revolving system of credit based on agreed rentals. In theory, loans or advances were made against agreed anticipated rentals as needed. Money was paid back, and new advances made, as debts and rental agreements rolled over. The advances were used for what soon became regarded as essentials, like medical bills and store goods, and also to pay the costs of bringing land through the court process to formalise lease agreements. The system relied on goodwill and a large degree of trust. While some advances were based on rentals, separate credit might be extended beyond the rent owed. Interest was commonly charged on both kinds of loan. Premiums were generally charged for goods supplied, to take account of the fact that they were bought on credit, and also because of the cartage involved in delivering them to isolated locations.

As was also common at the time, rents were lower than the value of the land might suggest. This was because lessees like the Pharazyns took into account what they considered to be extra costs associated with dealing in Māori land: the need for interpreters, the Government tax on Māori land, and the need to take land through the Court to get legally recognised title. Interest rates and terms of repayment were variable and arbitrary, as was common with credit during this time. Room for confusion and misunderstanding abounded, but for much of the early period, the relationship was generally regarded as beneficial to both sides. The relationship with the local Māori community secured the Pharazyns in their leases, and the community gained access to goods, services, and opportunities for employment and trade.

Questionable practices

By the 1890s, though, things were changing. Pharazyn junior began to use debt as a means of forcing the purchase of Māori land. He claimed that the owners at Whatarangi owed him about £800 – a significant sum. But in the few years after 1890, it suddenly grew much larger, as Pharazyn lent more money in an effort to block competition for his leases, and also to protect his ability to freehold the leases in the face of proposed legislative restrictions on private dealing in Māori land.

The major competitor to the Pharazyns’ enterprise was a farming operation owned in a partnership between Iraia Te Whaiti and John Sinclair. The partnership was looking to extend its leases and sheep farming operations in the area. This was exactly the kind of joint venture between Māori and Pākehā that the Government should have promoted (as the Hauraki Tribunal suggested) to provide Māori with realistic opportunities to derive a good return from their land. In the years from 1890 to 1893, as the Te Whaiti–Sinclair partnership sought to buy up leases coming due, Pharazyn claimed that the owners’ debts to him had ballooned to over £6000.

Complexities of Māori land title exacerbated the situation between Pharazyn and the Te Whaiti–Sinclair partnership. Putting the land to commercial use was difficult. It was multiply subdivided, and different subdivisions were subject to different rental agreements with different groups of owners. Meanwhile, partly in response to the competition for leases, the owners were trying to deal with the land in other ways: to partition it further, to succeed to interests in it, to have more
owners recognised (after the abolition of the 10-owner rule), and to get the court to confirm the various leases.

Pharazyn and his agents now began to promote a new genus of lease, with terms and conditions that, rather than continuing the previous cycle of credit, focused on enabling Pharazyn to claim significant debts and then use these to acquire the freehold. The new leases had terms, for example, that provided that with one year’s notice, the debts could be transformed into mortgages. Any such mortgage was to be repaid in seven years, but if no payments were made for three years, the amount owing could be taken in land.

Evidence later put before a trust commissioner and a parliamentary inquiry showed that methods to put in place the new leases were highly dubious, and included:

- claiming debts that could not be verified;
- using an agreement to lease before an actual formal lease, where the agreement to lease was apparently intended to bind the owners but keep certain information beyond the trust commissioner’s oversight;
- ‘incestuous’ relationships between witnesses, interpreters, and Pharazyn and his agents; and
- the apparent failure to explain to owners that the new leases now included a very real threat of losing their land to discharge debt.

And while Pharazyn was pressuring the owners to pay the debts they owed him, he himself was behind in his rental payments.

**Pharazyn sells up**

From 1893, Pharazyn focused on converting the large amount he claimed as debts into mortgages over the interests of individual owners in the blocks. But even if he acquired the land mortgaged to him, the owners might still have leased it already to the competition. He took the matter to the Supreme Court in 1893, but did not get the result he wanted. He seems then to have decided to sell out to the Te Whaiti-Sinclair partnership. They paid over £18,000 for the land and assets associated with it, including the substantial debts and mortgages. The purchasers managed to raise the purchase price – a very considerable sum – by themselves taking out a mortgage with Pharazyn for the whole amount, securing the lending on their other land and leases. The partnership took on the entire operation, with all its risks and complexities. They intended to sort out the legal morass that had developed, to establish a substantial farm operation, and to use income from this to pay off its huge mortgage.

However, Pharazyn’s dubious dealings continued. The new lease agreements allowed him to convert debt he had sold as assets to the partnership (around £6000) to mortgages. He did this over the next few years. Meanwhile, it became apparent that the rent he had agreed to pay for the new leases was insufficient to pay off what he claimed the owners owed him, let alone provide any additional income. This left the owners in a parlous state – really, a classic poverty trap. Unable to pay off the debts from rental income, their other land interests were now in jeopardy. Some derived income from other land which they could use to repay Pharazyn, but others were forced to sell their interests either in this land or in other blocks to pay for the difference between what they received in rent and what they owed to service the debt. The prospect of developing their remaining land receded further and further into the distance.

From 1895, distressed owners began appealing to Māori members of Parliament for help. Hone Heke suggested that the owners could form an incorporation to farm the land they had interests in and pay off the money owed. But Pharazyn had created a situation that did not allow for this – and the powers provided to Māori incorporations at this time might anyway have been inadequate for the task.

**Parliament takes a look at the Whatarangi case**

The case came before Parliament. Māori members of course felt very negatively towards situations like this, where Māori were deliberately embroiled in crippling debt as a device to part them from their land. They were also critical of the recent legislative amendments. Statutory protection of private creditors appeared only to encourage such activities, and make Māori land more vulnerable. Pharazyn and his agents had stepped up their efforts to acquire the freehold land in the estate just a year before the Liberal Government passed the
Native Land Court Act 1894, which restricted private dealings in Māori land. This Act allowed private land dealings already begun to be completed, but at first did not explicitly protect mortgages within those dealings. The legislative amendments of 1895 and 1896 made it clear that mortgages were included, increasing opportunities for private creditors to complete mortgage arrangements on Māori land, and then enforce the security with less scrutiny than before 1894. Speaking in Parliament, James Carroll criticised how the debt situation had worsened for Māori, and referred to the amendments of 1895 and 1896, which he thought had unintentionally resulted in making Māori land even more vulnerable to debts that were harsh and unfair.

Pharazyn benefited significantly from all of this. He secured his new leases along with mortgages, and then sold them as assets even before they had been fully executed.

In Parliament, Carroll criticised what Pharazyn had done to enforce his debts, bringing the owners to the brink of losing their land. He warned that the system now could well render some Māori landless, in contradiction of long-standing government policies. Seddon went further and implied that Pharazyn may have used his contacts to ensure that the wording of the 1895 and 1896 amendments fostered his own interests. Carroll and Seddon were part of the Liberal Government, which opposed large run holders and their ‘great estates’ instead favouring small settlers and more extensive settlement. This allowed debate and investigation of the issue, and remedial action.

The parliamentary select committee investigating the matter was less convinced that the 1890s legislative changes were the main problem. The committee did not question the fact of the large debts Pharazyn claimed, despite the dubious circumstances. They framed the issue as one of harsh credit terms. This led them down the same path that had led to the Government Advances Scheme, saying that what was needed was relief from high interest rates and fees, and unmanageable repayment terms. The Native Land Laws Amendment Act 1897 was the result.

been left to make decisions about how to manage the lending. As we have seen, the State lent with encouragement and advice to other smallholders needing to restructure their debts, but with nothing like this level of oversight.126

The point really is that, although a highly supervisory situation might have been needed for situations of crippling debt and looming foreclosure, other arrangements should have been available for owners of multiply owned land simply needing to borrow to make proper use of their land. Something like the Government advances scheme, perhaps with extra assistance and advice about the new opportunities and how to take advantage of them, would have sufficed.

In fact, it seems that the provisions for borrowing money by vesting land in a trustee to manage were rarely used; by early in the twentieth century, the Stout–Ngata commission reported that the provisions already practically amounted to a dead letter.127 If the provisions were so little

used, they plainly did not achieve the objective of preventing land loss by providing lending of last resort. They do not appear to have been used in the case of the Pharazyn debts, where owners were forced to sell land interests to meet their obligations under the mortgages.128

In our inquiry, we received evidence on only one situation where it appears that multiply owned Māori land was vested in the Public Trustee under the 1897 amendment as a means of restructuring debts. We set out the story in the sidebar over, relying again on evidence given by Bruce Stirling.129

5.5.9 The effect of State lending criteria

The exclusion of multiply owned land immediately reduced the pool of Māori landowners who might be eligible for loans to only those who had individual title to their land. Even so, in our inquiry district, there were areas
Tūpāpakurua Land

In this section, we see how easy it was to get into debt on Māori land, how hard it was to deal with the morass of legislation, and how the Native Land Laws Amendment Act 1897 did not help.

The story of a block of land variously known as the Whareama reserve, the Tūpāpakurua block, and Punakoturukuku stands as a sobering reminder of the very considerable obstacles Māori faced in managing their land. Legislation was unworkable and obstructive, and bureaucracy intransigent and incompetent. At the end of the day, though, it was the Māori owners that bore the cost – not only in their pockets, but also in their hearts. For the end of this story is that the land in question was lost.

The Crown granted this reserve of some 1150 acres to just two owners in joint tenancy in the 1860s. The reserve, or parts of it, was then leased out over the next 24 years. One of the original owners died in 1875, but the court’s succession orders were found to be invalid. Four successors of the other owner applied for a certificate of title to the block, and after a series of court cases, finally won their claim on appeal in 1893. The four were granted a certificate of title as the owners of the whole block. Probably the litigation had been expensive, for at the same time as the title was issued (1893), they mortgaged the land for a loan of £1200 for five years at 9 per cent interest.

The mortgagor was Chief Justice Prendergast, formerly the Attorney-General. The mortgage was confirmed just before the 1894 legislation that generally prevented private dealing in Māori land. Even for leases to go ahead required restrictions to be officially removed. The result in this case was that the owners could not immediately lease the land – first they had to get restrictions removed – while the interest on the debt mounted. As at 1896, they had yet to rent their land and had paid nothing off their debt.

At that point, the owners seem to have approached the Public Trustee to see if they could get a more favourable mortgage because the debt had climbed to £1400 and Prendergast was threatening to force a sale.

Officials apparently agreed to consider the possibility of a Public Trust mortgage, with the standard criterion that the land had to be leased at a rental that would cover the repayments. The owners still could not lease because of the restrictions on private dealing; they asked for these to be lifted in 1896 and again in 1897. While the interest continued to mount, the owners were hit with another debt – a compulsory payment to the local rabbit board for pest destruction. Then they found that the new lease they had lined up – which included conditions about fencing, clearing, and rabbit control – related to an area larger than the statutory limit for land dealing (which had been designed to promote closer settlement). Addressing this required more amendments to the restrictions. Interest was accumulating, there was no income, and now the official unimproved value of the land was just a little above the mortgage amount.

In 1898, an order was finally made that removed restrictions and enabled the owners to rent out the land. But Prendergast was seeking to foreclose.

The 1897 amendment Act had now passed into law, and those novel provisions allowing the State to lend on multiply owned Māori land in serious debt trouble must have seemed heaven-sent. Land had to be vested in an officer like the Public Trustee, who would manage the land, and lend on more reasonable terms to enable the debt to be restructured and paid off.

By Order in Council in August 1898, the land was vested in the Public Trustee. In December 1898, Prendergast was paid what he was owed, £1579, which included the original debt of £1200 plus interest, and lawyers’ fees to the end of 1898. This new sum, plus Crown legal fees and costs for the new loan, became the new Public Trustee mortgage of just over £1608. The owners also owed their own lawyer £50 for his work getting the restrictions lifted, the land rented, and the new mortgage organised – another significant debt. The new lease yielded rental of £100 per annum, and the interest charged on the new mortgage was around £64 per annum. This left the owners with £36 per annum between the four of them as well as any debts they had to pay off, like their legal costs. Clearly,
it would be some time before they were deriving income from their land.

But with the land safely in the hands of the Public Trustee, the owners could at least rest easy in the knowledge that it would be well-managed to achieve the desired end of debt repayment, and would ultimately be returned to them.

How appalling, then, that this was not what happened.

By 1910, the Public Trustee had been receiving rent on the land for 12 years. However, the office had failed to pay any of this to Treasury, as was required. Technically, therefore, the mortgage repayments had not been made. Interest on the loan had continued and compounded, so that the debt had grown to just over £2565, considerably higher than when the Public Trust took over. A decision was made to sell, and in 1910 legislation was passed to enable the sale of the land to the lessee, but it is not clear when the sale was completed.

In 1911, the Ikaroa Māori Land Board identified a possible conflict of interest for the Public Trustee, who was acting as both a trustee for minors and as trustee for the Crown interest in the mortgage. Nothing happened as a result.

The rental income from the land during these years flowed not to the owners, but to lenders and lawyers. The 1897 amendment Act, far from saving the block, delivered it to the hands of a Government official whose incompetence led to its sale. Presumably, it was the Public Trustee who made the decision to sell, even though he had a conflict of interest (a clear one, from our reading of the situation) and was himself responsible for the errors that led to the debt growing to unacceptable levels. Obviously, it was the Crown’s responsibility in this situation to ensure that, whatever else happened, the owners did not suffer as a result of officials’ bungling. But it was the owners (and their descendants) who suffered, and who lost their land as a result of a statutory system that produced perverse outcomes and lacked the flexibility to put them right.

Where, initially at least, individuals had title to significant areas of land. In the Ngā Waka ā Kupe land especially, the criterion for individual title was met, and there was some State lending.

The evidence suggests that lending on Māori land owned by one individual was in practice not treated like other land, in that a criterion for lending was that it was rented to Pākehā. This did not prevent lending, and in a few cases Māori owners raised large amounts, but the need to have a Pākehā tenant did influence the purposes for which the lending was likely to be used.

There were essentially two factors in operation.

First, Māori were poor, and often had little choice about where they would spend any income they had. They were driven by exigencies like medical bills, the need to restructure debt, and the need to buy goods to keep their families going. If land was not producing worthwhile income – and much of it was not good-quality land – they needed to sell in order to keep the wolf from the door.339 For example, owners from the Ngā Waka ā Kupe blocks sought to have restrictions lifted so that they could borrow money from the Public Trustee to pay off existing debts, build or fix houses, buy furniture, and pay medical and school bills.340 No doubt there were some who simply managed their finances poorly, but meeting basic needs seems to have been the primary focus. Vital though it was, however, such spending was not commercially productive and did little to improve the overall wealth of communities. Gilling notes some cases where monies were put to alternative business uses but these were rare and on a small scale.341

Effectively, Gilling says, owners were caught 'between the rock of needing to have cash to live on in the present and the hard place of retaining land for a long-term income and security.'342

Secondly, because State lenders required land to be leased out to a Pākehā with rental income assigned, there
was little incentive for owners to spend the money they borrowed on farm development, because it was the tenant farmer who would derive the benefit for the foreseeable future. Māori owners could have taken the very long view, and spent money on developing the land anyway, since it was their land they were improving. But realistically, to be able to do this, they would have needed to be cushioned by significant other income – and would owners in that situation have been borrowing from the State anyway?

There were thus few owners of Māori land who could utilise lending for their own farm development purposes. Another difficulty was that before they could qualify for the loan by having a lease in place, they had to get the restrictions on private dealing lifted from their title. As we have seen, this was a slow and expensive exercise which, perversely, made land more vulnerable to sale should difficulties occur. We saw in the Native Land Court chapter how, in the Ngā Waka a Kupe blocks, the alienation history followed a pattern of waves of applications for removal of restrictions, borrowing, and leasing, and then sales of the land concerned.

**5.5.10 State lending in Pāhaoa blocks**

Bruce Stirling also gave evidence about the Pāhaoa blocks, which were one area where there was sufficient land owned individually, and of sufficient acreage, to qualify for State lending.

The records reveal a common pattern of owners finding themselves in serious debt by the 1890s, and responding by attempting to secure lending from the State on more reasonable terms and conditions, so that they could repay debt and invest in land improvement. The same scenario applied to other small landowners at this time, as we have seen.

In many cases, owners’ debts derived at least partly from earlier court and survey costs. This was the case, for example, with Pāhaoa 3, 6, and 7A, whose owners all sought the lifting of restrictions on land dealing in 1897 and 1898 so that they could get mortgages from the Public Trustee.

The mortgages, applied for in February, were approved in October. But the debts were serious. The lawyer acting for the owners claimed that many were facing summonses, and a few were even concerned about possible imprisonment. It appears that once they secured lending, the owners channelled most of it into short-term (though vital) purposes, and little on longer-term productive investment. The borrowing only delayed rather than prevented the loss of the land.\(^{334}\)

**5.5.11 Other State lending scenarios**

There is also evidence in our inquiry district of some owners who owned multiple sections leasing one to a Pākehā as was required, borrowing against that one section, and then spending the loan money on developing another block to farm themselves. Such owners made up a small group, and it was a risky strategy. Any difficulty such as the tenant failing to pay rent, or forced sale of the section leased, could jeopardise the enterprise. It also prevented owners from concentrating their efforts on one profitable area.

An example was Wainohu te Huki and his whānau. They held land in the Pāhaoa 4 blocks, and were developing the Stronvar farm on a mix of their own smallholdings and Crown leasehold land. They sought State lending in 1898 in order to restructure their existing debts and improve the farm. They succeeded in getting a loan through the Public Trustee.

Stirling relates how their efforts to obtain the necessary finance for their burgeoning farming enterprise produced difficulties and delays that threatened to overwhelm them. They were in the fortunate position of having other land that they could rent and borrow against in order to develop their own farm. However, they still faced the usual problems in having restrictions lifted and a necessary lease approved so they could borrow to fund development. Interest charges continued to accrue, and debts forced them to sell some of the land they were leasing out.\(^{335}\) Information is sparse, but the records indicate that
their efforts failed; by the early twentieth century, the land had been sold.

Meanwhile, at Tautāne, two owners tried to borrow from the Public Trustee in much the same circumstances – leasing out some land and farming other land. But this time, the applications for exemption from restrictions on dealing were declined.\textsuperscript{136} Unable to lease, they were precluded from borrowing to pay off their debts and begin farming. The source says no more about what became of them.

These two examples indicate that as overall landholdings reduced into the early twentieth century, so did the number of owners who could borrow to invest in their own farms in this way. In the numerous cases where remaining land was only economically viable as part of larger units and could not be developed as separate farms, the incentives for spending loan monies in short-term debt repayment, immediate costs and other non-farm purposes were much higher.

\section*{5.5.12 Exceptional cases}

There were some exceptional cases where community leaders who held individual titles and very large areas of land also obtained unusually large State loans.\textsuperscript{137} They still show many of the patterns already identified, though. The lending, even for large loans, tended to come through the Public Trustee rather than through the Government Advances Scheme. Lending to restructure existing debts features strongly: while the loans were large, so were the debts to be paid off. While the lending did support sheep farming enterprises to some extent, loans for this purpose comprised a relatively low proportion of the total.

\textbf{(1) Lending to Hāmuera Tamahau Mahupuku}

One example of large State loans to restructure debt is the money that Hāmuera Tamahau Mahupuku borrowed late in the nineteenth century on Ngā Waka à Kupe land. Hapū led by Hīkawera (Wī) Mahupuku and Hāmuera Tamahau Mahupuku (known as Tamahau) had been running large flocks of sheep on this land from the 1860s. The familiar pattern of serious debt was present from early on, and in the 1890s, as State financing was becoming available, Tamahau sought from the Public Trust what was a huge loan for the time – some £18,000 – to restructure and pay off his existing debts. His eligibility arose from his having both individual title to significant areas and an existing lease to Pākehā. While the loan he sought was huge, his debts by 1898 were even larger – apparently close to £23,000 – while his land was worth some £40,000.\textsuperscript{138} Later, he borrowed a further £900.\textsuperscript{139}

Repayments would have left little for further investment, and more land had to be leased to get enough income to pay off the debt. Stirling notes that this ironically brought an end to the Māori-owned flock that had been run on the land for decades previously.\textsuperscript{140}

Early in the twentieth century, the Government took the station land for closer settlement, eventually paying compensation (after appeals) of £25,349. The share to which Tamahau was entitled was not sufficient to discharge his debts. Later, his descendants were cheated of much of their legacy by a dishonest lawyer.\textsuperscript{141}

As Stirling notes, the size of this operation and the level of lending from the Public Trustee were exceptional. It is also hard to ascertain how the level of debt grew so high. We can only speculate whether it arose from the business of running the large sheep station, from improvidence, or from a mixture of the two. As a prominent leader of the time, Tamahau contributed to the costs of the Pāpāwai parliament, and also to the costs of litigation in the Land Court.\textsuperscript{142} We do not know to what extent he incurred debt to pay these costs. He was of course investing in his community in times when the Government was not, but however he paid for it, the level of expenditure was unsustainable.

\textbf{(2) Lending to Niniwa-i-te-rangi}

We profiled Niniwa-i-te-rangi (also known as Niniwa or Ninewa Heremaia) in the previous chapter on the Native Land Court. She too was a community leader whose borrowing was exceptional. She had extensive land interests
and significant wealth. Many of her land interests she held in her own right, and in sufficient quantity to lease out.

But by the late 1890s, Niniwa also had serious debt problems, some of which derived from the Pharazyn situation described earlier.143 Like others who were eligible, Niniwa applied for loans from the Government to restructure and repay private debts, and to improve some of her land so that she could farm it. By 1907, the Land Court had varied restrictions on Ngā Waka ā Kupe land to allow it to be more easily mortgaged to Government lending departments. Over the next few years, Niniwa obtained loans from the Public Trustee and, unusually, from the Government Advances Scheme. She was able to obtain a £3000 loan from the Government Advances to Settlers Department in 1907, and another £8000 loan from the Public Trustee in 1908, using the 1908 loan to pay off the previous one from the Government Advances Scheme.144

Niniwa’s loans, large for the time, were secured against her main Ngā Waka ā Kupe interests, which presumably she had to lease out. However, she put the loan monies that remained after repayment of her debts towards the purchase of another farm and a sheep flock at Whāngaimoana.145 Compensation from compulsory Crown purchase of other land near Tablelands may also have helped her purchase the new property. The farm enterprise was successful, but because it was in individual title the property eventually passed out of community hands.

Niniwa’s was another case where only a small proportion of the large amount she borrowed went on farm development. Her high debt level meant that meeting high repayments soaked up most of the money.146

As it was, their situations were exceptional, and their level of engagement with the possibilities of the new economy was rare indeed.

5.5.13 Conclusion

Most Māori were effectively smallholders, and small-scale landowners were generally perceived as poor lending risks at the time. When the Government turned to lending to overcome the smallholders’ difficulties of access to finance on decent terms, Māori land was conceived differently, and different conditions were set for lending on it. The Crown justified the differences by reference to the problems with Māori land title, and the poor record Māori had generally in managing finance and debts. Closer scrutiny and tighter controls were required as a result. Prime Minister Joseph Ward said as much in Parliament in 1906.147

If it is true that lending money on the security of Māori land was a higher risk activity than lending to other smallholders – and probably it was – how many of Māori landowners’ problems with lending related to the challenges they faced with title, and with the constantly changing and complicated statutory regime that controlled their land and what they could do with it? It is impossible now to accurately weigh all the contributing factors, but the case studies we have recounted here show that the system itself was to blame for much of the failure.

And the Crown created the system. Its attempts to fix its problems were generally not very inspired and were also bedevilled by conflicting objectives, as discussed earlier in this chapter.

We follow the central North Island Tribunal in saying that it would have been Treaty compliant for the Crown to have offered a controlled and monitored system of providing lending finance to Māori landowners.148 The Government advances to settlers scheme and the many other forms of assistance established to offer advice and monitor the quality of farm produce helped small landowners in the settler population to overcome many similar difficulties, and reverse poor lender perceptions. As a
result, they enjoyed a period of prosperity. In contrast, the criteria set for lending on Māori land set up substantial barriers and restrictions to owners who were already often at a disadvantage from the poor quality of their land. Their failure to emulate the success of Pākehā smallholders, for whom circumstances were in fact much more propitious, in turn helped contribute to perceptions that Māori were either incapable or unwilling to farm for themselves, and fostered a very persistent prejudice against lending on Māori land.

Māori do not seem to have benefited greatly from the general reduction in legal fees brought about by the influence of the Government Advances to Settlers Office. The complexities of Māori land title, and the need to have restrictions lifted and land leased out before a loan could be obtained, all conspired to keep their legal costs high. This is another example of how measures intended to help Māori (preventing dealing in Māori land) had all kinds of unintended consequences that went to the opposite effect.

Where State agencies did lend on Māori land, the evidence overwhelmingly indicates that loan monies were put mainly to paying off existing loans or for modest improvements like housing or partial fencing. Large proportions also went to immediate needs such as school fees, medical bills, legal costs, and daily necessities.

Thus we can see that, in practical terms, Māori were ill-served by the system that the Crown created for holding and developing Māori land. Their situation was different in all sorts of critical ways from that of their Pākehā counterparts, and in the period under consideration, the Crown did not act to redress those differences. The result was that, in general, Māori small farming enterprises did not thrive, and land continued to be lost – at a time when, as the Crown has conceded, they could ill afford to lose more.

### 5.6 Tribunal Analysis and Findings

#### 5.6.1 What is ‘sufficient’ land and was land really necessary?

Associated with ‘sufficient’ in this context are many words and ideas: maintenance, subsistence, livelihood, comfort, ample, prosperity. What they mean is usually relative. It is plain that prosperity connotes more comfort than subsistence, but how much more depends on the circumstances. A prosperous person’s ‘livelihood’ could be quite generous; for someone else, the word could be synonymous with ‘subsistence’, meaning just enough to get by.

In this inquiry, the thrust of the Crown’s argument is that although the Crown did breach the Treaty by failing to protect Wairarapa ki Tāmaki-nui-ā-Rua Māori from landlessness, there remains a question as to the prejudice that resulted.

The argument goes like this. Māori in this inquiry district did not suffer the same ‘immediate crisis’ of insufficiency as Ngāi Tahu. The point where they were landless took longer to reach, becoming apparent in the 1890s. Land ownership, never critical to an adequate livelihood, was even less so by the late nineteenth century when the economy had diversified so that alternatives to depending on land were increasingly available. This meant that Māori of our district were always able to make ‘an adequate livelihood’, either from their landholdings – which until the end of the nineteenth century were sufficient – or, once the landholdings were no longer sufficient on their own, from other alternatives, or from a combination of other alternatives and the land that was left.

These arguments directly raise the issue we started with: what kind of livelihood is the Crown talking about? It seems to us that when it uses expressions like ‘adequate livelihood’, ‘meeting primary needs’, ‘economic sustenance’, and ‘no less prosperous’ in its submissions, the Crown restricts the meaning of ‘sufficiency’ to a bare minimum that involves no more than the meeting of basic needs. Thus, its argument today disappointingly echoes its reductive nineteenth-century approach to the Crown’s Treaty obligations.
Yet as we have seen, there were influential thinkers and policy makers in the early years of Pākehā settlement, who took a much more expansive view of things. McLean, Sewell, Governor Gore Browne, and others were well able to predict that if Māori were not protected in ample land for their present and future wants, they would face the kind of marginalisation that did, in fact, occur.

Previous Tribunals have found (most recently in the Hauraki and central North Island inquiries) that Māori cooperation with Pākehā settlement, and their agreement to sell land to the Crown to that end, invoked in the Crown a corresponding duty. It was to actively protect Māori in the retention of sufficient land not just for their immediate primary needs but to enable them to be ‘equal in the field’ with settlers when it came to new economic opportunities.150 This did not oblige the Crown to ensure that Māori were always or even mostly prosperous. However, it did require that ‘sufficient land’ meant land for future as well as immediate needs, and more than was immediately required for minimal levels of sustenance or merely ‘adequate’ livelihoods.

We accept that New Zealand was a new and developing economy, and land would not always directly contribute to livelihoods and the creation of wealth in the way settlers and Māori may have wished. Immediate new opportunities would be limited while economies and populations expanded, and some early farming endeavours were not successful. Nevertheless, settlers and Māori alike proceeded on the expectation that land was an important element of both livelihood and increased wealth – whether by farming, supporting developing urban areas, or by resource utilisation.

Land was certainly an important ingredient in the wealth created by the early forms of extensive pastoral farming – although by their nature, they tended not to employ or support large populations, especially not on a permanent basis. The capital required to invest in these ventures excluded many settlers and Māori from participating in them. The central North Island Tribunal noted that up to the 1880s, farming was generally divided between the large estates that offered the most potential for wealth creation, and small-scale semi-subsistence operations, many relying on seasonal work for additional support.151 Nevertheless, private investors and central and provincial governments sought to purchase land, because it was widely believed that it would be a major factor in future new economic opportunities.

We consider that land was an important element of wealth creation in the early years of the economy – and perhaps as important for our assessment of the Crown’s duties, everyone believed that land and prosperity went together, whether or not it actually did. That belief is why many of the settlers came to New Zealand, where land was plentiful (or thought to be so). It is why the Crown bought the land to sell to the settlers; it is why Māori too soon saw that land was a basic requirement for participating in the Pākehā kind of prosperity associated with running sheep.

Certainly, there was other economic activity too, and this increased as the colony developed. We turn now to the evidence that the Crown cited in support of its contention that economic prosperity was no longer land-based in New Zealand by the turn of the century.

First, we note that the statistical tables that the Crown produced in evidence are accompanied by warnings from their author, Professor Muriel F Lloyd Prichard, about the dangers of misinterpreting the evidence provided.152 We think that the Crown has not sufficiently heeded that warning.

For example, the first table, showing occupations and proportions of occupation to population in 1861, 1864, and 1867, is accompanied by a caution about the difficulties of accurately capturing reliable information about people’s occupations at this time. We reproduce this table opposite.

The table relies on self-described occupations; these are vexed by vagueness and by the tendency to describe the occupation in which a person was trained, rather than that in which he was actually employed on arrival in the new colony. Also, women and children are excluded completely, because they were unpaid and therefore not considered to be in an occupation.153
These qualifications would be tolerable if the table were being relied upon to define categories of occupation generally, but it is much less useful when used to identify sources of livelihood, as the Crown does. For example, in this period, women and children might well have been the principal but unrecorded workers on small farms. Men of the family could have supplemented this farm income with work in town or on the roads, which would be captured in another occupation category altogether, dissociated from the land.  

Further, while agreeing with the Crown's comment that the proportion of those described as working in the 'agricultural and pastoral' category seems low at fewer than 10 per cent, it is important to note that the only category shown with a higher percentage is mining. All other occupation categories have fewer workers. The least-populated category (one per cent) is that most disconnected from land and associated resources: 'professional' and 'other educated professions'. Many of the other categories, such as those under 'trade commerce and manufacture', include occupations closely related to land and its resources such as sawmilling, woodworking, grain-milling, and wool scouring. As Prichard says, overall, the 'dominance of mining and agricultural and pastoral occupations seems clear'.

The Crown referred us to another table from the same economic history that shows classes of occupations in the early twentieth century to 1916. Again, Prichard advises caution in using the information on occupation categories, and particularly warns against comparing the figures in
this table with the earlier ones, owing to the distortions caused by the circumstances of war.¹⁵⁷ We think that these caveats militate against relying heavily on the statistics given by the Crown to advance its arguments.

In our view, the information in these tables does not overturn the weight of evidence showing that, in nineteenth-century New Zealand, land ownership and control of the resources associated with it were widely perceived as important ways to derive wealth from the new opportunities expected to arise with settlement. From the beginnings of settlement, it was also understood that protecting the right amount of land for Māori would be
important in ensuring their capacity to participate in these opportunities. This was a key message in the assurances which persuaded Māori to part with their land. And as we have said, the possibility of land ownership also underpinned many of the inducements offered to prospective settlers, and was a major reason why provincial and central governments were so interested in pursuing the purchase of Māori land. Not least, this understanding and expectation helped drive the major speculative land boom of the 1870s.

5.6.2 Were there alternatives to land ownership?

This brings us to another important issue in the Crown submission. This is the question of the extent to which Māori had available to them economic ‘alternatives’ to land ownership at this time.

We have difficulty with the Crown’s view that Māori did have alternatives, because the Crown does not compare like with like.

If Māori in our inquiry district had retained sufficient good land, and had access to finance on reasonable terms, the economic slot available to them was to become large-scale sheep farmers. But the economic alternatives to this that the Crown seems to be talking about are essentially labouring in industries like mining or sawmilling. If Māori had become major players in sheep farming, they would have employed their own as farm workers. While farm labouring is roughly equivalent to labouring in other industries, the difference is that as joint owners of the sheep runs on which they were working, they could also share the profits of the enterprise. This would have afforded the possibility of improving themselves in all kinds of ways not accessible to people whose livelihoods depended solely on a labouring wage.

Would Māori at the time have had the skill set to run a successful sheep station? As the Hauraki Tribunal noted, one of the most realistic options for genuine Māori participation in the new order was for the Government to find means to encourage joint ventures between private interests and Māori – ventures that would utilise Māori land and resources, and settler capital and expertise. This was a feature of a number of British colonies at one time, including for a period, New Zealand. Our early timber and flax trades began largely on the basis of contracts between British merchants or naval captains and Māori entrepreneurs. However, once New Zealand was seen as a settlement colony, these ventures were largely abandoned in favour of extensive land purchase policies. That happened in this district, when the Crown undermined the early joint venture leasehold arrangements between Māori and settlers that might otherwise have fuelled resistance to selling land to the Crown.

Another advantage of holding on to land as an asset was that, whatever the difficulties of utilising it at any point in time, it was a form of stored wealth to be tapped when needed. This alone made it more than a simple economic equivalent to, say, labouring or road working. The Hauraki Tribunal emphasised the value of land as an asset, and added that it could be put to a variety of future uses (such as farming, forestry, or tourism), making it possible to ride out economic fluctuations. It could also be used as security for borrowing to raise capital for productive investment in new opportunities.

For all these reasons, we confirm that the Crown’s duty of active protection extended to ensuring that Māori retained sufficient land to enable their participation at all levels in whatever land-related opportunities the future might hold. Officials could see right from the 1840s and 1850s that, otherwise, a marginal role for Māori on the fringes of economic enterprise was much more likely. The Hauraki Tribunal characterised the suggestion that the Crown’s obligation extended to protecting only enough land for subsistence as a ‘less than minimalist interpretation of its Treaty obligation’. We agree, and add that people who are economically depleted will usually suffer culturally. Sufficient land was a core asset to underpin and protect Māori communities, enabling them to remain necessary centres of cultural and social identity for continued wellbeing – even if some families (as was likely)
chose to move to take advantage of expanding economic opportunities elsewhere.

The really major economic opportunity that transformed the Wairarapa ki Tararua district from the 1890s was the development of modern farming, through which small farms were about to become much more economically viable.

Gilling told us about how dairy farming expanded in the inquiry district in the early twentieth century, with considerable Government encouragement and support.161 As the century wore on, advances in farming methods made larger herd sizes possible.162 There was some Māori involvement, but their herds were ‘never large and [they] seem to have numbered their stock in the tens rather than the scores or hundreds’. They were one-man operations, it seems, and there was ‘no impression that they were getting wealthy from such a lifestyle or scale of operation’.163 Rather, Gilling inferred from the available information that Māori dairy farmers were unable to farm ‘at much more than a basic level with small herds on small land holdings’.164

5.6.3 Land as a capital asset

It is true that the sale of land might have given Māori sufficient capital to begin new commercial ventures. But the capacity to develop an existing property, or to acquire one that was under a title appropriate to a modern economy, or to invest in a business depended in large part on the adequacy of the original purchase payment. The problems for Māori based in the Wairarapa, in particular, were twofold. First, ‘systematic colonisation’ was predicated on the purchase of Māori land at cheap prices. Secondly, a very large proportion of territory went out of their hands in a very short time, and very early in their efforts to engage with the settler economy. Gilling comments that the change must have been an ‘economic and social cataclysm’.165 We agree.

Some seem to have coped with the dramatic change. Rangatira like Iraia Te Whaiti, and the owners who ‘purchased back’ Whakataki did connect with the new economy. There were also occasional visitors to the region who commented favourably on the appearance of the Māori they encountered.166

The Crown suggests that Māori in this district may not have been so poorly off because, after their negative reports in the early 1860s, Crown officials did not report a state of ‘acute poverty in succeeding years’.167 We think it is very difficult to deny the weight of evidence about Māori poverty, dating from very soon after the Crown’s purchases. Even if the evidence of ‘acute poverty’ is lacking, and the assessment of cataclysmic disruption to iwi in Wairarapa ki Tararua inquiry district is ‘not supported by close inquiry into the economic circumstances of Māori before and after the sales’, this is surely the Crown grasping at straws.168 If its duty was to protect Māori in the retention of sufficient land for their economic wellbeing – and that is certainly our view – it does little to advance the Crown’s case to argue that Māori were not in acute poverty. If the Crown wanted to defend its position, the correct approach would have been to undertake its own research to demonstrate positively that Māori in our inquiry district were sufficiently well off to support a contention that its active duty of protection was fulfilled.

But we believe that the evidence is otherwise. Not only were the prices paid in this early period minimal (except for the small homestead blocks), but those monies had to provide for many, and the cost of living rose. Increasingly, cash was required to pay for the necessities of life as traditional resource use modified. There were the new goods to buy: seed, stock, implements, buildings, and the forms of transport that were required for new commercial endeavour. Of course, there were also the trappings that Māori leaders often sought in their bid for social equality, plus the continuing expectations of chiefly generosity and hospitality. Gilling comments, though, that even the most important chiefs seem to have received little more than a few hundred pounds from the early transactions. This was an inadequate platform for embarking upon the most obvious route to economic advancement in nineteenth-century
Wairarapa: establishing a sheep station. As we outlined in chapter 2, this involved considerable outlay for stock, pasture improvement, fencing, drainage, building of sheds and yards, crop rotations, breeding and other farm management practices, and transport costs. We have noted the estimate of the early run holders that £1500 was required to get a station up and running. A few rangatira were able to amass the capital to do this, although of course they also needed to have an entrepreneurial spirit, and knowledge, or access to it. Gilling concludes, 'for the large majority of Māori landowners it was simply impossible to accumulate from land sales the quantity of funds necessary to give them a start in the alternative economy.'

Gilling also points out that problems became more acute, not less, for Māori as they parted with 'surplus' land and 'bites were taken from their core areas'. Crown purchasers wanted the best land first, and left Māori with relatively small designated reserves and marginal land that were harder to work and likely to generate less income.

Of course, added to this was a title structure that inhibited commercial dealing while failing to adequately empower customary decision-making about land and resources. We note also the crushing burden of expenses carried by a number of leaders in the late nineteenth century as they pursued their land grievances through the courts, as well as those incurred in the political and cultural revival of their people in the Kotahitanga movement, and at the Pāpāwai parliament.

Stirling's case studies where would-be borrowers became enmeshed in removing restrictions on the alienation of land so that they could derive income from leases emphasises the problems of gaining capital. Although officials recommended investing the proceeds from selling land previously under title restriction, and this was sometimes the stated intention of applicants, more often the money was needed to clear existing debts. Such debts might be for the development of other land, but they included also payments for survey and for food, clothing, and other living costs. Though eventually the legislation required a minimum acreage to be kept, debts and costs meant that little money was left for investment out. Paternalism embedded in the land laws was well-meaning, but also meaningless when it almost never extended to practical assistance, and became focused on securing for Māori a minimum acreage to prevent their becoming a burden on the State.

5.6.4 What can we reasonably expect the Crown to have done?

We cannot agree that practical assistance was impossible and that 'free trade' thinking prevented the Crown from intervening in the lives of its Māori citizens. This line of reasoning was rejected by both the Hauraki and central North Island Tribunals, and we follow their analysis. We accept, as they do, that nineteenth-century governments were concerned with 'progress' not 'welfare'. We also accept that laissez-faire thinking was influential. Nonetheless, active protection of Māori was promised and was far from inconceivable. Economist Professor Gary Hawke, who characterises criticism of the Crown for its failure to actively assist Māori as anachronistic, acknowledges that colonial governments were often pragmatic in reacting to new circumstances. He also says that laissez-faire policies did not mean minimal intervention as such, but rather 'an appropriate allocation of roles between government and non-government activity'. In fact, there had been a great deal of direct State involvement in the New Zealand economy and active encouragement of the interests of settler's in the name of national progress. Examples include the offer of rewards for gold discoveries, and bounties for the first producers in industries such as flax processing, woollen cloth, dairy products, and preserved meats. Owning businesses like the State Life Insurance Office and the Post Office Savings Bank also constituted State intervention, as did assisted immigration, the development (with the support of private industry) of a national transport and communications infrastructure, and the active promotion of closer settlement.

In our view, it is not unrealistic to expect the Crown to have done more for Māori. Even in the nineteenth
century, it was ready to intervene in economic and social arrangements in individual Māori cases, and more generally, in order to promote the development of the colony. Occasionally, this was done directly on behalf of Māori, most notably when officials tried to ensure they kept their pa, kāinga (villages), and cultivations, but also when they gave them flour mills, ploughs, and seed potatoes, or assisted them to ‘buy back’ their former reserves. Overwhelmingly, however, the Government intervened to protect the interests of settlers but neglected those of Māori. A case in point was how it assisted settlers with small farms, who would otherwise have been unable to attract capital from private lenders on reasonable terms so that they could bring land into production. The Crown's efforts to assist this group by means of the Advances to Settlers Act 1894 did not actively bar Māori, but they were practically excluded by the nature of their land title and by assumptions and prejudices shared by many policy makers. As the Te Tau Ihu Tribunal has pointed out, the failure of the legislation to address the urgent needs of Māori was not regarded as a matter of concern. This was partly because Māori were considered to be less capable than Pākehā of the sort of effort required to transform unproductive land into viable farms. ¹⁷⁴

This meant that Māori could borrow only from the Public Trust, and on conditions that were far more stringent than for owners of general land. In fact, these conditions worked to deter Māori endeavour by diverting development opportunity into the hands of lessees. In a handful of instances, rangatira received extensive loans, but there appears to have been little policy as to how Government lending should be deployed. Here too the Crown largely failed Māori, resulting only in more debt and more encumbered land.

It was not until the establishment of Māori development schemes that Māori had access to the same sort of assistance that had been long available to the Pākehā population. By then, many Māori had left the district to obtain work, and there was even less land left in the hands of its customary owners. However, we leave further discussion of this to chapter 6, which is on the management of Māori land in the twentieth century.

We have already touched on another important aspect of land retention by Māori: its vital role in their cultural and spiritual wellbeing. Although we did not, of course, hear from nineteenth-century Māori in our inquiry, we think that today's claimants' emphasis on cultural disempowerment probably echoes what their tipuna (forebears) would have said – or at least how they would have felt, since no doubt they would have used different words. They told us that the Crown's failure to ensure their tipuna kept sufficient land to enable them to function as tangata whenua impaired them not only economically but also socially. Beyond the unemployment, the poor living conditions, high mortality, and drug and other social problems, they told us about what it was like growing up as part of a small Māori minority in a Pākehā-dominated district. They talk about themselves as people disconnected from ancestral land and socially marginalised. They know that the Crown has failed to honour the relationship it entered into with their tipuna when it persuaded them to agree to settlement and give up land for the Crown to buy for settlers.

The Crown could not, and did not, guarantee the prosperity of every Māori citizen. However, we go back to our approach to sufficiency, set out at section 5.2.2. There, we said that sufficiency comprised four necessary features, which in summary meant equal opportunity in terms of land quality, location, and usability (title and governance). These were essential elements if Māori were to participate – if they wished to – in the colonial economy and society on a fair field. These were ideas that were circulating at the time; they were certainly not beyond the reach of nineteenth-century law-makers or Māori leaders. However, law-makers and officials chose to interpret ‘sufficient’ as a bare minimum, not as sufficient to provide Māori with a real opportunity to engage in economic opportunities on a basis of equality.

Finally, it must be acknowledged that many influences
were at work to impoverish Wairarapa ki Tāmaki-nui-ā-Rua iwi, and it is not possible to be precise as to their relative impact. Certainly, Crown actions and inactions were to the fore, but other factors promoting land alienation included international economic trends at various junc
tures over the period, and the activities of unscrupulous, or ‘feckless’ individuals. In our view, however, there can be no doubt that the Crown’s land purchase, land title, and land development policies adversely affected the capacity of Māori to retain and manage their land and consequently their chance to prosper. The Crown’s early and rapid purchase of the greater proportion of the Wairarapa district under pre-emption, closely followed by a concerted buy-up of Tāmaki-nui-ā-Rua under the Native Land Court system, left iwi with nothing even resembling adequate landholdings. This in turn initiated a downward spiral, which officials and observers began commenting on well before the turn of the century.

By the 1890s, the main impediments to Māori participation in development opportunities were the lack of land assets and the state of land titles. Though the Crown was fully aware of those barriers, it failed to put in place systems to ensure that Māori retained the land they had at that point.

During this period, the Crown took an active role in the development of farming, providing settlers with titles to established land blocks with access and infrastructure as well as targeted financial assistance. Māori argued for something equivalent, but it did not materialise. This effectively denied Māori the same opportunities as the rest of the population at a time crucial for the development of their remaining land interests as viable farms.

5.6.5 Findings

We thus find that the Crown breached its duty of active protection by failing to take the necessary steps to ensure that iwi in the Wairarapa ki Tararua inquiry district had a real prospect of retaining sufficient land to enable them to participate in the colonial economy on terms of reasonable equality, and to provide for their own cultural needs.

We also find that the Crown, in implementing policies to assist smallholders, including State lending, breached the guarantee to Māori of equal treatment as British citizens under article 3.

Notes

Epigraph: Henry Sewell, journal 2, vol 1, 25 March 1859, Auckland War Memorial Museum Library

2. Document 11(c) (Ngā Hapū Karanga closing submissions), p 32
3. Ibid, p 33
5. Document 11(c) (Ngā Hapū Karanga closing submissions), p 33
6. Ibid, p 34
7. Document 18 (Rangitāne closing submissions), p 173
8. Document 8.41 (Rangitāne opening submissions), p 8
10. Document 113 (Ngāi Tūmapuhia-ā-Rangi closing submissions), p 139
11. Ibid, p 141
12. Ibid
13. Ibid, pp 147–149
15. Document 117(d) (Crown closing submissions), p 3
17. Document 117(d) (Crown closing submissions), p 6
18. Ibid, p 4
20. Document 117(i) (Crown closing submissions), p 4
22. Document A114 (Hawke), pp 30–31
23. Document 117(i) (Crown closing submissions), pp 3–4
25. Ibid, p 358
28. Ibid, pp 1209–1213
29. Ibid, p 1219
30. Ibid, p 1222
33. Fenton, minute, 13 October 1856, AJHR, 1860, F-3, pp133–140, app B-1 (doc A113 (Loveridge), pp62–63)
34. Under clause 1 of the Native Territorial Rights Bill 1858, tribes, communities, or individuals could request the Governor to investigate their claims to the ‘exclusive use and occupancy’ of land, and the Governor, when satisfied of the land’s ownership, could issue a certificate of title. Clause 2 empowered the Governor to appoint a suitably ‘qualified person’ to investigate and report on the claims.
35. Richmond, 1 June 1858, NZPD, 1856–58, p474 (doc A107 (Hayes), app, p19)
36. Ibid, p20
38. Document A113 (Loveridge), p91
39. Document A107 (Hayes), app, p24
40. Ibid, pp24–25
41. Ibid, p26
42._Native Lands Act 1862, s 9
43. Stafford, 29 August 1870, NZPD, 1870, vol 9, p361 (doc A107 (Hayes), app, p3)
44. Sir William Martin to McLean, 29 July 1871, AJHR, 1871, A–2, p7
47. Haultain, ‘Papers Relative to the Working of the Native Land Court Acts, No 1’, p8
48. Document A107 (Hayes), app, p61
49. These were the words used in the preamble to the Native Land Act 1873.
51. NZPD, 1873, vol 14, p604 (doc A49 (Stirling), pp91–92)
52. Native Land Act 1873, preamble
53. Ibid, s 24
54. Native Reserves Act 1873, s 45
55. Document A118 (Gilling), p40. We also note that the Land Act 1877 provided for blocks from 500 to 5000 acres to be set aside for pastoral farming. The amount of land needed for viable pastoralism was only one factor; land quality, access to markets, and the ability to diversify to cropping were also relevant factors.
56. Document A49 (Stirling), p93
57. Lewis, ‘Minutes of Evidence’, 13 May 1891, AJHR, 1891, sess2, G-1, pp156, 158
58. Carroll, 5 November 1897, NZPD, 1897, vol 99, p552 (doc A59 (Stirling), p246)
59. Maori Lands Administration Act 1900, s 21
60. Stout and Ngata, ‘General Report on Lands Already Dealt With and Covered by Interim Reports’, 11 July 1907, AJHR, 1907, G-1c, pp8–9 (doc A118 (Gilling), pp5–6)
61. Document A118 (Gilling), pp387–388
62. Ibid, pp133–134
63. Document A42 (Walzl), p91
64. Ibid, p71
65. Ibid, pp71, 100
67. Commissioner of Crown lands to under-secretary, 15 September 1927, LS, 22/2553, ArchivesNZ; doc A39 (Berghan), p437
68. Document A118 (Gilling), pp242–243
69. Ibid, pp241–243; doc A42 (Walzl), pp17, 221; doc A78 (Oliver), p79
70. Document A118 (Gilling), pp110, 171–172
71. Ibid, p174
72. Ibid, pp173–174
73. Ibid, pp64–65
74. Ibid, pp66–68
75. Ibid, pp65–67
76. Ibid, pp67–69
77. Ibid, p71
78. Ibid, p69
79. Valuation Department, 3/30 general valuation roll 1897, borough of Masterton, part town acre, section 110, valuation 109, Wairarapa Archive, Masterton (doc A61 (Innes and Metcalf), p27)
80. Document A118 (Gilling), p161
82. Document A118 (Gilling), p209
84. Document A118 (Gilling), p321
85. Ibid, pp322–323
86. Ibid, pp324–326
87. Document E30 (Wright), p17
88. Document A118 (Gilling), p166
89. Ibid, pp161–164
90. Ibid, p163
93. Document A118 (Gilling), p164
94. Ibid, pp168–169
95. For example, James Belich, *Paradise Reforged: A History of the New
96. Document A118 (Gilling), p 212
97. Ibid, pp 224–226
100. New Zealand Official Yearbook, 1990, p 520
102. Ngā Hapū Karanga, statement of claim 1A, 15 April 2003, p 37
103. Native Land Laws Amendment Act 1897, ss 3–5
104. Crown counsel, statement of response 1A, 8 October 2003, p 55
105. Waitangi Tribunal, He Maunga Rongo, vol 3, p 1040
106. Ibid
107. Ibid, p 954
109. Waitangi Tribunal, He Maunga Rongo, vol 3, p 961
110. Ibid, pp 960–961
111. Ibid, p 1000
112. Ibid, pp 962–964
113. Document A118 (Gilling), pp 285–286
114. The Native Land Court Act 1894 and subsequent amendments such as the Native Land Laws Amendment Act 1895 (s 84)
115. Waitangi Tribunal, He Maunga Rongo, vol 3, p 978; doc A59 (Stirling), p 165
116. Waitangi Tribunal, He Maunga Rongo, vol 3, p 979
117. Document A59 (Stirling), pp 280–283
118. Ibid, p 165; doc A5 (Hayes), p 8
119. Waitangi Tribunal, He Maunga Rongo, vol 3, p 979
120. Ibid, p 962
121. Ibid, pp 968–969
122. Ibid, p 969
124. Document 117(f) (Crown closing submissions), p 36
125. Document A59 (Stirling), p 165
126. Waitangi Tribunal, He Maunga Rongo, vol 3, p 980
127. Ibid, p 984
128. Document A59 (Stirling), pp 253–254, 259–283
129. Document A49 (Stirling), pp 34–45
130. Document A118 (Gilling), p 263
131. Ibid, pp 263–285
132. Ibid, p 274
133. Ibid, p 265
134. Document A59 (Stirling), pp 174–179, 192–193
135. Ibid, pp 434–435
136. Document A118 (Gilling), p 282
137. Ibid, p 169

Sidebars
Page 569: ‘Surviving on the Land that Was Left’. Sources: doc c1 (Matthews), p 3; doc c5 (Kawana), p 3; doc c2 (Te Whaiti), p 3.
Page 584: ‘Tūpāpaku Land’. Sources: doc A50 (Stirling); doc A51 (Stirling); doc A59 (Stirling).

Tables
153. Lloyd Prichard, *An Economic History*, pp 99–100
155. Lloyd Prichard, *An Economic History*, p 100
156. Ibid, pp 99–100
157. Ibid, p 239
159. Ibid, p 1225
160. Ibid, p 1207
161. Document A118 (Gilling), p 211
162. Ibid, p 212
163. Ibid, p 213
164. Ibid, p 213
165. Ibid, p 278
166. Ibid, pp 278–279, 307–308
167. Document 117(i) (Crown closing submissions), p 4
168. Ibid, p 3
169. Document A118 (Gilling), p 280
170. Ibid, p 278
171. Document A49 (Stirling), pp 200–202
172. Document A114 (Hawke), p 30
CHAPTER 6

THE MANAGEMENT OF MĀORI LAND
IN THE TWENTIETH CENTURY

6.1 Introduction

By 1900, only about 10 per cent of the land in this district remained in Māori ownership, yet alienations continued for another 80 years. Today, there is one substantial agricultural property still in Māori ownership: Aohanga (sometimes called Ōwahanga or Ōāhanga) Station at Mātaikona. Otherwise, it can be fairly said that Wairarapa ki Tāmaki-nui-ā-Rua Māori are no longer landowners in their own rohe (tribal territory).

As we saw in the previous chapter, the Crown contends that this state of affairs was not necessarily economically disastrous for Māori of this region, because economic success is not determined by landholdings. We explained our view that while this is certainly true for most New Zealanders today, for much of the period we cover, landholdings and economic success were closely linked, especially in rural New Zealand. Moreover, it was part of the colonial ethos that people believed that land and prosperity were linked, and even if this was not as emphatically so as people thought it was, the strength of the belief is relevant to the Crown’s duty to actively protect the interests of Māori. In a climate where people believed in the nexus between land and prosperity, the Crown should have been focused on ensuring that Māori retained enough land to partake in whatever prosperity was going.

And of course, there is another consideration entirely, which we also explored in chapter 5, and which also extends into the twentieth century: the Māori cultural context. Independently of any economic consequences, for Māori people the loss of land concerns rangatiratanga (chieftaincy authority) and mana. Severed from their ancestral land, tangata whenua in this inquiry district have suffered a cultural loss from which they have found it very hard to recover. How can you be the tangata of the whenua when you have so little whenua left through which to express your whakapapa (genealogy), commune with your tipuna (forebears), and embody the kōrero (stories) that tell the next generation who they are?

The haphazard way in which Māori land was sold and partitioned in the nineteenth century continued into the twentieth century. But other problems for Māori landowners
emerged as well. When land titles were created to give effect to rights in land owned in common by many people, a formal process was needed so that owners could make collective decisions about the land. This would have enabled Māori to make community decisions about what land to keep and what to sell. They could have exercised control over the quality and location of the land they retained, and they could have continued their hapū relationship with the land. But no such process was provided; the only formal means of managing communally owned Māori land was by partitions. Purchasers – both Crown and private – could acquire the interests of owners in undivided blocks and apply to the Native Land Court to have the proportion of the block that corresponded to the interests they had purchased partitioned out. A corporate title became available in 1894, but this legislation required a degree of Crown interference that was unacceptable to Māori.

The result was that Māori owners mainly ended up with their kāinga (settlements), pā (fortified villages), urupā (burial grounds), and the ‘bits and pieces’ not wanted by others – lots that are small, uneconomic, and in barely usable configurations. The situation was exacerbated by the operation of the laws of succession, which allowed increasing numbers of people to acquire interests in less and less land.

In this chapter we consider claims about the administration, alienation, and utilisation of Māori land in Wairarapa ki Tararua in the twentieth century. Most of the problems faced by Māori landowners in this district have surfaced elsewhere in the country, but the distinctive feature in Wairarapa ki Tararua is that the Crown accepts that, by 1900, there was already too little Māori land left. Our discussion is summary in nature and reflects the emphases of the cases presented to us. We do not attempt comprehensive coverage because other tribunals – for example, those for the Hauraki and Central North Island districts – have recently tackled the same matters, and substantially we agree with them. The sad truth is that by the time the Crown took steps to ameliorate the problems of managing multiply owned blocks, it was too late for tangata whenua of most of the Wairarapa ki Tararua inquiry district, because their land was gone. As we have said, we analysed landlessness and sufficiency of land in the previous
chapter, calling on the work of other tribunals. In this chapter, we rely especially on the Ngāi Tahu and Mohaka ki Ahuriri reports.4

Like Tribunals before us, we focus on two broad themes that are central to the experience of owners of Māori land in the twentieth century: keeping enough land (sec 6.2), and using the land that remained (sec 6.3). Throughout, we refer to particular evidence presented by claimants to illuminate the wider picture. The Tribunal’s analysis of the key issues emerging from this account of what happened, and our findings, are presented in section 6.4, followed by a set of recommendations.

6.2 Keeping Sufficient Land
6.2.1 1900–30: the last chance to get it right
The first 30 years of the twentieth century represented the Crown’s last opportunity to give substance to its promises that Māori would retain sufficient land for their sustenance.

In 1907, the findings of a royal commission showed that Māori in the district had little land surplus to their immediate requirements, and also identified the urgent need for practical assistance in utilising what land remained. But, as this section sets out, the legislative and other changes that ensued did not respond to these concerns. Instead, purchasing was made easier: the system of restrictions on permanent alienation of Māori ‘reserve’ land was ended, and the Māori land boards era (from 1905 to 1952) was generally more permissive of purchasing activity. What is more, the land board regime represented a reversal of a much more promising initiative – the land councils established under the Maori Lands Administration Act 1900.

(1) Māori land councils and boards
By the end of the nineteenth century, Māori leaders nationwide were lamenting the reduction in Māori landholdings, and the difficulties faced by those wanting to use their land profitably.

Sheep yards at Akitio in the 1920s. Sheep-farming was the main agricultural activity in this inquiry district for the whole of the twentieth century.
However. (The Kotahitanga movement was a Māori political development of the late nineteenth century.)

At a tribal level, the councils established under the Maori Councils Act 1900 dealt mainly with social issues such as hygiene and health. But the Maori Lands Administration Act 1900 also provided for the establishment of land districts, each with an associated Māori land council with a membership that was partly elected. This meant that a Māori majority was possible.

The land councils were to determine what land Māori required for their own future ‘maintenance and support’; they could set such land apart as papakāinga (traditional settlement) land, absolutely inalienable except in exchange for more suitable areas. Once this had been done, the council could lease out the remainder for terms of up to 50 years.

As to what level of holdings was ‘sufficient,’ the standard was the same as that introduced by land legislation in the 1890s: each person required a minimum of 25 acres of first-class land; or 50 acres of second-class land; or 100 acres of third-class land.

The land council era – and the measure of self-government given to Māori – was short lived. The new policy had successfully reduced the flow of Māori land available for sale, but this success was the councils’ downfall. With settlers still pressing hard for land to buy, they were abolished in 1905. They made way for the Māori Land Boards, which were differently constituted. Instead of being partly elected, the membership was now wholly appointed, and of the three appointed members, only one had to be Māori. The Native Minister could compulsorily vest land in the boards for subdivision, after which they could grant allotments to owners and lease the remainder. Other provisions facilitated the removal of restrictions on alienation – a dismantling process that was to be completed in 1909.5

(2) The Stout–Ngata commission

A good snapshot of the state of Māori landholdings across the country at this time is provided by the report of the 1907 Stout–Ngata commission, which made the first
proper appraisal of the national situation. It arose from a combination of factors: Carroll's desire to save some land for Māori by encouraging leasing, and the Liberal Government's political need to respond to settler pressure for ‘idle’ Māori land to be opened up. Although attacked by the opposition as part of Carroll's tahihoa policy, it was the most thorough and measured assessment of Māori needs and aspirations that had been undertaken thus far. From this time on, governments could have little doubt about the state of Wairarapa Māori landholdings, about whether Māori were able to utilise them effectively, and about whether they could afford to sell any more.

In 1908 and 1909, the commissioners sat in several counties in Wairarapa ki Tararua: Masterton, Featherston, Wairarapa South, Pahiatua, Eketāhuna, and Castlepoint. Stout and Ngata found that 152,188 acres of Māori land remained in the district. They did not ‘deal with’ 56,839 acres because of the pressure of time. Of the balance, 72,280 acres were under lease to European farmers, and a further 569 acres were leased to Māori. The commission paid particular attention to 22,280 acres of land in the Waitutuma block, which the owners wished to sell. The commission supported that desire.

The commissioners found that no substantial area of Māori land remained unoccupied in the district. With the larger portions of remaining Māori land leased to Europeans, few Māori owners were farming their own land. Stout and Ngata reported, however, that this was not what Māori landowners wanted:

We heard the Maoris, and ascertained from them their views as to the disposal of the remnants of lands still in their hands and unalienated. There appears to be very little actual farming among the Maoris in the district. Most of the younger people are working for Europeans, and the older ones are depending largely on rents for their livelihood. There was, however, a laudable desire manifested among many to begin farming on a proper basis, and to assist them in their desire they have asked that the small remnant of lands left unalienated should be reserved to them for Maori occupation.

The commission found that blocks remaining in Māori ownership tended to be concentrated together and were important areas of occupation, containing papakāinga, pā, urupā, communities, and housing. Often they were near towns, such as Greytown, Masterton, and Dannevirke. Otherwise, the largest areas remaining in Māori ownership were remote coastal areas of hilly scrub country: Mātaikona (17,931 acres) on the east coast; Ngā Waka ā Kupe (26,920 acres) adjacent to the south Wairarapa plain; and a group of blocks in the south-east corner of the district, which included Kawakawa (17,814 acres), Waitutuma (21,151 acres), Mātakitaki (4828 acres), Te Kōpi (2624 acres), and Ōroi (2337 acres). A few other large blocks, located on flat land around Dannevirke, comprised valuable agricultural land – for example, Mangatoro (11,537 acres), Tāmaki (26,633 acres), Tiratū (7018 acres), Waikopiro (9521 acres), and Tahoraiti (9021 acres). These blocks were soon subject to extensive purchasing.

The commission’s report provides useful insight into the level of Māori involvement in pastoral farming in the period. The commissioners noted only a handful of Māori-operated farms in the district: there was an ‘important Maori sheep-farming community’ near the coast, and sheep returns for 1907 showed 23 registered Māori sheep flocks, totalling over 36,000 stock.

Evidence we heard from historian Dr Brian Gilling adds context to this information. He told us that the most important of the Māori sheep runs was Whatarangi Station at Pirinoa in southern Wairarapa. Between 1894 and 1918, this station ran 20,000 sheep and 500 cattle, making it one of the largest operations in the Wairarapa. But, he said, the best land for large-scale farming had been occupied and purchased by settlers since the 1840s.

With neither suitable land nor substantial capital behind them, ‘most Wairarapa Maori were in no position to set themselves up in the pastoral industry.’ However, agriculture did provide an income for younger Māori, who
Wool bales being transferred from a bullock-drawn wagon to a boat, Akitio, 1910. The boat would then be rowed out to a ship for loading. Sheep farming was a physical business on the rugged Wairarapa coast.

took on labouring and shearing work, often on a seasonal basis.

Stout and Ngata recommended that:

- Crown purchasing of Māori land should cease after their own recommendations for sale (the 22,800 acres in the Waitutuma block, whose owners had petitioned the commission for its approval) had been executed;
- alienation by direct negotiation between the owners and private individuals should be prohibited;
- further alienation of Māori land should be controlled by the land boards, with preference given to leasing to Māori; and
- Māori were to be given training and assistance to develop their own agricultural enterprise.13

Underlying all Stout and Ngata’s recommendations was ‘the importance they attached to the Crown’s obligation to preserving a tribal land base’.14 They thought that emphasis should now shift to ensuring that Māori were taught how
to farm their remaining land effectively. In fact, it was more than two decades before the Crown provided any assistance of this kind. Nor were the commission’s general recommendations reflected in the new, consolidating Native Land Act of 1909 and its Amendment Act in 1913, which together made it increasingly easy to purchase Māori land, for both Crown and private purchasers.

(3) The Native Land Act 1909: purchase of Māori land made easier

The Native Land Act 1909 ushered in a Māori land regime that remained essentially unchanged for four decades. It removed all restrictions on the alienation of Māori land, enabling it to be ‘alienated or disposed of in the same manner as if it was European land’. A Native Land Purchase Board of four Crown officials was established to carry out and complete its purchase negotiations. And now, private individuals could purchase directly again, subject to a new set of legislative checks (s207). Where land was owned by 10 or fewer owners and the purchaser was a private party (not the Crown), a lease or sale was subject to approval of the Māori land board of that district. The board had to be satisfied that:

- the alienation was not fraudulent or ‘contrary to equity or good faith or the interests of the Natives alienating’;
- the alienation would not make the owners landless;
- the payment was ‘adequate’ (s220); and
- generally, Māori owners retained sufficient land for their ‘adequate maintenance’ (s2).

The Act dropped the definition of how much land was ‘sufficient’ for ‘support and maintenance’ that had applied since 1893 – that is, no less than 25 acres of first-class land, 50 acres of second-class land, or 100 acres of third-class land for every man, woman and child. Now, the test was at the boards’ discretion, in accordance with general language of sufficiency and adequacy (section 2).

When blocks had more than 10 owners, it was up to the land boards to call owners together in meetings of ‘assembled owners’. It was through these meetings that Māori landowners in multiply owned blocks were now required to make all important decisions affecting their land (section 346). The provision was intended to give owners a mechanism for making decisions about sales and leases when many of them were absentees, and blocks had been fractionated through succession. At meetings of assembled owners, decisions were made by voting: the majority prevailed, and counting was according to the shareholding of those present. But only five of the owners plus the president of the land board or his representative were required for a decision to have effect. This meant that the wishes of those not present at the meeting could be bypassed, even if they owned the majority of interests. The land board had to apply most of the same checks as in the case of blocks owned by 10 or fewer owners before an alienation could go ahead.

The Act simplified the process of land alienation. Carroll, who guided the Bill through the House, doubtless hoped that land would be made available through lease. However, in Wairarapa – where this was already the norm for any desirable blocks that had been retained – the result was an increase in sales.

(4) The Native Land Amendment Act 1913: purchasing easier still

The Native Land Amendment Act 1913, passed by the newly elected Reform Government, further expanded the Crown’s power to buy Māori land. The Government could now ‘purchase, lease, or otherwise acquire’ Māori land whether it was vested in the Māori land boards, the Public Trustee, or a simple trustee; held by owners as freehold title; or held by owners who were incorporated or assembled (s109).

The Act also enabled the Crown to purchase undivided interests in multiply held land, dispensing with any need to deal with the owners collectively through assembled owners’ meetings, or any other forum.

The statutory definition of landlessness was further diluted. Section 91 of the 1913 Act now stated that an owner was not landless if he or she had an ‘alternative adequate
income. In 1921, the Supreme Court decided that owners were not 'landless' where, though they had leased every acre of their land, they received rents adequate for their maintenance.

The 1913 Act also removed the requirement for at least one member of each board to be Māori. According to Native Minister William Herries, this had the effect of ‘practically amalgamating’ the Native Land Court and Māori Land Boards. This is because the Native Land Court judge and registrar from each district were automatically appointed to the land board, so that roles on both bodies were held by the same officials. The potential for conflicts of interest is clear – board members were simultaneously responsible for representing the interests of sellers and for protecting the interests of non-sellers; and the judge and registrar of the court that decided on interests were involved also in the business of the boards.

6.2.2 Land alienations

(1) The first 30 years

When the land councils were abolished in 1905, it was in response to the declining amount of Māori land available for sale. Nevertheless, in the years from 1900 to 1909, a good number of sales went through, mostly to complete transactions initiated in the 1890s. According to the evidence of historian Tony Walzl, 12,376 acres of Māori land were sold in the Wairarapa district between 1900 and 1909, of which around 70 per cent comprised a single large block (Ngā Waka ā Kupe). In the Tararua district, around 30,000 acres were sold in the same nine years.

As we have seen, the recommendations of the Stout–Ngata commission were not picked up. Rather, the legislation that followed made it increasingly easy to purchase Māori land, for both Crown and private purchasers. It therefore comes as little surprise that, in the two decades following the 1909 Act, a large proportion of remaining Māori land in this inquiry district was sold. Walzl’s figures show that approximately 48 per cent of the land still owned by Māori in the Wairarapa in 1910 (around 75,879 acres) was sold between 1911 and 1930. Similarly, in Tararua, roughly 44 per cent of the Māori land remaining in 1910 was sold (around 36,859 acres) over the subsequent two decades. In fact, levels of land sales in this period may have been even higher, because there are gaps in the surviving records. Although the data is incomplete, it is likely that Crown and private purchasing accounted for roughly equal proportions of Māori land alienation in this district in the 1910s. According to Walzl, of the 56,438 acres of Māori land purchased between 1911 and 1920 in Wairarapa, at least 39,000 acres was purchased privately in the decade after 1909. In Tararua, the pattern was similar. Historian Steven Oliver estimates that Crown purchasing accounted for 15,421 acres between 1910 and 1920, and private purchasing 14,470 acres in the same period. Private purchasing became proportionately more important in subsequent decades, as Crown purchasing all but ended by the middle of the century.

(2) 1930s onwards

Across the district as a whole, land sales levelled out during the 1930s and 1940s, but increased again during the 1950s and 1960s. The increase was most marked in Wairarapa: while just 2617 acres were sold between 1930 and 1949, approximately 4499 acres was sold in the 1950s and 15,144 acres in the 1960s. In Tararua, approximately 1400 acres of Māori land was sold in the 1950s, and about the same amount in the 1960s, compared with approximately 1000 acres sold in the 20 preceding years.

The result, counsel for Ngā Hapū Karanga submitted, was that Wairarapa Māori landholdings halved between 1953 and 1993.

There is no simple explanation for the relatively sudden increase in Māori land sales over this period. As far as we are aware, the bulk of the sales was to private buyers; very little purchasing was done by the Crown. The last Crown purchases we are aware of took place in Tararua in 1952, and in Wairarapa in 1964 (a scenic reserve).
Walzl attributes the increase in Māori land sales in the post-war period to two factors. First, as demand for farm land strengthened, areas that had previously been considered marginal for agriculture were now regarded as viable. Often, neighbouring landowners who leased Māori-owned land adjacent to their own properties now sought to buy out the leased land, ‘mopping up’ remaining block fragments. Secondly, in many cases, Wairarapa ki Tāmaki-nui-ā-Rua Māori continued to sell land because they were poor and needed the money.31

Oliver and researcher Paula Berghan traced the same patterns in the Tararua district during the 1950s and 1960s. Typically, successive partitions had left relatively small blocks of land with a large number of owners. While some purchases in these years were of two- or three-hundred-acre blocks, most individual purchases were of less than 100 acres, and many were less than 50. In some cases, these small parcels of land were inaccessible or scrubby. Almost always, the vendors were not making profitable use of the land, other than by leasing. Under these circumstances, owners of adjacent or nearby land were perhaps the only people in a position to make economic use of small blocks. A number of Pākehā farming families cobbled together areas of land in the district in this way; in a few cases, individual Māori bought up Māori land to expand their properties.32

Private sales of Māori land in this inquiry district continued through the 1970s but by the 1980s and 1990s, had dropped away to virtually nothing. Still, with so little Māori land left, any sales in the modern era are surprising. In Wairarapa, approximately 2386 acres of Māori land were sold in the 1970s, and a little over 800 acres between 1981 and 2000. In Tararua, approximately 1800 acres were sold in the 1970s, but the combined total of sales in the 1980s and 1990s was less than 1000 acres.

Some areas of Māori land sold during the 1970s were relatively large. The largest sales were concentrated on the east coast of Wairarapa, where 856 acres of Te Maipi block and 743 acres of Ngāpuketūrua block were sold. Possibly these areas had been leased since the winding up of the Homewood development scheme, though Walzl does not provide details of the sales, nor their dates. Walzl’s land sales table also shows that 238 acres were sold from the Hurunui-o-Rangi block during the 1970s (Hurunui-o-Rangi marae at Gladstone is located on a partition of this block).

Oliver’s Tararua block histories show that the circumstances leading to sale in the 1970s (and later) were similar to those in earlier decades. Typically, sale blocks had been leased for many decades and were sold to lessees, often neighbouring landowners who had already purchased some shares in the land before acquiring it outright. For example, Alan Ferguson already owned some shares in the 293-acre Ngāpaueruru B2C3, before fully acquiring it in 1971.33 Other Tararua purchases saw farming families accumulate additional blocks. In 1971, the Wrenn family, for example, was able to acquire a number of blocks that it had leased for years: Ōringi Waiauruhe B1C2 (143 acres); Tahoraiti K1 (65 acres); and Tahoraiti K2B3 (29 acres).34

In the Tararua district today, approximately 21,885 acres of Māori land remain.35

6.2.3 The problem of succession in the twentieth century

Interests in Māori land became fractionated and fragmented through succession. Landholdings progressively diminished in size, and were owned by more and more people. These are among the most serious and almost insurmountable obstacles to dealing effectively with Māori land today, in Wairarapa as elsewhere.36

Apart from fractionation and fragmentation, there was another succession issue of real concern to claimants in this inquiry: land passing by succession to persons who had no whakapapa connection to the land.

For most of the twentieth century, legislation allowed interests in Māori land to be left by will to spouses and others not descended from the original owners of the land. Testamentary freedom – the right to leave your property
Mamae of Whānau

The mamae (anguish) of whānau who now have no interests in their ancestral land was palpable in the evidence of Jan Anaru:

what we are left with is a gross distortion of our tikanga and marae kawa . . . Katarina had no interest in the Hurunuiorangi marae and yet there she sat as an owner of it. This kind of outcome is an insult and to make things worse, since Katarina’s interests in Hurunuiorangi k have been succeeded to by the Porete whānau, it is likely that people who have never even heard of Hurunuiorangi marae are now owners of it. This might not matter to some but it does to us.

by will to whomever you choose – is a bastion of English law. But in tikanga Māori (traditional rules and practices for conducting life), the imperative is to retain whakapapa links to land. For most of the last 100 years, the English law preference prevailed, but the Te Ture Whenua Māori Act 1993 finally enacted tikanga to the extent that, now, land can be passed only to descendants.37

We set out below the experience of two whānau, whose ability to connect to their tūrangawaewae (ancestral home) has been severely compromised by the operation of succession laws in favour of people outside the blood line to the land.

(1) Anaru whānau

Jan Anaru presented the Wai 1008 claim on behalf of the descendants of her great-grandfather, Pahira Anaru. On his death in 1918, Pahira’s children succeeded to his land interests. Over the years, as Pahira’s children died, the land interests passed to the remaining children, Poua (Jan’s grandfather) and Te Ewe (Jan’s great uncle).

When Te Ewe died in 1945, he willed all his land interests to his wife Katarina Anaru. Katarina successfully applied to the Māori Land Court to succeed to Te Ewe’s interests, although, according to Jan, other family members were not present at the court hearing.38 Thus, Katarina came to own Te Ewe’s interests in 13 Wairarapa blocks, including Hurunui-o-Rangi k, the site of the Hurunui-o-Rangi marae. Katarina had no whakapapa link to this land.

The succession was effected under section 188 of the Native Land Act 1931, which gave the Māori Land Court exclusive jurisdiction to determine the right of ‘any person’ to succeed by will or intestacy to the interests of the deceased, and to make succession orders to give effect to such a determination. The Act did not restrict the passage of Māori land interests out of the blood line by will or intestacy. When Katarina died in 1970, people from her side of the family succeeded to her land interests.39 Jan Anaru argued that the Crown had ‘failed to guarantee ownership of our lands in accordance with Article 2 of te Tiriti o Waitangi by providing laws that have allowed our whānau lands to go to another whānau with whom there is no whakapapa connection.’40

(2) Randell whānau

Michael Randell brought claim Wai 1056 on behalf of te whānau o Tehere Stella Mānihera (née Randell). It concerns the disposal of Stella (aka Tehere) Manihera’s interests in the Pāpāwai 4A2 block.

Stella became the owner of the 4A2 land when her father, Inia Pou Mānihera, vested subdivisions of the Papawai 4A block in Stella and her sister in 1941. The land was whānau papakāinga or core family land, a place for Inia Manihera’s daughters to build their homes and raise their families.

Stella had four children with William Randell (their eldest child, William or Bill, is the father of the claimant, Michael Randell). Following the death of William Randell senior, Stella married Kelly (also known as Taiawhio) Waaka.

Stella’s new husband Kelly had no whakapapa connection to the Pāpāwai land, but he was a Māori. In 1952, Stella and Kelly wanted to build a house on Pāpāwai 4A2
and needed to raise money. The Māori Land Court vested Pāpāwai 4A2 in Stella and Kelly jointly under the Native (later Maori) Purposes Act 1941. Section 7 of that Act empowered the Māori Land Court, upon application by the Māori owners of a land interest, to vest up to five acres of that land in ‘any Native’ as a site for a dwelling. Michael Randell, grandson of Stella Randell, stated:

[In] April 1952 another vesting order of the Court was made which vested my grandmother’s land in herself and Taiawhio Waaka jointly. The minutes of the Court record my grandmother stating that her husband will be meeting the expense of erecting their house and that she wished to make him a joint tenant.44

In 1969, Stella died. At the time of her death, she and Kelly Waaka had been acrimoniously separated for two years. Stella’s son Henare described to us the circumstances of Kelly’s departure:

It was decided by the family that Kelly was to have no more to do with any of the family and that he was to be sent away, and never to have any rights in any of the family property. The family decided that the house was to remain with the family and was never to be sold but was to be left to the grandkids . . .

Mum died a couple of years later . . .42

Kelly left and did not return until the mid-1980s. However, because Stella and Kelly were joint owners of Pāpāwai 4A2, rather than tenants in common, the land passed by law to Kelly as the surviving owner. If they had been tenants in common in the house site, Stella’s children would have succeeded to her share in Pāpāwai 4A2 at the time of her death; because they were joint owners, Kelly took all the interests in the land as her survivor.

In 1985, Kelly applied to the Māori Land Court to sell the land. In 1987, Pāpāwai 4A2 was vested in him absolutely, and he sold it in 1989.45 According to the claimants, neither of Stella’s sons was notified that the court had recorded Kelly as the surviving owner, nor that he had sold the land. It was not until 1990 that the whānau realised what had happened – that Stella’s sons and grandchildren had lost all connection with their whānau land. Michael and Debra Randell, Stella’s grandchildren, told us how, throughout their childhood, they had struggled on low incomes.44 The whānau had moved around the country seeking work, and eventually lost touch with the Māori community at Pāpāwai. Debra said: ‘When we lost Stella’s house we lost a tangible connection to our turangawaewae. A homestead that meant more to us than just [a] roof.’45

Tavake Afeaki, the claimants’ lawyer, submitted that because the 1941 Act allowed Stella to vest an absolute interest in Kelly (her spouse, who himself had no whakapapa connection to the land), the law was inconsistent with tikanga Māori. Counsel submitted that, although it restricted the vesting of Māori land to other Māori only, the 1941 legislation did not take the protection ‘far enough to actually realise that Māori Land in the hands of any Māori is not correct’: “Any Māori” was still capable of alienating it out of the whakapapa. This omission demonstrates the Crown’s failure to understand tikanga Māori relating to Lands.46 He argued that the failure of the 1941 legislation to ensure that interests in Pāpāwai 4A2 went only to the Randell whānau breached the Treaty.

6.3 Using the Land

As the twentieth century wore on, Māori in this inquiry district struggled to overcome the same problems faced by their whanaunga (kin) elsewhere. As we have seen, landholdings were much diminished. What remained became increasingly hard to develop because of the large number of owners, the lack of any coherent management structures, and unavailability of development finance.

As this situation became increasingly obvious, successive governments developed strategies aimed at helping Māori use their land more ‘productively’. Ideas included consolidation schemes, incorporations, trusts and – of
particular concern to the claimants in our inquiry district – development schemes.

6.3.1 Development schemes
In the late 1920s, Māori were finally offered state assistance similar to that long available to other sectors of the community, so that they could move on to and improve their farms.

In 1929, the Land Laws Amendment Act established the Lands Development Board to further the development of Crown land. Ngata was Native Minister, and immediately appreciated that there was potential here for the development of Māori land. Māori had effectively been ineligible for either state or private lending, for the reasons we saw in the last chapter – they were seen as a poor risk, lacking necessary skills and drive, and owning only marginal land in multiple title. Ngata conceived a scheme under which the State would take control of the land for an initial period in order to bypass title problems, develop it for farming, and then return it in a condition where development debts could be repaid. Where blocks were large, they could then be divided into smaller, economically viable farm units. The initial period of development was also intended to provide rural employment and training, while selected owners would be able to continue farming and provide an ongoing livelihood for the community.

Ngata saw the scheme as operating under direct ministerial control, but in 1932, after a review by the National Expenditure Commission, control shifted to the Native Land Settlement Board. Greater focus on recovering the Government’s investment saw another shift in control in 1935, this time to the more powerful Board of Native Affairs. Running in parallel was the expansion of the Native Trustee’s role to fit in with Ngata’s proposals. Under the Native Trustee Amendment Act 1929 and the Native Trustee Act 1930, the Minister could vest the control and management of any land in the Native Trustee, who began to invest in farming on a large scale. Advances were made out of the trust funds and guaranteed by the State. Then, in 1953, control shifted again: the Māori Trustee and the Department of Māori Affairs took over the administration of the schemes previously run by the board.

The Government accepted that Ngata’s proposal was in the national interest. Even though it entailed some financial risk, it offered the prospect of bringing marginal and under-utilised Māori land into production. Also, as economic conditions were worsening, both Māori leaders and the Government were worried about what would happen if poverty forced unemployed Māori to move into urban

Sir Apirana Turupa Ngata. Ngata was the Native Minister when he pursued development schemes as a means of bringing Māori land into production.
Loss of Whānau Land

Michael Randell articulated the loss of whānau land in this way:

When my father found out the family homestead was being sold he went and saw a lawyer and he tried to fight for the land. But nothing came of it.

Because we lost that place our family had to move for work reasons we have had nowhere to go back to. We were brought up proud of our whānau down in Wairarapa, but we have lost not only our physical connection to the place, but also our sense of belonging.

It’s been a struggle for our family to know who we are. We don’t know much about our Māori side because we were never taught that side.

This claim is not about money for us. It’s about the loss we feel because that was our Marae down there. It’s also about recognition, of who we are and where we came from. If the homestead had remained in our family, we could have gone there for holidays and stayed at our place. But as it was when I take my family on holidays down there we sleep in the car or camp on the beach.

areas. Development schemes could improve prospects for communities already in a vulnerable position, reliant as they were on seasonal employment and semi-subsistence lifestyles.90

6.3.2 Development schemes in this inquiry district

A number of land development ventures were initiated in the Wairarapa ki Tararuia district during the 1930s and 1940s. We know of six, but have information on only five of them. They varied in character. Some involved sizeable areas held under multiple title, or the consolidation of a number of small partitions, while others involved single, uneconomic plots held by one or two owners only. Two of the schemes were administered by the Native or Māori Trustee rather than by the Native Land Settlement Board or its successor, the Board of Native Affairs. All were hampered to varying degrees by both the scarcity of substantial areas of good quality land and by confusion as to objectives. Although none of the schemes were particularly successful in terms of sustainable production, employment, or training in farm technology and management, they did ensure that land remained in Māori ownership. In the following discussion, we look at the long-term implications for the land and its owners.

(1) Aohanga Station

Aohanga (Ōwashanga or Ōāhanga) Station was developed on the 18,000-acre Mātaikona block, one of the few large blocks of land in the Wairarapa district remaining in Māori ownership by the early twentieth century, and still the largest today, by a considerable margin. Until the end of the 1920s, the block was under lease to a single settler. The Crown had shown an interest in purchasing the land for soldier settlements, but the major owners were unwilling to sell. They wanted to farm it themselves once the existing lease expired.

The land was under a prohibition of alienation by Order in Council under the Native Land Act 1909, which prevented its sale or lease to any party but the Crown. Just when the owners were negotiating a new lease to a private syndicate in the late 1920s, the prohibition was reissued. Then the Government decided that the land could not be successfully subdivided for settlement, and revoked the prohibition in 1929. The private syndicate tried to enlist the Native Land Purchase Board’s cooperation so that it could then acquire the freehold from the Crown. This request was declined.

By the late 1920s, it was clear that the land was in poor condition. Neglect by the lessee had worsened its always marginal state. However, the owners were still keen to farm the land themselves, and Ngata suggested that it be vested in the Native Trustee as a development scheme. In this way, necessary improvements could be funded, but the land would not need to be mortgaged to do it. Once it
had been managed into profitability, it could come back to the owners. So in December 1929, the owners agreed that a portion of the block (apart from two papakāinga areas and two small farms to be farmed by owner-occupiers) would be brought under the administration of the Native Trustee, who would put in a manager in to farm it. The trustee immediately set to work developing the property, known as the Aohanga (Ōwahanga or Ōāhanga) Station. According to Walzl, debt on the station was over £19,000. By 1934, over £140,000 had been spent on the block. This included almost £13,000 to provide work for the unemployed of Wellington City. The cost of this arrangement with the Unemployment Board was, Walzl thought, ‘vastly excessive’. It worked out at £3 3s 3d per acre, or three times the going rate for scrub clearing. The station was effectively subsidising the Government’s relief for the unemployed of Wellington rather than providing additional work for local Māori.

By the end of the decade, the debt on the block amounted to £80,000; however, its productivity had at least tripled. The Government valuation had also increased from £63,000 in 1930 to £108,000 in 1936. While some dividends were paid to beneficiaries during these years, nothing was paid between 1936 and 1938. The
trustee received appeals from many owners in these years requesting funds to cover food, clothes, medical expenses, and other expenses. However, the trustee declined to pay advances in addition to the scheduled distribution of profits.\textsuperscript{55}

Through the 1940s and 1950s, Aohanga Station experienced serious problems with rabbits, drought, and labour shortages. It was estimated in the early 1950s that only half the land was actually in production. Aohanga was described as ‘the most difficult station that the Department has to manage.’\textsuperscript{56} Nevertheless, farm productivity allowed the debt incurred in improving the station to be repaid by the early 1950s.

Because the station appeared to be operating successfully, the trustee moved to return the station to the control of its owners in 1951. The owners were reluctant to take over immediately, however; they had confidence in the arrangements their parents set in place, and doubted they had the expertise to successfully farm the land without a transition period in which to learn the skills to run the station themselves. But at the same time as the owners were seeking to have the trustee remain in charge of the station, trustee officials sought to ‘be shot of ventures like this’.\textsuperscript{57}

The Māori Trustee and officials decided, however, to keep the station under their control for the meantime, in part because they discovered in the mid-1950s that the station was not in as good a shape as they had thought. The manager had overestimated stock returns, deferred essential maintenance, and been generally incompetent in his job. To bring the station back into productivity, shareholder dividends were reduced, and a further £25,000 debt was raised to carry out the necessary maintenance. The owners still had faith in the Māori Trustee, and agreed that he should continue to administer the station. By 1962, debt had reached £40,000. Scrub reversion remained a major problem, and through the 1960s, a programme of maintenance and development was carried out. As productivity rose again, debt levels were kept under control.

At this point, the Native Trustee’s objective was to ‘carry on to the best of his ability to have the property in pretty good shape . . . by 1970’. This was achieved, with stock at capacity levels, and a relatively modest debt of $59,000 against a current market value (land and stock) of $545,000 by 1972.\textsuperscript{58} At the annual general meeting of that year, the owners agreed to incorporate, and the property was re-vested in them in 1973.

Today, the land remains in Māori ownership and is managed by the incorporation, with around 1200 shareholders. Bill Wright commented, ‘The owners don’t get
many returns from the land, there’s no way you could live off the returns from your shares, but at least we’ve got a bit of Maori land left, which is more than some people have.79

Although they kept the land, the experience of owners was not what Apirana Ngata had hoped for. Rather than learning the skills of running an agricultural enterprise, they and their whānau were essentially farm workers, with no role at all in management or any kind of decision-making. The accounts of people like Bill Wright and Mātai Broughton depicted the farm as run in a way that gave no priority to employing owners and their families, nor to recognising the owners’ cultural need – and right – to connect with their Aohanga land by staying there, and taking kai.60 It seems that the goal of running the farm profitably was regarded as incompatible with recognising the owners’ needs as tangata whenua.

(2) Tiratū Station
In 1930, Nireaha Paewai was farming Tiratū station, a 733-acre farm near Dannevirke. He was the majority shareholder in the land. The only other owner was his wife. By 1930, the farm was mortgaged to the Public Trustee and was no longer financially viable, perhaps because of the fall in commodity prices at the start of the Depression. The mortgage amounted to £6000. To save the property from mortgagee sale, the Native Trustee took over the mortgage, and granted a further loan of £1000. The property was vested in the Māori Trustee in 1931.61

We heard evidence about the complicated arrangements by which the debt that was incurred to develop Tiratū Station was charged to Aohanga Station, and agreements were entered into whereby Aohanga would be repaid through two-thirds of Tiratū’s profits. This system
Recollectons of Life at Aohanga

Matai Broughton was born in 1939, grew up at Pongaroa, and spent school holidays at Aohanga Station, where his maternal grandparents lived. Matai himself has lived and worked at the Mataikona end of the station since 1973, retiring only recently.

He recalled that, between 1950 and 1960, ‘kai was plentiful because everything was just off the beach and was easy to get to’. But, extraordinarily, ‘the farm manager at the time, Geoff Derbridge, would not let us go to the beach. You could not go fishing or hunting. He knew we were owners in the land there, but he would not let us go down there.’

Because they were not allowed to go fishing at Aohanga, they would cross the river to fish from Moanaroa, a neighbouring station owned by Pākehā farmer P B Smith.

Cheryl-Ann Broughton Kurei is Matai Broughton’s natural daughter. She was raised as a whāngai (adopted child) of Pakiaka Te Wiremu Rautū and Te Mata Tirakātene, who lived on the north western boundary of Aohanga in core Te Hika-ā-Pāpāuma territory. Cheryl-Ann spent her first years there. She told us that the bulk of the work force at Aohanga had been from Ngāti Porou. She recalled that ‘Daddy Jack [her whāngai father] would often get upset at the fact that we imported workers from other rohe to take up mahi (work) on the farm, when we had heaps of cousins who were all working on farms everywhere else but on our land.’

Matai Broughton told us that Aohanga Incorporation contributed to the costs of the education of his eight children ‘as a staff benefit’. Although this was good for Matai and his children, it is not clear whether the practice continued when the station was in the development scheme. Nor would other owners derive much from a staff benefit scheme, because Cheryl-Ann says that, at the time she gave evidence, her father was the only owner working and living on Aohanga.
Recollections of Aohanga

William John (Bill) Wright (right) is of Ngāti Kahungunu, Ngāti Toa, and Te Hika-ā-Pāpāuma. He was born in Carterton in 1926, was raised at Akitio, and has spent his working life on sheep stations up and down the Wairarapa coast.

Bill Wright worked at Aohanga and owns shares in it. He was the oldest of the witnesses who told us about the experiences of the owners of Aohanga.

His connections with the traditional land of Te Hika-ā-Pāpāuma went back a long way, and included stories handed down to him about how the farm had been run from the beginning of Native Affairs taking over.

He said that in about 1931, there were a number of families living at a place he called Pāpāumu Marae. It comprised seven or eight houses located on Aohanga Station land near the mouth of the Owahanga River. When Native Affairs came, he said, ‘they shifted all of the people out holus bolus to Masterton, including the old people that were there’.

Māori Affairs put in Pākehā managers to run the station – largely without regard, it appears, for the desire of owners to occupy and relate to their ancestral land. It seems not to have been any part of their role to train or encourage Māori in farm management. Bill Wright summed it up like this:

even though the families owned the land, the families didn’t run it; they just did the work and did what they were told by the Pākehās running the place. They didn’t make any decisions about how their land was to be used, or what they wanted to see happen to it.

Nevertheless, work was work. Bill Wright told us that ‘at one time the families would take turns working the land at Owahanga to make sure that everyone was getting a chance to work and earn some money’. He recounted tales of scrub cutting involving hundreds of men and multiple teams of horses, once Native Affairs had taken over the station. ‘It was slump time,’ Bill said, ‘and they’d come from all over the island to get work.’
skills to his own property. According to his son, Punga Paewai, Nireaha had originally borrowed money against the Tiratū land to pursue a degree in animal husbandry in the United States. However, the Māori Trustee persisted with Pākehā managers, who implemented Paewai’s innovative ideas. For the whānau who owned the land, it no longer felt like family land. Punga Paewai told us that his whānau lost almost all connection:

I recall we knew that Tiratū was whanau land but we had neither the privilege nor the opportunity to visit the property. I came to know personally two of the managers but never felt part of Tiratū until we were successful in acquiring the contract to shear what were] in reality our own sheep. A further irony was that it was not until after the death of our parents when we, the brothers, made a successful offer to purchase the balance of the family shares, that these family members for the very first time were able to set foot on land that was previously theirs.\(^6\)

Nireaha Paewai died in November 1950, and the station passed from the Māori Trustee to the trustees appointed under Nireaha’s will. The land was Europeanised by the Māori Affairs Act 1967. In 1974, Punga and his brother Ringakaha Paewai purchased from their siblings the interests they had inherited under their father’s will. The result is that the land remains in whānau ownership today, but it is now owned by individuals under general title, rather than as shareholders in Māori land.\(^6\) As a result, there are no legal restrictions on its alienation.

\(3\) Mākirikiri

Located on land near Pūkaha Mount Bruce, the Mākirikiri development scheme was gazetted in 1937. It comprised 806 acres divided into six farms. Clearing the land of ragwort and stumps provided work for 12 unemployed men in the scheme’s first year of operation. Other improvements included fencing, houses, cow sheds, and sundry farm buildings. Further previously leased land was added in 1940.

Initially, returns from mainly dairy production were ‘quite satisfactory’. Within a few years, though, optimism had dwindled. The properties were now reported to be in a ‘dirty mess’; paddocks needed draining, and were badly infested by ragwort, blackberry, and rabbits.\(^6\) The Native Department was doing little or no development work, according to Walz’s research. Only 10 years after it began, it was estimated that the Mākirikiri scheme still needed £7000 to put the land to rights, and another twelve years of production to repay the debt.\(^6\)

\(4\) Tahoraite development scheme

The 144-acre Tahoraite development scheme, near Dannevirke, was established in 1938. It was the only scheme that was set up under Ngata’s legislation in this northern part of the hearing district.

Evidence on this development scheme was very sparse. It involved the Kaitoki 2k2a block, and was apparently created for one family. The land, which was hilly but of relatively good quality, was fenced and stocked, and a house and cow shed were built. One additional worker was employed, and in the early 1940s the scheme received an additional £380 in Māori employment grants. This is the extent of the record.\(^6\)

By 1960, the development scheme had been wound up, and Herbert Tewa-Kite-Iwi Chase’s mother leased the land to him. Herbert gave evidence before us. There were few owners in the block, and its status was automatically changed from Māori to general land in 1967, by operation of the Māori Affairs Act of that year.\(^6\)

Herbert told us that he grew up on the block. In his opinion, ‘The actual soil beneath the scrub was . . . very good, however it required a lot of hard work before it was suitable for farming’, and he recalled watching his father, Edward Chase, trying to clear the scrub, only to see it grow back the next year.\(^6\) Herbert told us that his dad lacked the knowledge to stop the scrub returning – knowledge that Herbert himself acquired only when he worked on other farms in his youth – and, once he took over the farm, Herbert spent most of his adult life ‘clearing scrub on
various parts of the Kaitoki block. According to Herbert, neither he nor his parents ever received any financial or professional assistance from the Government to develop the Kaitoki land, and he had to raise a mortgage against the land in order to clear scrub, erect fences, and buy stock.\textsuperscript{70} Perhaps the improvements that appear to have been effected by the scheme in the 1940s had by this time fallen into disrepair.

It would have been much more in keeping with the original concept of development schemes if the Department of Māori Affairs had provided training for Herbert's father so that he was able to farm the land more successfully. Instead, Edward Chase had many years of struggle with the land, and the problems were inherited by his son, Herbert.

\textit{(5) Homewood development scheme}

Three development schemes were established in the Wairarapa part of the hearing district: Pirinoa, Mākirikiri, and Homewood.\textsuperscript{71} Of these, we heard detailed evidence about the Homewood scheme only.

It centred on approximately 2500 acres of land on 26 Ngāpuketūrua and Te Maipi blocks identified by Native Land Court officials in 1939 as suitable for development. This area was to be run as one farm. The land was, however, covered in mānuka and gorse and was a ‘breeding ground for rabbits’, having lain idle for many years. Although considerable work would be required to clear the land, officials believed that it would eventually support five Māori settlers running approximately 500 sheep and 200 cattle. More land would be included in the schemes as current leases over neighbouring blocks expired. The owners supported the scheme as a ‘most important’ and ‘vital’ one for their people, promising their ‘fullest co-operation’.\textsuperscript{72}

By the time the scheme was officially proclaimed in August 1940, eight men had already been employed to begin clearing the scrub, funded under the social security scheme.\textsuperscript{73} Local Member of Parliament John Robertson looked forward to the scheme providing work for unemployed Māori from Homewood and around Masterton: ‘This scheme would give them useful work in the meantime and in the future would provide permanent employment for many of them as farmers.’\textsuperscript{74}

Issues arose almost immediately about the scheme interfering with the owners’ use of some of the land for planting their own vegetables. The supervisor said it was not so, but the allegation was repeated later.\textsuperscript{75}

By 1943, there was a shortage of labour to continue breaking in the land. This problem persisted after the war, because local labour was not available during shearing season, and the scheme land was so isolated. Local Māori had begun leaving. Patricia Arohanui Bolstad told us told us that her parents moved the family from Homewood (Ōkautete) to Masterton in 1945 so that they could go to a ‘better school’ and be provided with ‘more resources’. They were one of the first families to move, providing a kind of ‘halfway house’ for others who soon followed suit, looking for work and better education.\textsuperscript{76}

In 1950, a Department of Māori Affairs report found that the increase in stock capacity did not reflect the department’s investment in scrub clearance and pasture creation. In 1953, in the face of marginal prospects and rising debt, the owners and the Department decided to cease development.

Various proposals regarding future use of the land were considered. Some owners wanted to incorporate and run the land themselves, but officials doubted whether the owners had sufficient expertise to constitute a committee of management. They questioned whether the scheme would generate sufficient returns to cover the costs of a manager and pay dividends to shareholders. In 1957, the owners decided that leasing the land was the best way of providing some revenue to repay debt and assist owners with housing costs.\textsuperscript{77} When the lease came up for renewal in 1973, the owners were unhappy with the lessee’s management of the land, and Hemi Morris – ‘the one Maori farmer left in this area rich in Maori history’ – took over the lease.\textsuperscript{78}

Hemi leased 1500 acres of Te Maipi and Ngāpuketūrua land. His son Sam Morris told us that the department required his father to lease the whole area, even though
The Problem of Development Finance

Developing land requires money. Yet banks and other lenders of rural finance were often reluctant to lend money when the only security available was multiply owned Māori land. This was—and indeed remains—a major obstacle to Māori owners participating in the agricultural economy on an equal footing with other farmers.

Hepa Mei Tatere, of Rangitāne o Tāmaki-nui-ā-Rua, told us how hard it has been for his whānau to borrow money to develop their land. Hepa was trustee of a 490-acre block of Māori freehold land at Ngā Awapūrua and Hāmua. He recalled that ‘The banks simply would not allow full mortgaging of the property we already owned to develop existing land or purchase further pieces of land.’

The Department of Māori Affairs rejected an application for funding to purchase another piece of land, and only agreed eventually on the proviso that Māori were employed to run the milking operation on the new piece of land. A second block was purchased through a bank, with borrowing made possible because the block was kept in general title.

However, at the time the sub-lease was prepared, departmental policy had changed. Now the sub-lessee was required to lease only the cleared land on the blocks, not the undeveloped scrub land. The farm debt was paid off over 15 years, but Sam said that 800 acres of scrub land included in the original lease now cannot be sub-let and can provide no return to the whānau:

only 400 acres was clear of scrub. The terms of the lease also required him to break in scrub land, rather than simply maintain the existing clear land. The refinancing required to cover the cost of breaking new land meant that the farm became uneconomic, and in the late 1980s, Hemi resorted to sub-letting the land to a neighbouring farmer to repay his debts.
If Dad had been able to do that [exclude the unproductive land from the area he leased] from the beginning, he would have been a lot better off. That change in policy set a precedent and now it is difficult to lease uncleared lands. Those lands are now not being utilised and are not returning income to the owners.\(^{79}\)

This seemed to be the worst of all worlds. Hemi Morris, an owner, had suffered from the requirement to clear scrub – a requirement that arguably benefited the owners as a whole rather than the farmer. Then Hemi had to sub-lease to a non-owner because the lease conditions were too tough, at which point the requirement to clear scrub was lifted. Neither Hemi nor the owners have benefited in the end.

Today, the Te Maipi and Ngāpuketūrua land formerly included in the Homewood development scheme comprise nine per cent of all Māori-owned land in the Wairarapa district.\(^{80}\)

### 6.3.3 The many obstacles to using the land that was left
Those who owned the district’s remaining Māori land in the twentieth century faced many barriers to using it productively, profitably, or in ways that allowed them to maintain their cultural and whānau connections.

Punga Paewai is a veteran of Māori land. He has been a farmer for most of his life, and sat on the Māori Land Advisory Committee for the Ikaorua district for many years from 1981. Although referring to a report on Wairarapa land undertaken by the Masterton District Council in 1993, he was really expressing his own views when he said that ‘continual fragmentation of the land has caused the increase in multiple ownership, current ownership lists are difficult to update and very little of this land is being used by owners or their whānau.’\(^{81}\)

Māori land, he said, ‘is like an asset that has become a liability.’\(^{82}\) He commented that Māori land is characterised by dilapidated fences, shabby barns, and poor husbandry. It is not hard to find the reasons for this. In the areas Punga is familiar with, ‘Early partitions have left many owners with land that is not viable for development as some are too small to be economic, others have access problems, or are irregular or ribbon shaped.’\(^{83}\) The maps attached to Punga’s evidence graphically illustrate how land near Masterton has been chaotically partitioned into long, unusable, narrow strips.\(^{84}\) While theoretically owners could now arrange amalgamations or exchanges to ameliorate the situation, most owners’ shares are too insignificant to provide an incentive for them to invest the necessary time and effort to apply to the Māori Land Court to bring order to chaos.\(^{85}\)

Punga’s observations leave little to be added, beyond acknowledging another major problem facing Māori landowners in our inquiry district: so-called landlocked land. These are usually remnants of Māori land that have ended up being surrounded on all sides by land owned by others, and with no provision made for access. Sometimes – perhaps more so in the past – Māori landowners have made arrangements with their neighbours for informal or (less frequently) formal access to be granted. But more often, landowners are completely dependent on the whim of the owner of the surrounding land. There have been instances

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### Farming at Homewood
Hemi Morris’s son Sam gave evidence on his and his father’s experience of farming the land at Homewood. Hemi’s lease was administered directly by the Department of Māori Affairs, not the owners. According to Sam, owners complained about the department’s administration of the leases:

> Māori Affairs could lease the land even if owners’ houses were on it. A lot of people had not partitioned out land for their homes in those days. If the owners weren’t occupying at the time, the lessee could do what he wanted with their house. There were a lot of complaints at the time, as lessees were doing things like storing hay in the houses.
where these neighbouring owners have taken advantage of the situation, to the point where no rent is paid for the landlocked land. (For an example, see the discussion of Pūkaroro reserve at section 6.3.3(2).)

Unsurprisingly, the frustrations associated with dealing effectively with landlocked blocks often leads ultimately to their sale. We heard evidence from two groups of claimants about their frustrating experience of trying to access landlocked land.

(1) Taueru urupā
Several claimants from Ngā Hapū Karanga presented evidence to us about an urupā at Taueru, which is landlocked within a privately owned farm. The current owners of the farm allow access to the urupā across their land, but the claimants expressed concern that with a change of ownership this arrangement might cease. They are also concerned about the mining of lime not far from their urupā, which has affected other urupā in the area. Official plans show a series of paper roads (roads which have never been formed) leading to the site, and the claimants want local bodies to form the roads to give them legal access to their urupā.86

(2) Pūkaroro reserve
Haami Te Whaiti, of Ngāti Hinewa ka me ēna Kāranga-ranga, presented evidence to us about the Pūkaroro reserve. This reserve is landlocked within the Te Awaiti Station owned by the Riddiford family.

There was originally a paper road leading to the reserve, but this was accidentally deleted from the official plan in about 1930. During the 1980s, station owner Dan Riddiford attempted to purchase the Pūkaroro reserve. The owners refused, and instead established a trust to manage the property. Riddiford then denied the owners access to the site, and would not pay rent for the land he was using as part of the farm. The owners also learnt that Riddiford had been charging commercial fishermen $5000 a year to launch boats from the reserve, which adjoins a beach.

In August 1996, the owners of Pūkaroro obtained from the Māori Land Court an injunction prohibiting Riddiford and his mother from trespassing on the reserve. Riddiford’s
appeal to the Māori Appellate Court was rejected, and on both occasions Riddiford was ordered to pay the owners’ court costs, which he refused to do. Riddiford continues to trespass on the reserve. The orders of the Māori Land and Māori Appellate Courts were of no practical benefit, because the owners cannot afford to take measures to enforce the courts’ orders.\textsuperscript{87}

Haami Te Whaiti has spent many years in the struggle for access and use of Ngāti Hinewaka’s reserves on Te Awaiti Station:

The lack of legal access to these reserves has meant that the reservation of these lands has been meaningless. They are token reservations. In practical terms we are not able to get access to the land, we are not able to use the land, and we are not able to prevent trespassers from trespassing on the land. Yet these lands are some of the last remnants of our tribal estate on the coast.\textsuperscript{88}

The fight to look after the landlocked land has taken a personal toll, as Te Whaiti acknowledges:

It is a daunting task as a trustee to look after our reserve lands when there is no access to them, they generate no income, the neighbouring land owners use the land as their own and orders of the Maori Land Court are ignored. I can understand how our tipuna were driven to sell land in such circumstances. However, I do not believe our generation or future generations will sell any of this land. The answer is for the Crown and the Councils to provide access to these three reserves on the coast, and to other landlocked reserves.\textsuperscript{89}

\textbf{6.4 Tribunal Analysis and Findings}

\textbf{6.4.1 Introduction}

As we said at the outset, the issues associated with Māori land in the twentieth century have been well ventilated in earlier district inquiries and dealt with by other tribunals in some depth. We adopt their analysis and findings where
relevant to the material before us, and where we find the approach of those earlier tribunals applicable.

Where we heard a specific and distinctive voice from the claimants of this district, we respond by focusing on particular evidence and argument. Sadly, though, the experience of Māori landowners in the twentieth century is all too similar. Looking back from the perspective of a new century, it is evident that the essential and enormous problems remain unresolved: there is too little Māori land, it is of poor quality, and it is owned by too many who lack the finance to develop it. And, even more sadly, no solution to these problems is in sight.
the present and future use of Māori to ‘enable them to engage on an equal basis with the European settlers in pastoral and other farming activities’.91

Counsel pointed to numerous occasions during the nineteenth and twentieth centuries when it was brought to the Crown’s attention that Māori landholdings in the Wairarapa and Tararua districts were diminishing. Yet, the Crown continued to purchase interests, and allowed private purchasers to do so too.92 Because of the poor quality and small size of holdings, their multiple ownership, and the unavailability of finance, it was – and remains – extremely difficult for owners to achieve more than a subsistence living from their holdings.93

As a result, Māori owners have frequently been forced to sell land. As the twentieth century progressed, owners became more likely to leave the area in search of employment, and to lose connection with their ancestral land and communities.94

Counsel said that, although protection mechanisms were sometimes enacted, these were both inadequate and ineffective in ensuring that Māori retained enough land to be able to earn a living from it. In particular, the removal of restrictions on alienation by the Native Land Act 1909, in spite of the contrary advice of the Stout–Ngata commission, demonstrates Crown failure to protect Māori interests.95 Their virtual landlessness now is circumstantial evidence of wholesale failure to honour the Crown’s Treaty obligations.

6.4.2 Retaining land in the twentieth century

(1) What the claimants said

The claimants emphasised that, although Wairarapa ki Tāmaki-nui-ā-Rua Māori were virtually landless by 1900, sales of land continued right up into the 1980s. Of land in the district today, only between 1.4 and 2 per cent is Māori land.90

Concerning the Crown’s Treaty obligation to ensure sufficiency of land and resources, counsel for Ngāi Tūmapuhia-ā-Rangi cited the Ngāi Tahu Tribunal’s findings about landlessness that we discussed in chapter 5. The Ngāi Tahu Tribunal found that it was the Crown’s duty to ensure that sufficient good quality land was retained for virtually landless and . . . this state of affairs represents a breach of the Treaty and its principles. This involves a judgement that the cumulative effect of policies and processes since 1840 is that Māori of the region now have insufficient land and associated resources to give appropriate support to their iwi operations and their cultural and historical associations with their rohe.96
The Crown accepts that it should have been evident by the end of the nineteenth century, or upon receiving the Stout–Ngata commission’s report, that Crown policies enabling the sale of further land after that time would inevitably lead to the situation that exists today.97

The Crown notes, however, that past policies ‘were not concerned with the preservation of a “sufficiency” of land in that sense’, given that less than 20 per cent of the workforce was actively involved in farming in the nineteenth century.98 A belief in free trade informed many legal and other reforms in the nineteenth century, and nineteenth-century governments ‘would not presume to determine what was best for their citizens’.99

Nevertheless, nineteenth-century New Zealand governments acknowledged the need to protect Māori in land dealings. Protection mechanisms were built into legislation, but these were intended to be of short duration, lasting only until Māori had learned to participate in the settler economy without the need for Government intervention. Integration, amalgamation, and assimilation of the races was seen as desirable until relatively recent times. In the past, the Crown’s concern was that Māori not be left without means once they had sold their land; there was less concern about their losing the land itself.

We discussed in chapter 5 how the Crown rejects the analogy with the experience of Ngāi Tahu, who were left
without alternative economic opportunities when their land was purchased en masse in the nineteenth century. The Crown says that there was no comparable ‘crisis of insufficiency’ such that Māori in this district were:

generally unable to make an adequate livelihood either from their landholdings, their activity in other sectors, or a combination of the two. But they were, as the Crown has acknowledged, exposed to policies that ultimately did not ensure the retention of holdings sufficient for the purposes we have noted.\(^{100}\)

On the loss of Māori land through the application to them of Pākehā succession laws, the Crown’s submissions responded to the specific whānau cases given in evidence, such as the Anaru and Randell whānau claims described above.\(^{101}\) What the Crown seems to be saying is that the law that affected these whānau was the product of the thinking of the day – the ‘different emphasis’ of a period when testamentary freedom was paramount, and assimilation was a policy goal.\(^{102}\) Crown counsel quoted from a 2001 Law Commission study paper on Māori custom law and values in New Zealand law as follows:

The rural land base and legal interests that Māori held in ancestral lands were best seen as a form of wealth that could be readily transmuted into another form, rather than as a part of a continuing ancestral inheritance. The most sensible course was to treat interests in Māori freehold land as no different from any other form of property that a New Zealander may own.\(^{103}\)

\(3\) What we say
(a) Sufficiency and landlessness: Our analysis and findings on sufficiency and landlessness in chapter 5 apply also to the twentieth century.
We follow the reasoning and findings of the Ngāi Tahu Tribunal set out in chapters 4, 5, and 6 of the *Ngai Tahu Report 1991*. These are perhaps best encapsulated in that Tribunal’s cogent statement that:

The tribunal has concluded that the two parts of article 2 of the Treaty must be read together and construed in the light of the surrounding circumstances, including the fact that, had the Maori chiefs not been assured that possession of their lands would be protected, they would not have signed the Treaty. In the light of these considerations the tribunal has found that article 2, read as a whole, imposed on the Crown a duty first to ensure that the Maori people in fact wished to sell; and secondly that each tribe maintained a sufficient endowment for its foreseeable needs.\(^{104}\)

We also endorse the findings of the *Mohaka ki Ahuriri Report* on this topic. That Tribunal considered that the Ngāi Tahu Tribunal’s comments about the Crown’s duty to provide for future needs were especially relevant to the claims before them, ‘since Hawke’s Bay, like the eastern South Island, was used by colonists for extensive pastoralism’.\(^{105}\) We find the Ngāi Tahu Tribunal’s approach apposite for similar reasons. Like the Mohaka ki Ahuriri Tribunal, we consider helpful the principle outlined in the *Ngai Tahu Report*; it was necessary to reserve sufficient good land for the existing and future needs of Ngai Tahu so that:

they would, as Lord Normanby contemplated, later enjoy the added value accruing from British settlement. Sufficient land would need to be left with Ngai Tahu to enable them to engage on an equal basis with European settlers in pastoral and other farming activities.\(^{106}\)

This Tribunal is much aided by the Crown’s acceptance that Māori in this district inquiry are ‘virtually landless’ and ‘have insufficient land and associated resources to give appropriate support to their iwi operations and their cultural and historical associations with their rohe’.\(^{107}\)

As to when precisely Māori were delivered to this state of landlessness, the Crown said in closing submissions:

Given the complexity of the factors at play there are difficulties in proposing a precise time at which Wairarapa Māori passed from a state of sufficient to insufficient holdings. The weight of evidence suggests that the potential for insufficiency ought to have been apparent to the Crown at either the last decade of the 19th century or upon receipt of the 1907 Stout Ngata report. The Crown accepts that its policies enabling further land to be sold thereafter inevitably led to the situation as it presents today. Insufficiency, in the sense used above, was therefore a phenomenon that broadly dates from the turn of the last century.\(^{108}\)

There was broad consensus in the inquiry about this analysis, and we adopt it. The facts on which it is based are summarised in the following table:

<table>
<thead>
<tr>
<th>Category</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Inquiry district alienated, 1840–65</td>
<td>59.3</td>
</tr>
<tr>
<td>Inquiry district alienated, 1865–1900</td>
<td>29.9</td>
</tr>
<tr>
<td>Inquiry district alienated, 1900–2000</td>
<td>9.3</td>
</tr>
<tr>
<td>Inquiry district remaining in Māori ownership</td>
<td>1.5</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>100.0</strong></td>
</tr>
</tbody>
</table>

Wairarapa ki Tāmaki-nui-ā-Rua Māori land alienation, 1840 to the present, as a percentage of total land in district

If we accept (and we do) that Wairarapa Māori had insufficient land to enable them to participate equally in the pastoral economy at the turn of the twentieth century, then the Crown had a duty to exercise special care to ensure that Māori could keep all the land they had left, and put it to good use. The Crown accepts that this did not occur.

The Crown also contended, in mitigation of the prejudice to Māori arising from their landlessness, that
economic prosperity was no longer land-based in New Zealand by the turn of the century. We substantially reject that argument as it relates to this inquiry district, and our findings and analysis are set out in section 5.6.

(b) Crown failure to act to keep Māori land in Māori hands: By the beginning of the twentieth century, Māori land and its owners were mired in a morass of complicated laws that did little or nothing to serve their interests, and still lacked a form of land title option that would enable collective control of multiply owned land. The year 1900 saw the apparent acceptance by the Liberal Government that Māori should be protected in the retention of their land, and should be enabled to manage blocks for themselves – an acceptance brought about in no small part by the lobbying of the Kotahitanga movement from its Wairarapa base at Pāpāwai. As we have seen, a system of Māori land councils was introduced – for the first time, bodies with power and influence that had the potential for majority Māori membership.

But not for long. After only five years, the councils were abolished. Governments opened up Māori land to purchase once again under the 1905 and 1909 Native Land Acts. The Hauraki Tribunal observed that ’no single fact . . . more clearly demonstrates the fundamental demand of the settler electorate to acquire the freehold of Maori land, than this sequence of law changes.” We agree. Of the land in Māori hands in 1900 in this inquiry district, just over half was gone by the end of the land board era in 1953.

This particular development is especially deplorable because it took the place of another system (the land councils) that had much more potential to stem the flow of land from Māori tenure. Moreover, the more permissive land board regime was enacted after Stout and Ngata had clearly warned in their royal commission report that there was no ‘idle’ land in the district available for purchase. We are no less critical of the 1913 legislation where the Crown gave itself, once again, the power to purchase undivided shares – when it had been stated only a few years before that a great injustice would be caused if that system continued and that Māori would almost certainly be rendered landless.

(c) Mid-century changes too little too late: There was no sustained interest in enacting a land-owning regime that provided for Māori preferences and control. While steps were taken in this direction after the Second World War, the small landholdings remaining to Māori in our inquiry district meant that they were no longer in a position to take real advantage of them. It was not until the enactment of the Te Ture Whenua Māori Act in 1993 that a real Māori flavour was discernible.

That legislation, though, was arguably too little too late. The damage done by the Native Lands Acts and succession laws that applied during the nineteenth and twentieth century cannot now be undone. Similarly, the land that Māori sold cannot now be regained – even though they sold it substantially because of problems that were not of their making. In the twentieth century, Māori in this district very often sold because the land that was by then left to them was so poor and so difficult to run. The Crown was greatly at fault for not intervening earlier to prevent this whittling away of Māori land, which continued up until very recent times. Its breach of the Treaty in this regard is as serious as the breaches of the nineteenth century – because, by the twentieth century, it was so much more critical to ensure that tangata whenua kept the little whenua they had left. Also, by the twentieth century, the Crown knew more, and could do more, because New Zealand was a fully developed state with resources at its disposal.

That which whānau lost is gone forever, because the Tribunal has no jurisdiction to make recommendations for the return of land in private ownership. Compensation is of course an inadequate remedy for situations where the prejudice to tangata whenua concerns their mana, culture, identity, and tūrangawaewae.

(d) Non-whānau succession: The ability for non-whānau to succeed to Māori land also contributed to the dwindling of
Māori land held by its traditional owners in the twentieth century. The extent of land loss through succession outside the whānau has not been – and possibly now cannot be – quantified in terms of acres, roods, and perches. But, as the evidence in this inquiry made clear, often the problem was not that a lot of land was lost in this way; it was that there was hardly any land left, so that the small amount lost was of great significance. It was also that the legal regime left no room at all for the application of tikanga in matters relating to whakapapa and whenua where, in Māori terms, there was a right way and a wrong way. In the cases brought to us in this inquiry, the law sanctioned the wrong way.

It should have been apparent to the Crown, as the twentieth century proceeded, that treating Māori land as if it were no different from general land for succession purposes was likely to lead to a further weakening of the ties between Māori and their traditional land. The Crown submitted that legislation allowing land ownership to be bequeathed outside the family was a product of the assimilationist ethos of its time.111 We agree. But this does not address the question of the Crown’s Treaty obligation to Māori. Our task is to look at the Crown’s performance in the light of the Treaty principles. It cannot be an answer to say – as the Crown appears to be saying – that the Crown’s obligations under the Treaty did not need to be fulfilled in times when other policies were considered more important. The Crown’s duty to support Māori in their own tikanga in relation to their own land remained through the whole period, including times when policy emphases were otherwise.

We agree with the Hauraki Tribunal where it said:

We note that the Crown was not completely out of step with evolving Maori opinion. But we think that the claimants have a valid point: the Crown did cause the patrimony of the hapu to be eroded by the provisions relating to wills, and that this did cause significant injury in particular cases in the 1880s and 1890s, and between 1909 and 1974.112

The Tribunal went on to cite the specific examples that were the subject of evidence in that inquiry, as we have cited specific examples that came before us.

In these periods, and for the reasons discussed, the legislative regime breached the Treaty because it eroded Māori land tenure, whakapapa, and whanaungatanga (kinship ties), all guaranteed to Māori under the rubric of article 2, and prejudice certainly resulted.

(e) Fractionation of interests caused by the nature of title: Although the Te Ture Whenua Māori Act 1993 effectively ensured that land could not be willed outside the bloodline, it did not fix the other major problem of succession: fragmentation and fractionation of titles.

The Hauraki Tribunal made an interesting observation about this. Commenting on how succession rules had contributed to fractionation of interests, the Tribunal said:

We believe that criticism is properly directed [not to the succession laws as such, but] . . . to the failure of the law to provide for the corporate management of the land by owners, particularly to those who lived on or near it. But this and similar effects of the land laws are a question of the nature of Māori titles as defined by statute, rather than of succession law as such.113

And of course this is true. The tiny shares of individuals in a block would be of far less concern if provision had been made for communal management of interests, and derivation of benefit by the community. Then the incentives would have been different: development may very well have been possible, returns would have been greater, and shared. But there was never any appetite for encouraging ‘communalism’ at all.114 Now it is probably too late to rationalise interests in Māori land so as to overcome the problems we have talked about. Māori lives have changed, and the overwhelming majority of those who own interests in Māori land are absentee owners. The diminution in the size of owners’ interests has been going on for too long, and, although many owners are no longer practically or physically connected with their land, they remain...
committed to retaining individual ownership of their small shareholdings. As a result of all these factors, we regret that a solution to the problem of fractionation of interests probably no longer exists.

Since the Te Ture Whenua Māori Act 1993, the Māori Land Court has promoted the establishment of whānau trusts as a means of holding whānau land interests in a corpus. This prevents the further fractionation of the land interests themselves, although of course the number of beneficiaries of whānau trusts will increase forever. Substantially, however, we agree with the Hauraki Tribunal where it said:

We note that the problems in the law were largely remedied by the Te Ture Whenua Maori Act 1993, which provides a balance between tikanga and English principles much more in accord with Māori preferences than previous laws, while still protecting widows and widowers by enabling the grant of a life interest in deceased estates.115

(f) The principle of options: From 1909 until 1993, however, the laws governing Māori land tenure reflected two things: first, the needs and desires of settlers for easy purchase of Māori land; and secondly, the belief and desire that Māori would ultimately be assimilated into English society and become subject entirely to the common law. In both these aspirations, land was treated as a commodity, and not as an embodiment of cultural identity. Some Māori of course yielded to these pressures. They sold their land, gave up speaking their language, and blended as required. To the extent that this could be characterised as an exercise of free choice, it has no implications for the Crown in terms of the Treaty. But the Crown was not entitled to impose its assimilationist views on its Treaty partner, so that effectively there was little or no choice to be had. As the Muriwhenua Tribunal said:

Neither text [of the Treaty] prevents individual Maori from pursuing a direction of personal choice.

The Treaty provided an effective option to Māori to develop along customary lines and from a traditional base, or to assimilate into a new way. Inferentially it offered a third alternative, to walk in two worlds. That same option is open to all people, is currently much in vogue and may represent the ultimate in partnership. But these are options, that is to say, it was not intended that the partner’s choices could be forced.116

It is plain to us that, as regards their land in the twentieth century, the choices of Māori were far too often forced. The principle of options, first expressed by the Muriwhenua Tribunal in the passage quoted, was therefore breached.

6.4.3 Using the land
(1) What the claimants said

The land that did remain with Wairarapa ki Tāmaki-nui-ā-Rua Māori in the twentieth century was encumbered with the usual problems associated with Māori land. Titles were fractionated, holdings were fragmented, and owners struggled to manage their resources collectively. Development finance was hard to get, and owners lacked the necessary experience to participate in the settler farming economy.

Counsel argued that the Māori land board system, which was nominally intended to overcome problems with Māori land management, in fact acted to ‘divorce Māori from active management of their lands’.117 The activities of the boards resulted in the continued alienation of land, and they had too much discretionary power over the uses of land and the money accruing from its use. Instead of providing assistance in land development, as the Stout–Ngata commission had proposed, the boards replaced owners as the managers of the land. Counsel for Ngāi Tūmapuhia-ā-Rangi submitted that ‘Maori became supplicants to the Board, fostering dependence and denying the opportunity for Maori to develop their own land management skills and self-reliance.’118

It was difficult for Māori landowners to develop their land like other New Zealanders – that is, by borrowing
using their land as security. Lenders then (as they do now) regarded Māori land as poor security, because of the difficulties of enforcing the security when there are many owners. Faced with an uneconomic asset, and often lacking other choices, Māori owners chose to sell their land because they despaired of its ever being other than a financial liability.¹¹⁹

Neither did Māori development schemes, under which the Māori Affairs Department funded and assisted Māori to develop their land, achieve the intended outcomes.

Because of the limited amount of land remaining in Māori ownership, and the poor quality of that land, there was relatively little potential to create development schemes in the Wairarapa ki Tararua district. The Homewood development scheme, one of the few here, was ‘too little, too late to enable [Ngāi Tūmapuhia-ā-Rangi people] to continue living on and working their lands.’¹²⁰ Counsel for Ngāi Tūmapuhia-ā-Rangi stated that the management of Homewood by the Department of Māori Affairs resulted in the Māori owners became alienated from their ancestral land.¹²¹ Ngāi Tūmapuhia-ā-Rangi were employed as labourers by the farm managers, rather than being trained to take over the farm themselves. One owner, Tinirau Akuira, attended owners’ meetings, but ‘had no say’ in the proceedings, and was not given the opportunity of taking up the lease of the land when the previous lease expired. For this owner, ‘the Scheme’s effect was to stop their association with the land.’¹²²

**(2) What the Crown said**

The Crown confined its submissions on Māori land in the twentieth century to the issues of sufficiency of land and landlessness, and the related topic of succession, discussed in the previous section.

**(3) What we say**

The technological developments discussed in previous chapters, especially advances in refrigeration in the 1880s, meant new opportunities for Māori in the Wairarapa who had lost out in the first round of economic expansion based on wool and large-scale pastoralism. Refrigeration, the catalyst for the growth of the modern farm industry, enabled the sorts of marginal land Māori had been left with – small, previously uneconomic plots or hilly land requiring considerable improvement – to be brought into production. Small farms could be profitable as never before.

In our view, as new opportunities emerged, the Crown should have taken reasonable steps to ensure that the barriers to Māori utilising their land were removed. At least,
Māori should have been offered similar assistance to that made available to other sectors of the community, most notably Pākehā owners of smaller areas of undeveloped land who had limited capital. These were critical areas for Crown action:

- assessment of the needs of iwi and hapū;
- a concerted and sustained effort to solve title difficulties;
- access to State lending (in line with what was available to Pākehā);
- help in areas where Māori were known to be disadvantaged (in particular, farming knowledge); and
- stemming further attrition of their land-base.

All were possible in the early decades of the twentieth century.

Instead – and despite the clear warnings of the Stout–Ngata commission – Wairarapa ki Tāmaki-nui-ā-Rua Māori had to wait until the 1930s for any sustained and concerted assistance to be attempted. By then, as already discussed, there had been considerable further loss of land. This was not only because of the Crown’s inaction in not providing adequate mechanisms for Māori to transform their individual and scattered shares into economically viable blocks that they could effectively manage, it was also as a result of the Crown’s own actions in continuing to purchase Māori land.

In particular, Māori continued to be greatly hindered by their lack of access to finance. Confused land titles, created by 40 years of Native Land Court processes, meant that neither the Government nor private institutions would lend on multiply owned land on the basis of equivalent criteria. The real question with lending should always be ‘Can the borrower pay it back?’ But with Māori land, disinclination to lend often flows from a blend of prejudice, ignorance, and fear of the ‘too hard’ basket. This combination leads all too often to ‘no’. As we have seen, in the early part of the twentieth century, the requirements for lending on Māori land were effectively incapable of fulfilment. Section 5.5 showed how most Māori were barred from taking advantage of measures designed to assist landowners with limited means to develop their land, in particular the Advances to Settlers Act 1894. Although technically eligible, in fact they faced obstacles that were insuperable in practical terms. The central North Island Tribunal showed how Māori and Māori land were screened out by:

- the requirement that land was held under a full certificate of title;
- survey liens and other debts encumbering Māori land;
- the need to gain owners’ consent before the land could be mortgaged and a loan obtained; and
- the Advances to Settlers Office applying more stringent criteria to Māori land. 124

Not much evidence was available on state loans made in our district. Historian Bruce Stirling located only a handful among the 145 made to Māori nationwide in the period 1910 to 1922. 125 While the Crown passed a series of amendments to the Act to ensure that it met the needs of groups identified as worthy of inclusion – and despite the requests of Māori, and some minor tinkering in response – the same was not done for them. 126

Developments in farm education were similarly disappointing. Again, the Government did offer assistance to the general population from the 1890s onwards. The Government was also aware of Māori needs in this area.
As we discussed in chapter 3C, access to education was one of the central promises made during the Crown’s purchase negotiations with Māori, and calls for practical training in farming techniques were ongoing. In 1891, the Royal Commission into the Native Land Law (the Rees–Carroll commission) recommended that the Government provide training and educational assistance to enable Māori to participate in the opportunities available in farming.127 The Stout–Ngata commission highlighted the issue again in 1907, calling training a ‘paramount consideration’ in making Māori into industrious and useful settlers. Its proposals were twofold: including agricultural training in the school system; and the State taking an active role in guiding and leading Māori adults towards practical experience in farming and horticulture. Options included using state experimental farms as a training ground, and regular visits by agricultural instructors to Māori districts. Yet, even though the commission emphasised that the need was ‘pressing,’ Māori continued to be excluded from general assistance programmes. Māori land boards did not include members with the necessary skills to offer the sort of training and advice available to other sectors of the community, and the Government ignored the issue until 1929, when the development schemes were introduced.128

(a) Development schemes: Development schemes were a major Crown initiative for Māori, but one that really came too late in our inquiry district. Nonetheless, having been without access to finance and training for so long, and with the economic situation deteriorating, Māori welcomed the idea. They were willing to hand over temporary control of their land, and agreed to repayment of debts out of farm profits, in return for immediate financial help, expert advice, and employment. But they also expected to participate in decision-making, to be trained in farm management, and to get their land back at the end in an improved state, unencumbered by serious debt.

With the benefit of hindsight, it is apparent that for Wairarapa ki Tāmaki-nui-ā-Rua Māori, the schemes were at best a mixed blessing. They were a well-intentioned attempt to remedy some of the problems afflicting Māori land, and if their implementation had accorded with their original conception, they might have succeeded rather better. In fact, the schemes initiated pre-1945 were not well thought out. As the central North Island Tribunal has pointed out, they were implemented on an ‘emergency’ basis, with unresolved issues concerning the rights of owners, how much debt would be charged against the land, and how it would be repaid.129

In practice, the schemes tended to be run by Pākehā whose focus was on making ‘idle’ land productive so that debt could be repaid, rather than on growing a population of knowledgeable Māori farmers; although tangata whenua got jobs on development scheme farms, they were at the farmhand level. Sometimes, jobs did not go to tangata whenua but to the unemployed of Wellington, or to Māori from outside the district. The jobs were frequently also of relatively short duration. The training objective of the schemes was therefore not fulfilled, and nor were the farms run in a way that acknowledged at all the special relationship of tangata whenua with the land. This was the case whether the farms were run by the Native Trustee or the Native Department (via the Board of Native Affairs). After the initial discussions about whether land was to be handed over for development, Māori input seems to have been limited to an annual meeting of the owners. They were drawn into decision-making again at the very end, when their views were sought on whether the land should remain within the scheme or not, but the final say rested with officials.

In our view, Government intervention and a reasonable degree of control was necessary for the schemes to succeed, but Māori still needed to participate more in overall management. Ngata’s original conception provided for Māori management committees, and this went into the 1929 legislation. But owners were thought to lack the necessary expertise for decisions about the running of the farms, and the committees went out under Native Land Amendment Act 1936. There was provision for district Māori land committees, but this seems to have remained
a dead letter until the late 1940s. The Board of Native Affairs took charge in 1935, extending bureaucratic control over the land included in the schemes, but it had no Māori member until 1947. Nor was it subject to any monitoring or review on the owners’ behalf. Until the 1970s, the focus was almost entirely on repaying debt and protecting occupiers rather than attending to the interests of the owners. This led to frustration and resentment.

That the properties yielded little in the way of income for owners during the development scheme era no doubt exacerbated these feelings. Although it was reasonable for the Crown to expect payment of debts once farms were profitable, development objectives and debt repayment should not always have been prioritised over owners’ needs. Especially in the 1930s and 1940s, when economic hardship for many was extreme, a more flexible approach was called for.

A flexible approach was also, we think, justified by a broader view of the development schemes as projects serving the national interest. Bringing Māori land into production had benefits well beyond their Māori owners, and using the schemes to subsidise unemployment relief also met a national need. Forms of financial assistance such as mortgage relief were afforded to other sectors of the community. The same thinking could have been factored into policy for repayment of debt on the schemes – especially as Māori owners of land in the schemes had made personal sacrifices, contributing labour at low rates, and forgoing short-term financial gains from leases. Unfortunately, neither the national interest context nor the owners’ sacrifices seem to have been taken into account in formulating policy on debt repayment.

Debt on the schemes was a perennial problem, even on the more successful ones. It took 40 years for Aohanga to get to a situation where the farm was valued at a higher figure than the debt owed on it.

Māori bore many risks. The debt burden on their land increased, they lost income, and they lost contact with the land when others assumed control. And all the while they had no say in how the schemes operated, nor how much and what kind of debt was loaded on to the properties. This situation was all the more galling because in fact it was unlikely that this land would ever be especially productive. Much of it subsequently reverted, as marginal land does, to scrub.

Really, the best that can be said for the development schemes in this district is that they signalled the Government’s commitment to assisting Māori to develop their land rather than targeting it for purchase. This had the positive effect of keeping Māori land in Māori ownership, as some claimants noted. Had development schemes not been introduced, it is likely that much of that land, like other Māori land in the district, would have been sold for the reasons that we have enumerated.

The failure of the schemes to involve owners in the management of the land, and to focus on developing their farming skills, seems to have been an important opportunity sadly lost. The development scheme farms did not succeed very well as businesses, so it is regrettable that they were not at least deployed as training opportunities. Instead, as the claimants complained, when the schemes were wound up, the owners still lacked the skills to farm the land efficiently.

(b) Access to and viability of remaining Māori land: The unsupervised partitioning out of Crown interests in the past, and the general failure (and really, as far as owners were concerned, inability) to ensure that the landholdings remaining to Māori were viable in any sense, has led to a chaotic situation where many blocks of Māori land are inaccessible and uneconomic. Evidence before us clearly showed the human cost today of these ill-considered decisions of the past.

Under the Te Ture Whenua Māori Act 1993, there is potential for processes to be undertaken within the Māori Land Court that could ameliorate the situation of some of these blocks, and some of these owners. For instance, amalgamations and exchanges could be embarked upon
with a view to re-organising blocks so that owners are left with holdings that are decent-sized, and coherently organised and shaped. And the Māori Land Court now has jurisdiction to order access to landlocked blocks.\textsuperscript{33}

As we have seen, however, many people own these small remaining blocks, and financial rewards from them are few. It is therefore unsurprising that changes do not happen. Changes take a lot of energy, time, and money. They involve many hui and much negotiation with interest holders, probably over many months, or even years. No individual can pay for this, however much he or she would like to. If the changes are to happen, funding would be required, to purchase the guidance of lawyers and surveyors, and of knowledgeable people like Punga Paewai and Haami Te Whaiti.

Our recommendations reflect our view that the time has come for a significant project to be undertaken to assist tangata whenua in this district to rationalise their remaining landholdings in an effort to make them viable. We have explained how successive Crown actions and inactions led to the chaotic situation we have today. The Crown should now, we believe, make available the funding to allow the claimants to find a way out of the bind they are in (see recommendations).

(c) Development finance: The difficulty of accessing development finance has been an important and ongoing limitation on Māori seeking to make their remaining landholdings into an asset. The conflict between banks’ desire to use land as security that may be sold when debts go bad and the need to ensure that Māori retain ancestral land in their hands for coming generations is difficult to resolve. Neither is the problem limited to multiply owned land. Even where there is a sole owner – and here the difficulty for lenders in enforcing security is really no greater than for general land – the experience of the Māori Land Court is that lenders seem simply to be prejudiced against lending on the security of Māori land. The reasons appear to be a lack of understanding as to how the (admittedly complicated) provisions of Te Ture Whenua work, and fear that a mortgagee sale of Māori land would be a political liability for the lending institution.

It seems to us unlikely that a genuine solution will be found to the problem of financing development of Māori land if the only option available to Māori landowners is lenders operating in the commercial world. This option has been failing for a long time. Given the extent of the Crown’s Treaty breach in relation to Māori land, the time has come for the Crown to accept that it must itself again (as it was in the past) become a lender of money to enterprises whose only asset is Māori land. It is difficult to see how, otherwise, the present situation will ever be improved.

6.5 Recommendations

As we have already commented, there is not a lot that can be done now to restore to Māori the land they have lost as a result of poor twentieth century law making. The Tribunal has no power to recommend that land currently in private ownership be purchased and returned to its former owners. Thus, we are limited to suggesting legislative and policy changes, and compensation.

In addition to general redress for the breaches committed and the prejudice suffered, we recommend:

1. That the Crown works with Wairarapa ki Tāmaki-nui-ā-Rua Māori in the light of the significant breaches of the Treaty relating to keeping and using Māori land, to design a means whereby the Crown either:
   (a) lends money to owners of Māori land on the security of that land; and/or
   (b) guarantees lending to owners of Māori land by other institutions unwilling to accept Māori land as security.
2. That the Crown engages with Wairarapa ki Tāmaki-nui-ā-Rua Māori to explore the feasibility and desire for a Crown-funded project that:
(a) explores with Māori landowners the possibilities available; and
(b) funds the necessary expertise (project manager, facilitator, surveyor, lawyer, community liaison) to assist Māori to engage in the level of Māori Land Court activity that would be necessary to:
(i) effect amalgamations and exchanges to ameliorate the effects of the poor partitioning of titles in the past; and
(ii) apply for the Court to exercise its new jurisdiction to facilitate access to landlocked land. The Pūkaroro reserve would be a good starting point.

This recommendation, if accepted, would involve the Crown in paying for the costs of surveyors and lawyers;

3. That the Crown provides financial assistance to enable Māori owners to enforce court orders in respect of their land; and

4. That the Crown assists the owners of Taueru Urupā to work with local bodies to form the roads that will afford access to their urupā. If this avenue does not succeed, assistance to invoke the Maori Land Court’s jurisdiction with respect to landlocked land will be required (see recommendation 2(b)).

Notes
1. Purchasers did have to meet legal requirements about what proportion of the owners were required to assent to the partition. Under section 52 of the Native Land Court Act 1894, the agreement of only one-third of owners was required if all owners were deemed by the court to have sufficient other land: see doc A49 (Stirling), pp 175, 185, 202.
2. Native Land Court Act 1894, ss122–130
5. A more detailed discussion of the legislative changes during this period can be found in Waitangi Tribunal, He Maunga Rongo, vol 2, ch 11.
7. Ibid, p 2
9. Evidence of extensive purchasing of these blocks is contained in the reports of Walzl and Oliver outlining the alienation of Māori land in the inquiry district throughout the twentieth century: see doc A42 (Walzl); doc A78 (Oliver).
10. AJHR, 1909, G-1D, p 2
12. Ibid, pp 188–189
14. Waitangi Tribunal, He Maunga Rongo, vol 2, p 684
15. The Māori development schemes were introduced by legislation in 1929.
16. A more detailed discussion of the legislative changes during this period can be found in Waitangi Tribunal, He Maunga Rongo, vol 2, ch 11.
17. Maori Land Settlement Act 1905, s 22
21. In Bennion’s Maori Land Court and Boards, p 12, he notes that:

The confusion of duties is obvious. The land boards were already compromised in having to act as trustees and promote settlement for Maori, as well as progress private alienations, and make rulings on the benefit of those alienations for their Maori beneficiaries, as well as the general public. Now, they would also have to make decisions on partitions designed to protect the interests of dissenters. How could the dissenters be sure that the land board was properly considering their interests in a partition, when the board was also finalising a purchase and seeking the best price for the sale of the block of which their land was a part?

22. Document A42 (Walzl), p 40
23. We aggregated the block data in Steven Oliver’s report (doc A78) on twentieth-century lands in the Tararua district to arrive at this 30,000-acre figure. Inevitably, there are some omissions and inconsistencies in the data; however, a broad analysis of Oliver’s Tararua block figures
gives a useful picture of the general sale trends across the decades up to 2000. In general, the unknown sale dates and acreages are more likely to have occurred early in the century, so we consider that the overall patterns in the rate of alienation would remain the same, even if a perfect set of data were available.

24. A more detailed discussion of the legislative changes during this period can be found in Waitangi Tribunal, *He Maunga Rongo*, vol.2, ch.11.

25. We aggregated the block data in Walzl’s report on twentieth-century lands in the Wairarapa district: see doc A42 (Walzl), pp.469–470.

26. We aggregated the block data in Oliver's report on twentieth-century lands in the Tararua district to arrive at this approximate percentage for sales of Māori land between 1911 and 1930: see doc A78 (Oliver).

27. Document A42(a) (Walzl), p4

28. Document A78 (Oliver), p15; doc A78(a), p3

29. Document 11(c) (Ngā Hapū Karanga closing submissions), pp.28–29

30. Document A78 (Oliver), p158; doc A42 (Walzl), pp.324–325


32. Document A78 (Oliver), p20. See also the Tararua district block histories in document A39 (Berghan).

33. Document A78 (Oliver), p89

34. Ibid, pp.95, 111

35. Ibid p43

36. Fragmentation of interests through succession began as a problem in the nineteenth century.

37. The Act also makes provision for succession by whāngai children, who may not be related to land by whakapapa. There may be some debate about the extent to which this reflects tikanga Māori, but it is generally accepted that the tikanga of most iwi would allow some inheritance by whāngai to rights to whāngai parents’ property.

38. Document F17 (Anaru), pp.15–16

39. Ibid, p18

40. Ibid, p20

41. Document G21 (Randell), p3

42. Ibid

43. Document G23 (Te Whanau o Tehere Randell née Manihera opening submissions), pp.5–6

44. Document G21 (Randell), pp.4–8; doc G20 (Randell), pp.2–6

45. Document G20 (Randell), p5


47. Native Minister Ngata to chief judge, confidential memorandum, 8 October 1929. In the memorandum, Ngata stated that the Native Minister would ‘approve borrowing, alienations etc, and that a report and balance sheet be submitted annually’: doc A42 (Walzl), pp.170–171.

48. Waitangi Tribunal, *He Maunga Rongo*, vol.3, p1018


52. Ibid, pp.163–74

53. Document A118 (Gilling), p.228

54. Ibid, pp.231–2


57. Under Secretary, Maori Affairs, to the Maori Trustee, 10 July 1953, MA13/1, box 247, pt.2, p.344, ArchivesNZ (doc A42 (Walzl), pp.285, 319)

58. Document A42 (Walzl), pp.405, 414–415

59. Document E30 (Wright), p18

60. See docs E30 (Wright) and C6 (Broughton).

61. The Native Trustee acted here under section 25 of the Native Trustee Act 1930.

62. Document A118 (Gilling), p236

63. Document E15 (Paewai), p11

64. Document A78 (Oliver), pp.31–34

65. Document A42 (Walzl), p232

66. Ibid, p240

67. Document A78 (Oliver), p30

68. Document E6 (Chase), pp.3–5

69. Ibid, pp.4–5

70. Ibid, pp.3–5

71. Tiratū and Aohanga were not development schemes in the strict sense. They came about because of the involvement of the Māori Trustee. They were run by the Department in the same way, however.

72. Pita Heriheri Paku to Apirana Ngata, 3 August 1939, AAMK 869, 1437C, ArchivesNZ (doc A43(l) (Walzl supporting papers), p.3041)

73. Document A42 (Walzl), pp.190–200

74. *Wairarapa Times Age*, 26 August 1940, ND 1/6/15, AAMK 869, 1437C, ArchivesNZ

75. Document A118 (Gilling), p220; doc A42 (Walzl), p314

76. Document D15 (Bolstead), pp.4–5

77. Document A42 (Walzl), pp.314–317

78. Ibid, pp.407–408

79. Document D11 (Morris), pp.6–7

80. Document A42, (Walzl) p.381

81. Document F8 (Paewai), p4

82. Ibid, p5

83. Ibid, p4

84. Ibid, annexures A, B

85. Ibid, p4–5

86. Document C5 (Kawana), p6; doc C7 (Te Tau), pp.6–7; doc C43 (Taueru/Taumataraia resource documents), pp.7–12

87. Document D8 (Te Whaiti), pp.11–15

88. Ibid, p15

89. Ibid

90. Document 113 (Ngā Tūmapuhia-ā-Rangi closing submissions), p.135
118. Christopher William Richmond, the Minister of Native Affairs from 1858 to 1860, sought to legitimate the confiscation of Māori land and declared in 1858 that it was designed to 'stamp out the beastly communism of the Maori': see Christopher William Richmond, memorandum, 29 September 1858 (Keith Sinclair, *The Origins of the Maori Wars* (Auckland: University of Auckland Press, 1957), p 198).

120. *Waitangi Tribunal, Ngai Tahu Report*, vol 2, p 239
121. *Waitangi Tribunal, Mohaka ki Ahuriri Report*, vol 1, p 26
122. *Waitangi Tribunal, Mohaka ki Ahuriri Report*, vol 1, p 27
125. Document A51 (Stirling), pp 283–284
126. *Waitangi Tribunal, He Maunga Rongo*, vol 3, pp 968–973
127. *Waitangi Tribunal, He Maunga Rongo*, vol 3, p 993
128. Ibid, pp 995–996
129. Ibid, p 1002
130. Ibid, p 1018
131. Ibid, pp 1018–1019
132. See our discussion of Pūkaroro reserve above, and the long skinny partitions referred to by Punga Paewai in document F8, annexures A and B.
133. Sections 326A to 326D of the Te Ture Whenua Māori Act 1993 (as inserted by the Te Ture Whenua Māori Amendment Act 2002) give the Māori Land Court power to look at the whole situation of the land in question and, where the circumstances are right, order that reasonable access is provided over the land required.
TIMELINE

WAIRARAPA MOANA TIMELINE

The timeline on the following pages lists significant events relating to Wairarapa Moana, Pouākani, and Mangakino.
6 February 1840: The Crown and Māori sign the Treaty of Waitangi, leading to the Crown negotiating to buy lands from Māori to facilitate controlled settlement.

1853: The first Crown purchase of Māori lands adjoining Lake Wairarapa and Lake Ōnoke is made.

Late 1860s onwards: Pākehā farmers place mounting pressure on the Crown to either purchase the lakes or to open the lakes’ mouth during floods.
1874: The Crown is unsuccessful in its first bid to purchase the lakes.

1876: 'Hiko's sale': The Crown endeavours to purchase the lakes but buys only the shares of 17 Māori owners, including Te Hiko. Most Māori owners oppose the sale and refuse to recognise it.

1883: The Native Land Court grants the title to the lakes to 139 Māori.

1886: The South Wairarapa River Board is formed to control the flooding of Pākehā farms surrounding the lakes.

1888: The river board unilaterally opens the lakes’ mouth for the first time, despite Māori protests.
1891: A royal commission investigates the ‘claims of Natives to Wairarapa Lakes and Adjacent Lands’.

1896: Māori gift the lakes to the Crown in exchange for a cash sum and the provision of ‘ample reserves’.

1907: Crown officials decide not to offer remaining lakeside Crown land for the reserves and instead look at suitable sites elsewhere in Wairarapa.

1892: ‘The battle of the lakes’ – Māori physically block attempts to open the lakes by members of the river board.

1909: The Crown decides to offer land for the reserves outside the Wairarapa rohe.
1916: The Crown vests the Pouākani block, in southern Waikato, to 230 relatives of the original owners of Wairarapa Moana.

1945: A road is built from Tokoroa to Pouākani (the first road access to the Pouākani block) and the construction of Mangakino begins.


C 1943: Preliminary work begins on the Maraetai hydro dam on the Waikato River in the Pouākani block.

1949: The Government approves the permanent acquisition of 787 acres of Pouākani land for hydro works and agrees to lease 683 acres of land required for the Mangakino township from its owners.
1955: The Maori Land Court grants compensation to the owners of Pouākani: £510 for the land permanently taken and £34 annually for the leased area.

1959: Mangakino reaches its peak population of 6400 and declines rapidly thereafter.

1966: The first Mangakino town section leases begin to be transferred to the Mangakino Township Incorporation as the Crown leases expire.

1970: Major forestry development begins on unused portions of the Pouākani block. The Mangakino Township Incorporation leases 16,000 acres of land to New Zealand Forestry Products.
1971: The Māori Affairs Department restructures the development scheme in response to landowners’ criticism of its administration of it.

1980

1984: The Government ‘hands over’ the control of the majority of the development scheme land to the Pouākani 2 Trust.

1990: Late 1990s: The Mangakino Township Incorporation and the Pouakani 2 Trust amalgamate.

2000


2001: The Maori Land Court approves the owners’ application to freehold the approximately 500 remaining town sections.
Approximate high- and low-water levels of Wairarapa Moana
CHAPTER 7

WAIRARAPA MOANA AND POUĀKANI

7.1 Introduction

The story of what happened to Wairarapa Moana – or, more precisely, to the wetland system comprising Lakes Wairarapa and Ōnoke and their surrounds – sits squarely in the middle of this inquiry. As well as being a story fascinating in its twists and turns, it is in many ways an analogue of the colonial experience. Would it be going too far to call it the defining story of the colonisation of Wairarapa? So much of what took place now seems barely credible, so manifestly unfair was it to the tangata whenua of the region – who by contrast seem to have conducted themselves throughout with remarkable restraint, dignity, and honour.

The careful treatment of the topic in this report responds to the claimants’ emphasis in evidence and argument. That emphasis no doubt arose from a number of factors, including the enormous historical importance of the lakes as a food resource and repository of local lore and spirituality; and the fact that a good many of the key events happened as recently as the twentieth century. Those events were therefore within the living memories of people still alive today or of their close whanaunga. Moreover, the loss of the moana, and ultimately the loss of the promised opportunity to obtain land nearby, was all the more distressing because it occurred at a time when most of the land that had once belonged to Wairarapa Māori – especially in the fertile environs of the lakes – was already long gone.

Lake Wairarapa and Lake Ōnoke are located on the south Wairarapa coast. They are lagoon-like, in that they have a natural outlet to the sea. In its natural state, Wairarapa Moana was of an imposing size at any time of year, but in late summer, when floods occurred, the flat land surrounding the lakes was inundated so that the area covered by water comprised both lakes and large areas in between and around them. At such times, the total area below the high-tide mark was about 52,500 acres. Little wonder, then, that it was the single most valuable natural resource in the Wairarapa district. It was an incredible fishery, offering an endless supply of the foods that Māori liked best to eat. The fish and tuna (eels) there were relatively easily caught because they were so plentiful. The lakes were quite shallow and safer than the wild sea coast of the region, because they were less exposed to the weather, currents, and tides. Te Whatahoro Jury gave evidence about the lakes to the 1891 royal commission that was established to inquire into them:
The importance of the lake to the Natives was the fish that was obtainable – such as eels, flounders, white-bait, and kokopu. They also procured ducks and paradise-ducks. These are the description of food we used to procure from December to May. . . It was owing to the advantages alluded to that the Natives did not desire to dispose of the lake and the fishing rights pertaining to it.

The eel fishery was vital to the tangata whenua. Alexander Mackay, the royal commissioner who conducted the inquiry, was fully persuaded of this by the evidence presented to him, not only by Te Whatahoro but by many others besides. In his report, he wrote, ‘Eels were a favourite food with the Maoris, and a good eel-fishery like the Wairarapa Lakes is of as much value to them as the banks of Newfoundland are to those who deal in cod-fish.’

In this chapter, we unravel the long and intricate history of interaction between the Crown and Wairarapa ki Tararua iwi over the ownership and control of the lakes and the adjacent fertile flood lands. From the time of the first wave of Crown purchasing in the district in 1853–54 right through to 1896, Māori steadfastly and successfully resisted strong pressure from the Crown to relinquish control of the lakes. Then, in 1896, rangatira of the region suddenly and ceremoniously gifted the lakes and surrounding

Wairarapa Moana
disputed land to the Crown. We examine this surprising
turn of events in detail – how it came about; what the
‘gift’ meant to Māori and the Crown; and why the Crown
agreed to pay £2000 in cash. Critically, also, we investigate
what was understood by the undertakings made in both
the English and the Māori texts of the deed about land that
would be set aside for the lakes’ owners and the signifi-
cance of any differences between the two texts.

In the years after the ‘gift’, the donors worked hard
to hold the Crown to the terms of the agreement that
recorded it. The eventual outcome, though, was that in 1916
the Crown vested in the lakes’ former owners a large tract
of poor-quality pumice land at a place called Pouākani
in the central North Island. This land, located where the
King Country meets the Waikato, was intended as a substi-
tute for the reserved land that had been promised in the
Wairarapa district. In this inquiry, we directed consider-
able attention to the failure of the Crown to provide lands
of the kind that were promised and the transfer instead of
land at Pouākani that was different in every way from what
the donors of the lakes may legitimately have expected.

The story did not end there, however. To say that the
Pouākani land was in an out-of-the-way place or that it was
hard to get to would be to understate the position entirely.
Its total inaccessibility meant that it remained untouched
for 30 years after the Wairarapa people became its owners.
Indeed, for practical purposes, it was really as though the
transfer of ownership did not take place until the Crown
began to construct the Maraetai hydro dam there. By then,
the Second World War had come and gone, and the New
Zealand Government was entering an expansion phase.
The Crown compulsorily acquired nearly 800 acres at
Pouākani for hydro works and leased nearly 700 acres
for the construction of the township of Mangakino, the
first purpose-built ‘hydro town’ in the country. We heard
about the entirely inadequate process by which the Crown
effected these arrangements and also about the operation
of the Māori Affairs development scheme at Pouākani that
stumbled along for several decades. We take our inquiry
right up to the dawning of the twenty-first century, when

the owners of Wairarapa Moana began receiving dividends
from the farms on their Pouākani land for the first time.

7.1.1 The lakes before the settlers came

Lakes Wairarapa and Ōnoke and their surrounds have
been transformed since the mid-nineteenth century. The
uplifting of land caused by the massive 1855 earthquake
and various flood-protection works undertaken to facili-
tate agricultural land use around the lakes have massively
reduced the area of the lakes and wetland system since the
first Crown purchases in Wairarapa.

Most significantly, since the 1890s the mouth of Lake
Ōnoke has been kept open through various artificial means
(usually by bulldozing a channel) in order to prevent the
annual cycle of natural floods that would otherwise occur.
Prior to the artificial opening of the lake mouth, in mid
or late summer, the combination of reduced river flows
and prevailing sea currents would cause the sand bar at
the mouth of the lake to grow to the point that it blocked
the outlet to the sea. This would cause lake levels to rise by
up to four metres, and the two lakes would combine into
one enormous expanse of water. The area covered by water
would increase in the annual floods from 24,000 to 52,500
acres.4

This natural flood cycle played a vital role in the eco-
nomic life of Wairarapa Māori. During the floods, enor-
mous quantities of tuna (eels) – between 20 and 30 tonnes
a year – and other fish could be caught as they gathered
in the backed-up waters behind the Lake Ōnoke spit.5
According to Te Whatahoro:

The hao, te heko, and kokoputuna description of
eels could not be caught until the lake was closed,
and then these were obtainable only at the mouth; the
other kind could be got at any time. As the flood-water
ascended the creeks, the Natives placed their baskets
in these creeks; but, on the water rising above a cer-
tain level, the hinaikis were of no service. After this the
system followed was to make dams to catch them. . . .
Hoani Te Whatahoro Jury
Large quantities of the kind called te hao and kapako-pako were dried and stored for several years, two and three years together. The whitebait and kokopu were also dried, and kept for several years.  

Surplus preserved fish and tuna were traded for goods from around the North Island.  

The abundance of tuna made the lake mouth a perfect place to live, and many hapū had rights in the lakes and wetlands. According to Hoani Tunuiarangi, ‘all the people fished together at the mouth of the lake, but it was a different matter in the creeks and rivers; each hapū had their own rights to these places.’ Hapū of Rangitāne and Ngāti Kahungunu occupying areas around the lakes included Ngāi Te Aomataura, Ngāti Te Aokino, Ngāti Pakuahi, Ngāi Tūkoko, Ngāti Te Whakamana, Ngāti Rākaiwhakairi (Rākaiwakairi), Ngāti Komuka, Ngāti Hinetauira, Ngāti Rangitawhanga, Ngāti Te Hangarākau, Ngāi Tūtemiha, and Ngāti Rangiakau. Hapū generally had rights in the area of the lake adjacent to the land they occupied.

7.1.2 The early years of Pākehā settlement  
Pākehā settlers wanted the flat lands adjacent to the lakes for farming; centuries of flooding had deposited on them deep layers of silt, which made for highly productive
farmland. Right from the earliest days of colonisation, potential purchasers were lining up to buy, and some of the earliest Crown purchases in our inquiry district happened here.

Between September 1853 and January 1855, Donald McLean bought four blocks adjoining Wairarapa Moana: Tūrakirae (bought 1 September 1853), Tūranganui (5 September 1853), Ōwhanga (23 December 1853), and Kahutara (5 December 1854). At the signing of these deeds, McLean made general commitments concerning Māori rights in the lakes. While only the Tūrakirae deed explicitly reserved Māori fishing rights in the lake, there was a common understanding between Māori and the Crown that none of the lakeside purchases extinguished any Māori fishing rights. Further, as the owners of the lake waters and the Ōnoke spit, Māori controlled the opening of Lake Ōnoke.

The Crown accepts that, in purchasing the lakeside blocks, the Crown did not acquire Māori interests in the lake. The Crown also accepts that McLean promised Māori that the lake would not be opened.

The deeds gave the block boundary as the margin of the lake, so the lakes themselves (and the spit extending across the mouth of Lake Ōnoke from Kiriwai to Okorewa) were explicitly excluded from sale and remained in Māori ownership. However, it was not clear from the deeds’ terms whether the block boundary was defined by the lakes’ floodline (the high-water mark) or permanent margin (the low-water mark). Adding to the confusion, there was no reliable map of the district at this time, much less surveys of the lakeside purchase blocks.

For the first two decades after the purchases, there was an adequate supply of flat land around the lake for settlers’ needs, and the issue of the ownership of the land between the high- and low-water marks created no difficulty. With Hūtana described the practical arrangement arrived at between Māori and farmers by the late 1860s and early 1870s:

In 1871 I was at the mouth when the lake burst out. At that time the only persons who had stock on the low

land was Mr Hume on the east side, and Mr Matthews on the west. In those days we used to warn the settlers to remove their stock inland when the lake flooded. We were good friends then with each other, but afterwards, when land became more valuable for grazing purposes, differences arose about opening the lake and changed the condition of affairs . . .

### 7.1.3 The push for settler control

As the land around the lakes was farmed more intensively, there was an increasing desire on the part of the farmers to control the annual floods by opening the lake mouth. However, only Māori had authority to do this, and they were not interested in flood control – they liked the wetland for the food-gathering opportunities it provided, and because they were not farming the area the inundation of possibly the best-quality pasture in the district was not their main concern. Māori ownership of the lake mouth allowed them to assert their preferences. As time passed, the settlers became increasingly intolerant of Māori control over a situation where their interests were at stake. It became an issue of real contention between the settlers and Māori and, consequently, between the settlers and the Government.

Approximately 28,000 acres of land were subject to flooding for six months each year. The settlers around the lakes regularly lobbied the Government to acquire the lakes and permanently open the lake mouth to make more land available for farming. Meanwhile, Māori sought assurances that McLean’s promise would be honoured: that they, as owners of the lakes, would retain control over the opening at Ōnoke. In December 1868, Rāniera Te Iho wrote to the Government asking for confirmation of the ‘rule’, guaranteed by McLean, that the lake mouth would never be opened artificially to release the flood waters.

Responding to the settlers’ lobbying, officials sought to acquire from the lakes’ owners formal authority to open the lake mouth. In 1872, Richard Barton was appointed to negotiate with the lakes’ owners about this, but he made no
headway. Soon, the Government tried again. In January 1874, McLean instructed Resident Magistrate Wardell to negotiate the purchase of what McLean now called the owners’ ‘alleged right to the closing of the lake’. Wardell convened a hui of Wairarapa rangatira at Featherston for this purpose, but again it was to no avail.

The settlers grew impatient. In 1875, Rāniera Te Iho wrote again to the Government, this time protesting the intimidating behaviour of a local settler who threatened to resort to ‘hostilities’ if Māori tried to prevent settlers from artificially opening the lake mouth. Meanwhile, Pākehā landowners met at Featherston and resolved to push the issue by opening the lake mouth themselves. When they told McLean of their intentions, he described their proposal as ‘simply preposterous’. His preferred solution was to purchase the lakes outright, and shortly afterwards he authorised the expenditure of £1200 to this end. Government agent Edward Maunsell was engaged to negotiate the purchase, and a short time later he claimed to have acquired the lakes on behalf of the Crown in a deal known as ‘Hiko’s purchase’.

7.2 The 1876 ‘Purchase’ of the Lakes

7.2.1 ‘Hiko’s sale’

Maunsell was known to the Wairarapa chiefs; as a Government agent, he had dealt with them fairly regularly over land issues. In February 1876, he brought Te Hiko, Hēmi Te Miha, Te Mānihera, Te Whatahoro Jury, and a number of other Wairarapa Māori to Wellington to meet with McLean. The purpose of the gathering was to negotiate the purchase of the lakes.

There were differences of opinion within the group over the sale, but nevertheless on 14 February Te Hiko and 16 others signed a deed ceding to the Government their rights in the lakes for £800.

The transaction became known as ‘Hiko’s sale’, but it may be that Hiko’s was not the central role – Te Mānihera was possibly more influential. Historian Therese Crocker thought that Te Hiko was probably influenced to sign by younger leaders such as Te Mānihera and Hēmi Te Miha.21 Historian Angela Ballara has also suggested that Te Mānihera persuaded Te Hiko to sign and then withdrew.22 According to Maunsell’s own account, recorded in 1891, it was at Te Mānihera’s suggestion that he first approached Te Hiko about the purchase, and Te Hiko was initially reluctant to sell, travelling to Wellington primarily to settle an issue over land at Pukio. Certainly, Maunsell chose not to bring to Wellington rangatira he knew to be opposed to the sale of the lakes – notably, Piripi Te Maari and Rāniera Te Iho.23

The legal effect of the deed was not immediately clear. According to its text, Te Hiko and the other signatories surrendered and conveyed to the Crown ‘such eel fishing rights and other rights and interests of any kind whatsoever which we claim to have in such Lakes or in the borders of such Lakes whether in land or whether in the waters thereof between the Lands already sold to Her Majesty’.24 When he gave evidence to the royal commission of 1891, Maunsell said about the deed:

The original intention was only to purchase the fishing-rights, so as to obtain control over the mouth of the lake, but, owing to my zeal in the matter, I inserted a clause making it a cession of the land both under the water and on the margin of the lake as well.25

Differences about the true nature of the deal persisted for over six years, until the Native Land Court investigated the title to the lakes in 1882 and 1883.

7.2.2 Fall-out from Hiko’s sale

Immediately after the ‘sale’, many Wairarapa rangatira, including Piripi Te Maari, Rāniera Te Iho, and Te Whatahoro Jury, expressed their opposition to it. In June 1876, Te Whatahoro and Te Mānihera called a hui in Greytown to prepare a parliamentary petition stating that Maunsell had transacted the purchase without the consent of the majority of chiefs. The lake was ‘guardedly kept
out of sales of land made in this district for us, and our descendants after us, and it was kept to be inalienable by purchase for us. Mānihera, Rāniera, Te Whatahoro, and more than 50 others signed the petition. Some of the petitioners were also signatories to Te Hiko’s sale, so it seems that something had happened in the interim to change their minds about the arrangement with Maunsell. Three months later, in September, Piripi Te Maari and 138 others again petitioned Parliament to object to the purchase.

The Native Affairs Committee considered the petition, found that a majority of lake owners had not consented to the sale, and recommended that the question of the lakes’ title should be sent to the Native Land Court for determination. Because Wairarapa Māori objected, the court did not investigate until October 1882, and in the meantime the Government tried again to negotiate for control over the lakes. Sir George Grey and Native Minister Sheehan met with Wairarapa Māori at Pāpāwai to settle the question. Nothing came of this visit, according to Te Whatahoro, because the Government refused to send a surveyor to determine the high-water mark around the lake. Subsequent efforts by Native Minister John Ballance also failed.

7.3 The Struggle for Control of the Lakes
7.3.1 Māori owners compromise
Meanwhile, in the late 1870s, Māori consented to the lake mouth being artificially opened at an agreed time in return for a cash sum. Lake owner and witness before the 1891 commission Wī Hūtana described the background to this:

I know of the first opening of the lake. It was a matter of agreement made with me. This was in 1876. The Europeans believed that the Government had acquired
the lake, but were not sure, so they came to me about
it; but while the question was unsettled the waters rose,
and Mr Hume offered me £40 to open it. The reason
why no action was taken in former years was because
the settlers were few, and their stock were not so
numerous as now. I made two arrangements with the
Europeans for £40 each time . . . On one occasion the
settlers not only paid a sum of money for opening the
lake, but they gave the Natives a bullock. 29

This arrangement did not satisfy the settlers, however.
In September 1877, they petitioned Parliament, protest-
ing the ‘obstructive’ behaviour of Māori in delaying the
Native Land Court title determination and demanding
that the Government take steps to allow them to open the
lakes. The petitioners stated that, if the lakes were opened,
10,000 acres of land might be brought into pastoral and
agricultural use. 30

7.3.2 Legal answers sought
The courts then became the locus for conflict about the
lakes, and legal complexity ensued.

In January 1881, Maunsell applied to have the Crown’s
interests in the lakes defined under the provisions of the
Native Land Act 1873, section 107 of which empowered the
Native Land Court to investigate and finalise incomplete
Crown purchases. But, before the land court could inves-
tigate, the lakes’ owners sought a Supreme Court ruling
on whether the land court had authority to determine title
to the bed of the Wairarapa lakes (which comprised the
Wairarapa Moana block), as no rights of ownership to lake
beds existed in Māori custom.

The Supreme Court ruled that it could not make a
finding on the matter of whether Māori, by customary
rights, owned the soil beneath the lakes. Instead, Justice
Richmond referred the matter to the Native Land Court.
However, he found that, supposing that such rights did not
exist – and hence Māori did not own the lake beds – ‘there
seems to be no reason why the Native Land Court should
not issue certificates of title to rights of fishing as ten-
ements distinct from the right to the soil, which would then
be in the Crown’. 31

In October 1882, the Native Land Court sat to ascertain
what interest in the lakes, or their beds, the Crown had
bought through Hiko’s purchase. It ruled that the Crown
had acquired 17 undivided shares in the lakes. 32 However,
in November 1883, a further Native Land Court hearing
found that the Crown’s interest comprised only 17 of 139
shares. 33 This made the Crown a tenant in common with
the Māori owners, with no independent right to control
the opening of the lake mouth.

In November 1883, the question of rights in the lakes
went back to the Native Land Court. Paraone Pahoro, who
claimed to be an owner, asked the court to determine the
identity of all the Māori owners and he presented a list to
the court. 34 In what Ballara and tribal leader Mita Carter
have called a ‘significant victory’ for lower Wairarapa
Māori, the court recognised that 139 Māori were the
owners of the lake and it issued a certificate of title to
those owners. 35 Disappointingly for the owners, though,
the judge also ruled that they possessed title only up to the
new lakes’ margin. This was an area of 24,950 acres, much
less than the area bounded by the flood mark of 1853–54,
which was the time when Māori had sold most of the land
surrounding the lakes. Māori believed that they had sold
only the land to the floodline. They also contended that the
1855 earthquake had lowered the lakes and uplifted much
of the surrounding land. 36 The Government, they believed,
had simply assumed ownership of the land between the
high- and low-water marks of the lakes, as well as the new
land created by the earthquake. Moreover, they maintained
that the Government had sold much of this disputed fertile
land to Pākehā settlers without consulting or compensat-
ing Māori. 37 Thus, Piripi Te Maari rejected the claim of
Pākehā pastoralists that ‘their’ land was being flooded; in
his view, Māori owned the flooded lands. 38 This was all
part of the royal commission’s investigation in 1891.

Once the court had listed the owners, the Crown
resumed its efforts to acquire the lakes, seeking to purchase
the remaining 122 Māori shares from individual owners.\textsuperscript{39} Again, the owners resisted. They did not want to deal with local agent Maunsell, but ultimately more important was the influence of Te Maari, sometime chairman of the Wairarapa komiti. Te Maari was vehemently opposed to any sale, and he successfully coordinated other owners in a resolute rejection of offers.\textsuperscript{40}

### 7.3.3 Piripi Te Maari and the Wairarapa komiti

It was of course very much the kaupapa (agenda) of the Wairarapa komiti to keep the lakes and their resources under Māori ownership and control. At an 1886 hui called by Te Maari, the lakes’ owners formally resolved not to sell and not to deal individually with the Crown. The komiti ruled that any owner selling their interests to the Government would be liable for a fine of £50. According to royal commissioner Alexander Mackay, when he later investigated all of this, the komiti rule effectively prevented ‘negotiations for the sale of shares to the Government’.\textsuperscript{41} In May 1885, in response to commercial Pākehā fishing and duck hunting on the lakes and their margins, the komiti also imposed a more general fine ‘of not less than £5 nor more than £50 upon any person or persons who shall be guilty of trespassing, fishing, or shooting birds upon the lakes or lakes, or the borders thereof’.\textsuperscript{42} Historian Bruce
Stirling notes that supporters of the komiti ordered some Pākehā hunting and fishing parties off the lakes and even detained the guns of one shooting party.43

Then, in 1886, Te Maari called another meeting, this one attended not only by the lakes’ owners but also by Native Minister Bryce. The owners were prepared to agree to a compromise – they would allow the lake mouth to be artificially opened in April. This would cost tangata whenua two months’ fishing but would lessen the effect on farmers of the flooding. This arrangement was confirmed with the new Native Minister, John Ballance, in November 1886.44

### 7.3.4 Settlers seize control of the lake opening

However, the agreement to open the lake mouth in April was not enough for the local Pākehā farmers, and they took matters into their own hands, forming the South Wairarapa River Board to manage the flooding of the Wairarapa lakes.45 Prominent members were wealthy runholders such as Alfred Matthews and Peter Hume, who believed ‘their’ land was affected by flooding.46 The river board announced that it would open the mouth of Lake Ōnoke under the provisions of the Public Works Act 1882 and the River Boards Act 1884. Those Acts allowed river boards to undertake drainage works. The river board quickly declared that the lake was a ‘public drain’, so that they could legally (they said) open the lake when farms were threatened.47 When Ballance sought a legal opinion on the board’s proposal, the Solicitor-General advised, first, that only county councils had the authority to carry out drainage works and, secondly, that ‘a work of such presumed magnitude and effect as draining a large lake was not contemplated by the Act’.48 In June 1888, proceeding without the consent of the lake’s Māori owners and in defiance of the Solicitor-General’s unequivocal opinion that to do so would exceed its authority, the river board opened the lake mouth for the first time. Piripi Te Maari and a group of approximately 10 other Māori attended the opening in protest, and Te Maari served Alfred Matthews (the chairman of the river board) with a £200 fine for interfering with the outlet. According to Matthews, this exchange was notable for the politeness shown by the parties:

> I went to Mr Piripi. He at once took out a book. He said ‘I have entered my protest I now propose to summon you for two hundred pounds for interfering with this outlet. Will you sign the book?’

> I replied ‘with the greatest of pleasure, Mr Piripi,’ He handed it over and I signed it.

As did Mr Hutton, the interpreter.

He took me by the hand and shook it with utmost cordiality. ‘Mr Matthews,’ he said, ‘I have no feeling against you, no feeling against the settlers, my feeling is against the government.’49

The river board opened the lake mouth again in 1889 and 1890.

### 7.3.5 Te Maari and others petition Parliament again

In June 1890, Te Maari and 49 others once again petitioned Parliament.50 The earlier petitions, in 1876, had objected to Hiko’s sale. This time, they complained about the river board’s actions, and expressed their wider concerns:

- the proper boundary of the Crown purchases was the high-water mark of the lakes – that is, the level reached by the lakes during the flood season – as it stood prior to the 1855 earthquake, and the petitioners were entitled to all of the lakeside below the pre-1855 high-water mark;
- the river board had trespassed on Māori land and opened the lake mouth without the permission of the lake owners, transgressing their fishing and property rights;
- Hiko’s sale was ‘wrong and illegal’ because in 1876 the shares of the signatories to the deed had not yet been determined and the signatories had no right to sell any interest in the lake without the permission of all the lakes’ owners; and
- a compromise solution acceptable to the petitioners
would be to allow the Government to open the lakes whenever flood levels rose above the pre-1855 high-water mark.

After considering the petition, the select committee recommended that a royal commission be established to investigate the issue.

7.4 THE 1891 ROYAL COMMISSION

7.4.1 The royal commission addresses its task

In November 1890, Alexander Mackay, a judge of the Native Land Court, was appointed to inquire into the issues raised in Piripi Te Maari’s petition of that June.

Mackay sat in Greytown in April and May 1891, hearing evidence from a number of lake owners, settlers, and former Crown officials who had been involved with the lakes. The Crown was not represented.

In June 1891, Mackay reported to the Governor. He outlined the long background to the disputes over the lakes, made findings on the points raised in the June 1890 petition, and recommended possible actions for the Government to take to resolve the dispute. Mackay’s investigation was thorough, and in his recommendations he sought to find a balance between justice and pragmatism.

The report addresses each of the petitioners’ concerns in turn. First was the issue of the ownership of the land below the high-water mark of the lakes.

(1) Who owned the land below the high-water mark?

Many witnesses were adamant that the land below the high-water mark was not sold to the Crown in 1853.

Piripi Te Maari argued that the boundary of all the lakeside blocks was formed by the high-water mark, because fishing places were located on the land below and the vendors had excluded these from sale.

Hēmi Te Miha was a signatory to the Tūrakirae and Tūranganui deeds and recalled pointing out the boundaries to McLean from Wahakaia, a hill on the east side of the lake. In both blocks, the boundary was the high-water mark or ‘tahakupu o te whenua’. He remembered negotiating this:

It was the Natives who fixed the boundary at the flood-line. Mr McLean suggested that the boundary of the lake should be the boundary, but he gave way to the contention of the Natives that the flood-line should be adopted.52

Settler John Russell, who was McLean’s clerk at the time of the purchases and had actually drafted the deeds, supported this view. Russell said that he could not recall the exact boundaries, but he did remember that at the time the troubles over the opening of the lakes first arose (probably in the early 1870s), McLean had stated that ‘It is impossible the settlers’ land could be flooded, because the land below the flood-line had not been acquired’.53

On the Tūrakirae, Ōwhanga, and Kahutara blocks, Mackay found that the margin of the lake was the low-water mark. In support of this finding, he noted that the Ōwhanga and Kahutara block boundaries as described in the deeds of purchase included portions of the lake. He also referred to the boundaries of the lake as given by Māori claimants to the 1883 Native Land Court title

Alexander Mackay

Alexander Mackay was born in 1833 in Edinburgh and settled in Nelson. He worked with Māori as a resident magistrate, a commissioner of native reserves for the South Island (1864–82) and New Zealand (1882–84), and a Native Land Court judge. As commissioner of native reserves, he had worked extensively on reserves issues in Wairarapa, so was familiar with the tribal landscape there. He spoke te reo Māori, had a good knowledge of Māori culture, and was considered a leading authority on race relations in the South Island. He had recently reported on the condition of the Ngāi Tahu people and whether they had sufficient land to support themselves. He died in 1909.
investigation, pointing out that 'most of the places named in the ... application are situated on the proper margin of the lake when not flooded'. In the case of Turakirae, the clause in the deed reserving fishing places also contributed to Mackay’s view that the lake boundary was not the flood-line. Unless the purchase boundary was the low-water mark, he reasoned, why would there have been a need for the vendors to exclude their fishing places from sale?

On the Tūranganui block, however, Mackay largely accepted the petitioners’ position that the land below the high-water mark had not been purchased by the Crown. Two factors convinced him of this. First, the value the owners attributed to the lakes’ fishery, and the associated right to control the opening of the lake mouth (guaranteed to them by McLean), meant that they needed to keep the lake mouth itself, which was located within the Tūranganui block. Secondly, Mackay found that, since its initial purchase of this block, the Crown had purchased two lakeside parcels of land below the high-water mark. If the land below the high-water mark had been acquired in 1853, he reasoned, why would the Crown have purchased the land again from its original owners? Further, Mackay found that, as part of its 1881 application to have the Native Land Court determine title to the Lake Ōnoke block, the Crown had prepared a schedule which described the block’s boundaries. This schedule indicated that the block still included ‘a large portion of the low-lying land’ adjacent to the lake. This was further proof that the Crown had not acquired this low-lying land in 1853. Thus, Mackay concluded that the western boundary of the Turanganui block was formed by the flood-line or high-water mark. For the other three lakeside blocks, however, the conclusion was different: the petitioners had not proven their case and the boundaries were properly located at the low-water mark.

(2) Who had authority to control the opening of the lake mouth?

Mackay then turned to address the issue of control over the opening of the lake mouth. He confirmed Māori ownership of the spit and further found that Hiko’s sale, by which only fishing rights were conveyed to the Crown, did not ‘confer any right to open the lake at all’:

neither the Government nor any of the local bodies are legally authorised to interfere with the opening of the lake to the detriment and injury of the fishery and other proprietary rights guaranteed to the Natives by a solemn compact with the Imperial Government, and ... such infringement of their rights without their consent, or the payment of compensation for the injury done, is a grievous wrong, and contrary to the rights of property.

The South Wairarapa River Board’s powers were ‘confined to the conservation, &c, of rivers, streams, and watercourses’ and did not extend to lakes. There was no right to go on to the spit and forcibly open the lake mouth against the will and consent of the owners: it was a ‘serious interference with the proprietary rights of the Natives’. The lawyers for the Māori parties before the commission were AS Menteath and CA Pownall. They characterised the proclamation of the area where the lake is situated as a district under the River Boards Act 1884 and the constitution of a river board to manage it as ‘an attempt by a side-wind to violate the Native rights under the Treaty of Waitangi’.

Mackay absolutely understood why the tangata whenua did not want the flood waters released:

It is while the lakes are at their highest flood-level that the eels abound at the mouth of the lower lake, and are caught in large quantities by the Natives. A much larger variety of eels are obtainable during this period, and some of the choicest kinds can only be procured when the lake is flooded. The sudden opening of the lake by the River Board at such times allows large quantities of eels and other fish to escape to sea before the Natives have time to secure them, and this is the cause of their complaint.

Mackay quoted article 2 of the Treaty, which specifically guaranteed to Māori the retention of their fisheries for ‘so long as it is their wish and desire to retain the same in their
He observed that ‘no disposition has been shown on the part of the owners, excepting in the case of a few individuals in 1876, to alienate any of these properties’.

(3) Compromise proposed
Mackay ended his report with recommendations for a formal resolution to the matter of the opening of the lake. He proposed an agreement whereby Wairarapa Māori would consent to the lake mouth being opened following two months of flood conditions or whenever flood waters began inundating farmers’ lands. Mackay suggested that a fee be paid to Māori in return for this concession and that this fee might be raised by a levy on lands subject to flooding.

Implicit in this proposal was Mackay’s grasp of the politics of the situation. Although Wairarapa Māori owned the lakes and the spit, and no one but they had authority to open the lake mouth, he sought a compromise that would placate the settlers who farmed the flood-prone land. Altogether, settlers had paid the provincial government £12,000 for their land. And so, he said, they were:

entitled to consideration for the vexatious loss and inconvenience they are put to periodically through having their pasture-land destroyed and rendered useless for fully six months in the year by the inundation of the lake.

Although Māori were entitled to retain their fishing rights and other interests in the lakes, they had to manage the effects of flood waters on the settlers’ lands:

although the Native proprietors on the one hand are entitled to their fishing and other rights in the lakes fully respected, they are not justified, while conserving their own interests, to allow the lakes to flood the lands sold by them to the Government, to the detriment and loss of the settlers who now own it, as the disposal of property by an owner implies that such owner will not allow anything to happen that may be reasonably prevented on the part of the estate retained by him, which abuts on the portion alienated to others, that will operate detrimentally to the interests of the person or persons to whom such portion was sold, or their assigns.

Nowhere did Mackay identify a legal basis for any duty on the part of customary lake owners to take steps to stop the flooding cycle for the benefit of neighbouring farmers; nor for what he called the settlers’ ‘entitlement’ to compensation for the effect of the floods on their land. Possibly, his reasoning owed more to realpolitik than law.

Finally, Mackay recommended the payment of compensation to Wairarapa Māori for the approximately 4000 acres of the Tūranganui block lying between the flood-line and the lake margin that the Crown had never purchased.

7.4.2 Commission’s report changes nothing
Mackay strove valiantly to find a compromise that would meet the needs of both the lakes’ owners and the Crown, and understated the extent of the Māori owners’ rights in order to do so. But even so, his suggestions gained no traction; his report and recommendations became a dead letter. Without right or sanction, the river board continued to open the lake mouth to protect farmland, and the lakes’ owners continued to use all means at their disposal to oppose the board’s actions: protest, parliamentary petitions, and legal action.

7.4.3 Another confrontation
When members of the river board gathered to open the lake mouth in May 1892, about 100 Māori met them in protest. When the board members moved to dig a trench to open the lake mouth, some Māori took hold of their shovels, while others sat in the area where the trench was to be dug. Māori women played a prominent part.

But the opening of the lake mouth proceeded anyway, as was now usual. The Crown was unwilling to prosecute the river board, even though the royal commission report had said it was clearly in the wrong. Again, Piripi Te Maari
resorted to the courts, alleging trespass and claiming damages.

The Court of Appeal heard the case in May 1893. Counsel for the Māori owners of course denied that the river board had any legal right to open the lake mouth. The board's bailiwick was natural watercourses, not lakes, and the lake mouth was not a natural watercourse within the meaning of the Public Works Act of 1882.70

Four out of the five Court of Appeal judges found in favour of the river board. They ruled that the channel out to the sea, even when completely blocked by sand and the shingle spit, still existed: “The channel is still there, although for a time blocked up and hidden by obstructions, which the waters of the lake will shortly remove.”71 Since the lake mouth was a natural watercourse, they found that the river board was not liable for damages for opening it. Indeed, the board had been granted authority to do this by the county council.72

Piripi Te Maari was not the man to let it rest there. He petitioned Parliament once again, protesting that the 139 lakes' owners were not represented on the river board and so were at the mercy of the 22 ratepayers on the board. The Native Affairs Committee recommended that the Government should try to resolve the matter either by ‘purchasing the rights of the Natives or by compensating them for any injury done.’73 But still nothing happened. After almost two years, Te Maari petitioned Parliament again in 1895. And, again, the committee ‘most urgently’ recommended that ‘the undoubted grievances under which the Natives labour should be redressed.’74

Te Maari died in August 1895, and with him went the tremendous zeal for this cause that had dominated his life. However, his mantle was assumed by Hāmuera Tamahau Mahupukū (who was known simply as Tamahau, presumably to distinguish him from his father, who went by the name Mahupukū). Tamahau was a high-profile leader from Pāpāwai, who largely took on the roles and responsibilities of Te Mānīhera after he died in 1885. Tamahau was a Native Land Court whakawā and, like Piripi Te Maari, a successful farmer.75

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**Piripi Te Maari-o-te-rangi**

Piripi Te Maari-o-te-rangi (1837?–95) was a Ngāti Kahungunu rangatira who for decades led and coordinated Māori resistance to the attempts by settlers and the Crown to gain ownership and control of the lakes and their resources. A successful large-scale farmer and prominent member of the Wairarapa komiti, his involvement in the struggle to retain the lakes and their fishery dated back at least to 1868, when he, Rāniera, and other owners of the lakes wrote to Government official George Cooper seeking confirmation that the lake mouth would not be opened. By the early 1880s, Wairarapa Māori and the Crown alike regarded him as the leading figure on lakes issues. He pursued his cause on every available front. He was a key witness in the Native Land Court title investigation; he mounted successive parliamentary petitions – including the June 1890 petition that got the Mackay commission established; and he led several battles through the courts.
Te Maari’s passing seems to have been a watershed in the lakes’ saga; or perhaps it was a case of everything coming together at once. Whatever the reason, within a matter of months, things changed decisively: the lakes were transferred to the Crown, and with them went the lake mouth.

We now turn to consider the 1896 gifting itself.

7.5 The Gift of the Lakes

7.5.1 What happened?

In January 1896, after four decades of concerted efforts by their owners not to sell them, the Wairarapa lakes were transferred to the Crown in a transaction generally described at the time as a gift. Unfortunately, there is a dearth of documentary evidence available to shed light on how and why the gifting was arranged. In particular, there are few Government records on the subject.

At Pāpāwai, three days before the gifting agreement was signed, Native Minister James Carroll met with the owners of Wairarapa Moana, led by Tamahau Mahupuku. Did Carroll come to suggest to the owners that they give the lakes to the Crown? Later, Tamahau gave a speech at Tipapakuku (also known as Pigeon Bush) in which he explained how the gifting had come about:

[Carroll] came to us as a chief, and as a chief we received him. His request to us as one chief to another was that the Wairarapa Lakes should be handed over to him. I then stood up, as representative of all the tribes and people of Wairarapa, and said ‘Yes’ and I hereby hand the lakes over to you.

Another owner who was present at Pāpāwai, Tiriti Maika Purākau, said the same:

The Hon Mr Carroll asked us to hand over Wairarapa Moana to the Government, as one chief would make a ‘tuku’ to another chief; and on 14 January Tamahau Mahupuku wrote to Premier Seddon that the people ‘gave’ Wairarapa Lake ‘gracefully’ into Carroll’s hands.

For Carroll to act in this way was certainly consistent with the policy and practice of the Liberal Government, which favoured settling local grievances through high-level intervention.

Other contemporary accounts maintain that the initiative came from the owners themselves. For example, Hoani Paraone Tunuiarangi, a close associate of Tamahau, maintained that the ‘hapus’ made the decision to make the gift and then invited Carroll and the Government commissioner to attend a meeting of the owners at Pāpāwai.

Wherever the idea originated, it seems to have been well supported. In the telegram Tamahau sent to Premier Richard Seddon the day after the meeting with Carroll at Pāpāwai, he wrote:

The people settled everything satisfactorily with your colleague the Honorable Mr Carroll yesterday about the Wairarapa Lake. The whole people gave it gracefully into the hands thus settling this trouble in a satisfactory manner and giving effect to the words of our chiefs who have passed away from us.

An agreement was executed at Pāpāwai Marae on 13 January 1896. The signatories included many leaders of the day, including komiti chairman Tiriti Maika Purākau and komiti members Retini Tamihana, R H Mānihera, Oraia Te Ama Te Whaiti, Hoani Ngātuere, Hēnare Parata, M Kahu-ngunu Maara, Āporo Hare, Raharuhi Tuhokiairangi, Hāmuera Tamahau Mahupuku, Parotene Nuku, Te Whata-horo, Kingi Ngātuere, Enoka Hohepa, Hoani Te Tohu Rangitaka-iwaho, Wiremu Hūtana, Ratima Ropiha, Hoani Paraone Tunuiarangi, and Takana Kingi. No Crown official signed the deed. However, Native Land Court judge William Butler was there, and it was he who presented the Government’s cheque for £2000 to Tamahau. The role and significance of this money is explored in section 8.5.3.

7.5.2 The agreement

The English version of the agreement signed at Pāpāwai Marae read:
The whole of the Wairarapa Lakes are hereby conveyed surrendered and assured to Her Majesty the Queen as an estate of inheritance in fee simple freed released and discharged from all Native claims and rights whatsoever—

IInd In consideration of the conveyance and surrender aforesaid the Government of New Zealand shall pay to the Native owners under a scheme to be hereafter arranged the sum of £2,000 (two thousand pounds) and shall out of any lands which shall come into the possession of the Government through such conveyance or out of any other lands acquired from Natives and still in possession of the Government make ample reserves for the benefit of Native Owners—

The term ‘ample reserves’ in this paragraph shall be interpreted by the Honorable the Native Minister together with the Honorable the Minister for lands.  

The signatories were Tiriti Maika Purakau, Tiamana o Te Komiti, Kaporeihana, Retini Tamihana, Eruha Piripi
1 E whakaai pono ana matou ki ti tuku i Wairarapa Moana kia kuini Whikitoria hei whenua tuturu mana tuku iho tuku iho mo aki tonu atu a kua whakakorea katoa tia atu i konei te mana me nga take katoa o ia tangata o ia tangata whai hea ki ana moana

2 A i te mia kua ata whakawhitia e nga maori ti mana me nga take katoa o Wairarapa Moana kia kuini Wikitoria ka utua e ti kawanatanga o Niu Tireni nga

This is the Māori version:

The gathering at Pāpāwai for the gifting of the lake. The hinaki (eel traps) probably signify the understanding of tangata whenua that they would still be able to access their prized tuna fishery.
The signatories were the same as above.87

As was often the case, the Māori and English versions of the agreement, although similar, are not the same. We will need to identify the differences between them arise and assess their significance.

First, though, let us identify what they have in common. We can say that in both the Māori and the English versions the agreement addresses these topics: the transfer of ownership of the lakes from Wairarapa Māori to the Crown; the Crown’s payment to the owners of £2000; and the undertaking to set aside reserves for the former Māori owners of the lakes. But the two versions address the topics neither clearly nor uniformly, and as a result important questions arise that bear on the nature and extent of the Crown’s obligations to Wairarapa Māori.

The first question is whether the transaction was really one of gift or sale; the second is the nature of the undertaking about the reserves that were to be provided by the Crown.

We inquire first into this question: was the conveyance of the Wairarapa lakes from Wairarapa Māori to the Queen a transaction in the nature of a gift or sale?

7.5.3 Gift or sale?

The curious thing about the transfer of Wairarapa Moana to the Crown is that, although the contemporaneous evidence points clearly to a mutual understanding that what happened was a gift and not a sale, neither the Māori nor the English version of the agreement that was signed says so unequivocally. The language is simply ambiguous, because the key words in both versions are capable of bearing the inference that there was a sale, and that reading is encouraged by the fact that the Crown paid the owners £2000 as part of the deal. Payment – technically, ‘consideration’ – is a necessary component of a contract for sale, and the word ‘consideration’ is actually used in the second clause of the English version. But a careful reading of that clause discloses that the word is not used there as a synonym for payment under a contract. Nevertheless, all these things conspire to make what happened less than clear,
and construing the two versions of the agreement simply as documentary artefacts, it would certainly be possible to infer that what took place was a sale.

(1) The language used in the English version

In the English version, the word 'sold' seems deliberately to have been avoided, but neither is the idea of a gift really captured by 'conveyed surrendered and assured to Her Majesty the Queen'. 'Conveyed' and 'surrendered', when used together like this, connote more a giving up than a giving over of something; 'assured' adds certainty to what has been yielded to the Queen. This impression is reinforced by the following words, which state that the title being conveyed is one in fee simple (ie, an absolute title): 'freed released and discharged from all Native claims and rights whatsoever'.

What the language of the first clause makes clear is that Māori have given up all their rights in the Wairarapa Lakes to Her Majesty the Queen; less clear, from the words of the English version at least, is how the rights have been given up. The language obscures rather than clarifies whether the transaction is in the nature of a gift, a cession of rights, or a sale of some kind.

The second clause does not rescue us from this ambiguity. Again, the use of the word 'sale' is eschewed – instead, the interests have been 'conveyed'. This idea is expressed twice in the paragraph. As in the first clause, 'convey' makes it clear that interests have been transferred from the Māori owners to Her Majesty, but it leaves open the matter of how the interests have been transferred.

The second clause opens with the words 'In consideration of the conveyance and surrender aforesaid'. But as foreshadowed in the introduction, the use of the word 'consideration' here does not – as it often would in an agreement conveying rights – indicate that what happened was a sale. 'In consideration of' here means 'because of' or 'taking into account'. It is saying that, because of what the Māori owners had given up, certain things would follow. This is a different usage of the word 'consideration' from the usual contractual usage.

But, although the word 'consideration' was not used in the usual contractual sense, was consideration – in the sense of payment – nevertheless present?

The thrust of the second clause is that, because of what the Māori owners had given up, the Government would do two things:

- pay £2000 to them 'under a scheme to be hereafter arranged'; and
- 'make ample reserves' for them.

Did the Government's undertaking to provide benefits (money and reserves) to the lakes' owners in return for what they had given up imply that in essence this was a sale? If providing money and reserves can fairly be construed as payment, this would certainly indicate that the transaction had the key hallmarks of a sale, even if the agreement deliberately stopped short of saying so in so many words.

We think that, looked at as a whole and on its own, the English version of the agreement can be construed as a document recording that a sale of the lakes had taken place. Judge Butler's presentation of the cheque to Tamahau at the signing may arguably have reinforced this impression.

However, the English version of the agreement did not – and does not – stand on its own. It is an artefact of what happened, but not the only one.

We turn now to consider the language of the Māori version. And then we put into the balance what we know about the context from which the two versions of the agreement arose, and how they were understood at the time.

(2) The language used in the Māori version

Like the English version of the agreement, the Māori version, when viewed simply as a documentary artefact, does not resolve the ambiguity about whether the transaction was in the nature of a sale or a gift.

In the first clause of the Māori version, the conveyance of Wairarapa Moana to the Queen was called 'ti tuku'. In this phrase, 'ti' is the definite article (nowadays rendered...
as ‘te’), and ‘tuku’ is the noun. By using the word ‘tuku’, the drafters of the agreement were once more specifically avoiding specific language of sale: ‘hoko’ was common parlance for sale, while ‘tuku’ connoted a less specific yielding-up of something. As in the English version, the emphasis in the first clause is on what the Māori owners were giving up forever (‘te mana me nga take katoa o i a tangata o i a tangata whai hea ki ana moana’), rather than on how they were giving it up.

In the second clause, the words for what the Māori owners had done in giving up their rights to the lakes were ‘ata whakawhitia’. The word ‘ata’ is a qualifier here, indicating that something was done carefully and deliberately. But what was done? Like ‘convey’, ‘whakawhitia’ expresses the idea that something has been passed over or transferred. Something that has been ‘ata whakawhitia’ has been deliberately or purposefully passed across from one to another. Again, the word ‘hokona’ (sold) could have been used instead but was not. Thus, as with the English version – and again, focusing on the language alone – the essential nature of the transaction was left at large: something could be ‘ata whakawhitia’ (carefully or deliberately transferred from one to another) pursuant to either a gift or a sale.

Nor does the rest of the second clause resolve this ambiguity: as in the English version, it is plain that, because of the transfer of rights in the lakes from Māori to the Queen, the Government would pay the owners money and set aside land for them. Again, it is not clear from a reading of the words alone whether this arrangement was pursuant to what was essentially a sale of the interests in the lakes or as a result of other obligations that the Government had to fulfil. It is certainly a possible inference that the Government was paying the owners for the rights they had given up: in other words, a sale.

We now turn – crucially, as we shall see – to the context within which, and from which, the agreement arose.

(3) Context

The tuku of the Wairarapa lakes to the Queen occurred in a unique context. Other Waitangi Tribunals have considered the practice of ‘tuku whenua’, and we have considered it earlier in this report. But, for present purposes, we have not found it especially helpful to refer to these earlier interpretations. The context here is very particular. ‘Tuku’ is a word that has many meanings, and those meanings are often highly influenced by the cultural context. Intuiting the connotation intended requires a subtle understanding of what else is going on. Each signatory signed both the Māori and the English versions of the agreement. In order to appreciate the Māori parties’ conception of what was happening when they signed, we now turn to explore the context as fully as we can from the available evidence.

We have already outlined the events leading up to that day in January 1896 when the rangatira of Wairarapa signed their names to the agreement by which they gave up Wairarapa Moana. For decades, they had resisted pressure to yield their rights to the settlers and the Crown. The pressure was constant and took many forms: the owners were pressed to sell, to give up control of the lake opening, to put the land through the Native Land Court, to agree that the boundary of the land sales was the low-water mark rather than the high-water mark, and simply to let others read down and usurp their rights. They had petitioned Parliament again and again; they had been to court again and again. The toll on them in terms of time, effort, and money was surely enormous. Stress, too, must have always been present. Piripi Te Maari had been the heart of the struggle; in 1895 he died. Could anyone else have brought to bear the necessary passion and resilience to continue in the face of so much opposition?

For the times were against the lakes’ owners. Although they had explored every available option to maintain their position, the options were narrowing. The royal commission report had gone nowhere. After the 1893 Court of Appeal decision went against them, legal avenues were effectively closed. At Parliament, the Native Affairs Committee had not been prepared to support them in the retention of their rights before the court’s decision; it was hardly likely that it would do so after the judgment. All of these initiatives must have cost a lot of money. Did they
have any left to spend? And, even if they did, where else could they turn?

We do not know whether the gifting idea came from Carroll or from the owners themselves. But, if only because of the paucity of options, placing the lakes in the Queen’s hands must have been seen as an answer to many of the difficulties the lakes’ owners were facing. For one thing, it had the overwhelming merit of preserving their mana: they would not be seen to be surrendering to the pressure by selling the lakes they had held so resolutely. Rather, they would be engaging in a chiefly act, dealing with Carroll and Seddon ‘rangatira to rangatira’ to give away that which they cherished most. It was a noble and honourable gesture, and they would have confidently expected it to engender a commensurate response from the Crown.91

No doubt they talked to Carroll about what they wanted from the Crown. They would have told him about all the money that had been spent and the consequences for them
of that expenditure.\textsuperscript{92} Carroll – known to Māori as Timi Kara – would have been completely attuned to the nuances implicit in a tuku, including the reciprocal obligations of the parties.

In tikanga Māori, the act of giving enhances the mana of both the giver and the receiver. To engage in such a practice with the leaders of the Liberal Government of the day would certainly have been consistent with the thinking of the time within the Kotahitanga movement (the movement is discussed more extensively in chapter 4). Tamahau and Tunuiarangi were influential members of the moderate pro-government wing of the Kotahitanga, whose policy was to seek small-scale, moderate improvements for Māori by actively cooperating with the Liberal Government.\textsuperscript{93} The missives from Tamahau to Seddon quoted in this chapter show how keen he was to cultivate a good relationship with the premier. Traditionally, the practice of tuku was a classic way of establishing and reinforcing relationships between chiefs.

Certainly, Prime Minister Seddon seems to have been completely alive to the cultural context when he said:

I take this early opportunity of rebutting the statement that has appeared in one of the papers that the Natives had sold the lake for £2000. It was not sold at all; in a sense it was simply given away. There were legal technicalities, however, there had been expenses incurred which we considered ought to be reimbursed and we had the sum mentioned. But the lake was not bought for £2000. It was given to the government and was accepted in that spirit and in that spirit it shall be ever dealt with.\textsuperscript{94}

In his final sentence, Seddon captures one of the central elements of tuku: utu (reciprocity). Wairarapa Moana was freely given and not sold, and the Crown’s payment of £2000 was not a payment for the lakes. Nevertheless, there were obligations. The gift was not free in the sense that there were no strings attached. Under tikanga Māori, the gift and obligations in return were complementary, and could not be separated.\textsuperscript{95}

There is no evidence of what discussions took place between the Government and the Māori owners leading up to the agreement. As discussed, we know that Carroll met with the owners at Pāpāwai three days before the signing, but there is no record of what unfolded apart from the few (and somewhat contradictory) later commentaries that we quoted earlier (sec 7.5.1). We do not know how or by whom the agreements were drafted, nor with whom they were discussed. We do not know the level of involvement of Pākehā locals in the Wairarapa, nor what they were told about what was going on. Some certainly assumed at the time that the lakes were sold, and later the Crown proceeded on that basis too.\textsuperscript{96}

But those directly involved at the time, whether at the signing at Pāpāwai or at the celebratory picnic at Tipapakuku a few days later, were clear that the transaction was a gifting and that the money paid by the Crown was compensation for the owners’ legal expenses.

The day after the agreement was signed, Tamahau wrote in his telegram to Seddon that “The people do not look upon the settlement of this trouble from a monetary point of view rather it is a peaceful act on their part.”\textsuperscript{97} Seddon was not present in person until the day of the picnic. On that occasion, Māori leaders including Hoani Paraone Tunuiarangi, Hoani Te Rangitakaiwaho, and Te Whataho Ranga emphasised that, despite the transfer of money, the lakes were a ‘free gift and in no sense a sale.’\textsuperscript{98} An anonymous article in the Wairarapa Matuhi Press reiterated this point, reporting that the chiefs had ‘stated quite clearly that they did not sell it[;] they placed it within the hands of the Queen.’\textsuperscript{99}

In his speech at the picnic, Tamahau responded to the suggestion in the newspaper that the transaction was a sale:

\begin{quote}

it might be thought that there is some truth in the paragraph printed by a certain newspaper that we had sold our rights in the lake for the sum of £2000. It is not so. We deliberately of our own free will handed over the lakes. We gave them as a present from one chief to
another, and we therefore hope the Government will also treat us liberally in this matter as we do them.\textsuperscript{100} Like the statement made by Seddon, the final sentence of this quotation neatly encapsulates the expectation of reciprocity implicit in the tuku.

It seems that settlers too knew something of the cultural context within which the tuku took place. Alfred Matthews, the chairman of the South Wairarapa River Board, noted in his recollection of the gifting of the lakes that 'Mr Carroll knew that if a Native makes a present he expects an equivalent in return.'\textsuperscript{101}

But the payment of the £2000 was bound to blur the boundaries between a gift and a sale, at least in the perception of those who were not present.

Seddon tried to put the matter straight. In his statement quoted above, he referred to the expenses that the owners had incurred – legal expenses that the Government 'considered ought to be reimbursed'. He amplified the point, saying to the owners that they 'went into the law Courts and fattened the lawyers. Your money disappeared like snow from the mountain tops; you impoverished yourselves; your lands were gone from you for the purpose of maintaining this struggle.'\textsuperscript{102}

An article in the \textit{Wairarapa Matuhi Press} also stated that the £2000 was compensation for the 'great costs' the chiefs accumulated while 'challenging processes through the European court systems' during the 1880s and 1890s.\textsuperscript{103} Lawyers had become 'fat cats financially' in representing their cases in the courts.\textsuperscript{104} The article said that the dispute would not have been resolved in the courts and would have dragged on until the Māori owners were completely impoverished: 'If it were left to the lawyers to control they would have exhausted all the resources of the Wairarapa Moana to align their pockets.'\textsuperscript{105} 'That was why the owners sought to settle the dispute otherwise.'

\textbf{(4) Conclusion}

Although the language of the agreement, both in English and in Māori, leaves open the interpretation that the transfer of the Wairarapa lakes was a sale rather than a gift, the participants in the transaction were in no doubt about what took place. It was a gift and not a sale. In Māori terms, it was a tuku, with all the implications for enhancing the mana of the parties and for utu that entails.

The statements made at the time are unequivocal and, importantly, come from both sides. We can thus be confident in saying that, however ambiguous the words used in the agreement, there was a meeting of minds about the nature of the transaction. But the contemporary statements allow us to go further. Not only was there a mutual understanding that the transaction was in the nature of a gift and not a sale, but also both sides expected and understood that the nature of the gift, and the context within which it was made, imposed obligations on the Crown to deal honourably with the Māori owners. This is implicit in the quoted statements of Seddon and Tamahau.

It was clear that nothing ordinary or simple was going on. The language of many of the quotations is metaphorical, emphasising the great cultural significance of the event. Tamahau, in his letter to Seddon on 14 January, evokes the biblical language of sacrifice when he describes how 'the whole people gave' Wairarapa Moana 'gracefully into his [Carroll's] hands. In the Māori tradition, he invokes their tūpuna (forebears), saying that the gift has given 'effect to the words of our chiefs who have passed away from us.'\textsuperscript{106}

At the picnic, he prefaced his speech with a chant of welcome, which included a 'special reference to the handing over of the lake, which was compared to a noble canoe that was being hauled to its final mooring-place, there to be regrettfully taken leave of by those who had so long voyaged in it.'\textsuperscript{107} The importance of the occasion – and the need to impress upon everybody the implications of the Māori tuku – called for these rhetorical flourishes in the manner of whāikōrero. Interestingly, Seddon responded in precisely the same vein:

When I listened today to the incantation, to the song of farewell, sung by the chief in bidding adieu to that lake which they have loved so long, which is vested
with so many historical associations for them, and which has been to them a living necessity, I realised that that song came from the heart, and I could feel that my spirit joined with theirs.\textsuperscript{108}

This must have been exactly the response that the Māori speakers were looking for: Seddon entirely understood the transaction from their perspective, he was both intellectually and emotionally engaged, and he would undoubtedly ensure that his Government properly fulfilled its undertakings.

Now that we have explored the gift or sale question, we turn to the second important question arising from the agreement by which the ownership of the lakes was transferred to the Crown: What was the nature and extent of the Crown’s obligation to provide reserves for the lakes’ owners?

7.5.4 Reserves

We examined the English and Māori versions of the agreement in the context of answering the question about whether the lakes transaction was in the nature of a gift or a sale. We considered that, as documentary artefacts, both versions really left the question open: the language used was capable of bearing the inference that what was intended was a sale, but it was also consistent with the intention that the lakes’ ownership was to be conveyed by way of a gift. Our view that the two versions were equally ambiguous on this point meant that we did not have to embark upon any consideration of the legal implications of the differences between them.

As to the provision of reserves, however, the situation is otherwise. The two versions of the agreement differ in important ways. This raises for us the application of the \textit{contra proferentem} rule.

We now outline the differences between the two texts of the agreement as it relates to the provision of reserves, and then we explain how the \textit{contra proferentem} rule applies in this situation.

\textbf{(1) What did the Crown undertake to provide in the English version?}

In the English version, the Crown undertook, ‘in consideration of the conveyance and surrender’ of the lakes to the Queen, to ‘make ample reserves for the benefit of Native Owners.’ The reserves were to come from ‘any lands which shall come into the possession of the Government through such conveyance or out of any other lands acquired from Natives and still in possession of the Government.’ Thus, the resource for the ‘ample reserves’ was Crown land, including land between the low- and high-water marks around Wairarapa Moana that was part of the gift.

The agreement does not indicate for what purpose the reserves were to be set aside, nor is their location mentioned (except to the extent that they might come out of the land the Government had obtained by the agreement). The only description of them is that they are to be ‘ample’, and ‘reserves’ is in the plural. This suggests that what was contemplated was more than a single fishing reserve. But the Ministers were to determine what ‘ample reserves’ would mean: ‘The term “ample reserves” in this paragraph shall be interpreted by the Honorable the Native Minister together with the Honorable the Minister for lands.’

\textbf{(2) What did the Crown undertake to provide in the Māori version?}

The key words in the Māori version are ‘ka ata rahui tia to tika hei oranga mo nga Maori whai take ni aua moana . . . nga whenua . . . i roto i tenei takiwa.’\textsuperscript{109} These words convey three things:
- land would be put aside (‘rahui tia’) for the Māori interest-holders in the lakes;
- the task of putting the land aside would be done carefully and deliberately (‘ata rahui tia’, the adverb āta ‘indicating care, deliberation and thoroughness’) so as to cater exactly to their needs (‘to tika hei oranga mo nga Maori’); and
- the land to be reserved would be in the area of the lakes (‘i roto i tenei takiwa’) and would be suitable to the Government (‘e tika mai ana ki te kawanatanga’).
As in the English version, the final paragraph addresses the process of defining the entitlement to reserves:

Kaati ko tenei kupu – ‘Rahui to tika hei oranga mo nga Maori whai tai ma Honore te Minita Maori me te Honore Minita mo nga whenua e ata whakaoti ena kupu.\footnote{111}

The Ministers will carefully and purposefully give effect to the phrase (‘e ata whakaoti ena kupu’): ‘Rahui to tika hei oranga mo nga Maori’. The words ‘he Oranga mo nga Maori’ convey the idea of catering to the welfare and well-being of the Māori people concerned, and the words ‘ata whakaoti’ emphasise the care that should be taken to fulfil this objective. The Māori version differs from the English version here because the emphasis is on the careful fulfilment of the undertaking, rather than on determining its meaning.

\section*{(3) What does the contra proferentem rule do?}

\textit{Contra proferentem} is a rule of contractual interpretation that provides that uncertainties in a contract will be construed against the party proffering the deal. It translates from the Latin, and means ‘against (contra) the one bringing forth (the proferens)’. The reasoning behind the rule is to encourage the drafter of a contract to be as clear and explicit as possible, so as to avoid inconsistency and uncertainty.

The Waitangi Tribunal has used the rule to give precedence to the Māori version of the Treaty of Waitangi over the English version.\footnote{112} The Orākei Tribunal considered that, where there were differences between the English and Māori texts of the Treaty, ‘considerable weight should be given [to] the Māori text since this is the version assented to by virtually all the Māori signatories.’\footnote{113} This approach was ‘consistent with the \textit{contra proferentem} rule that, in the event of ambiguity, a provision should be construed against the party which drafted or proposed that provision.’ The Tribunal was influenced by the 1899 United States Supreme Court decision \textit{Meehan v Jones}.\footnote{114} That case said that treaties with Native Americans should be construed in the sense in which they would naturally be understood by the Indians. The Orākei Tribunal also quoted Lord McNair’s advice (from \textit{The Law of Treaties}) that a tribunal charged with applying or interpreting a treaty should give effect to ‘the expressed intention of the parties . . . as expressed in the words used by them in the light of the surrounding circumstances’ (emphasis in original). On bilingual treaties, McNair said that neither text was superior to the other but that it was permissible to interpret one by reference to the other.\footnote{115}

While the lakes agreement is not a treaty in terms, it is in the nature of a treaty. Formally, a treaty is an agreement between two or more sovereigns or nations, but at a conceptual level it is an agreement between people, focusing on relationships and public welfare. Treaties occupy the same legal and political space as conventions, protocols, agreements, and arrangements. The Wairarapa lakes agreement was unquestionably more of this breed than it was like a contract between private parties.

It also had – in common with many treaties – a version in two languages. The evidence does not disclose whether the official signing on 13 January 1896 was conducted in English or Māori. The Wairarapa minute book of the Native Land Court records that the agreement was read aloud. Was it the Māori version that was read out? Presumably, the court convened the day after the agreement was signed in order to make an order giving effect to it. The judge wanted to ensure that the owners understood the implications of what they had done:

The Court having ascertained that all the owners of Wairarapa Moana were present or properly represented, asked if they thoroughly understood the meaning and effect of the agreement read out. The reply was in the affirmative. On being asked if they agreed to an Order being made in favour of Her Majesty they all expressed their approval and consent. Objectors were challenged – none appeared.\footnote{116}

These circumstances seem to us to justify the invocation of the \textit{contra proferentem} rule. We will accordingly
construe the two versions of the agreement in favour of the Māori owners of the lakes.

(4) Applying the contra proferentem rule
Both versions of the agreement clearly provided for reserves to be set aside for the Māori owners of the lakes. The emphasis in the Māori version was on the land being carefully chosen so that it was suitable for the owners’ needs; it also stated clearly that the land was to be in the district. The emphasis in the English version was on ample reserves and the Ministers were to determine what ‘ample reserves’ means. In the Māori version, the two Ministers were to carefully give effect to the words ‘rahui to tika hei oranga monga Māori’, which emphasise the need for the land set aside to be exactly suited to the needs of the Māori people.

Thus, in order to fulfil its obligations under the agreement, the Crown would need to provide reserves for the lakes’ former owners that were ample, entirely suitable for the owners’ well-being, and in the environs of the lakes. Also, it was the Crown’s job to ensure that these requirements were conscientiously met.

7.6 Ka Ata Rahui tia to Tika hei Oranga mo nga Māori Whai Take ni aua Moana . . . nga Whenua . . . i roto i tenei Takiwā
The Crown never did set aside ample reserves in the district for the welfare of the lakes’ former owners. In this section, we examine why. It is a complicated issue. Land near the lakes needed to be surveyed; land prices were escalating; and views may have changed about what kind of reserves would best ensure the welfare of Wairarapa Māori who had owned the lakes. Initially, a suitable place to live near the lakes so as to fish them was seen as the priority; later, the idea of establishing pastoral farming opportunities for the tangata whenua seemed to gain hold.

Crown counsel Fergus Sinclair acknowledged that the Crown’s ‘accumulated acts and omissions in relation to the Lakes agreement constitute a breach of the Treaty of Waitangi and its principles.” In particular, he submitted that, at the time it entered into the agreement, the Crown failed to ensure that both the owners and the Crown had a clear understanding of what would constitute ‘ample’ reserves, and where the reserves would be located. Nor did the Crown make any assessment of its ability to implement the reserves provision in a timely way. As a result, the Crown gained clear title over the lakes and the ability to open the lake mouth as and when it liked, but there was ‘considerable delay’ in the Crown’s provision of reserves to the lakes’ owners.

Because the Crown did not inform itself on the question prior to proffering the agreement, we do not know whether land really was available for the kind of reserves described in the agreement at a price the Government of the time could reasonably have been expected to pay. We do not know how strongly local farmers’ wishes influenced officials’ views. As events transpired, after various surveys, searches, and delays, no area of land near the lakes was found to be suitable.

Entering into an agreement without first checking that you are able to fulfil your obligations under it is always likely to have negative consequences, and that was surely the case here. It was the Māori of Wairarapa Moana who bore the brunt of those negative consequences. It is part of our job to assess the extent of the prejudice to them of the Crown’s failure to do its part.

We can only imagine their disappointment. Having decided – surely reluctantly and as a last resort – that their only way forward was to give their rights in the lakes over to the Queen, Wairarapa Māori must have had high hopes for a new, amicable relationship with the Crown. Surely, having got what it wanted at last, the Government would happily and readily honour its modest commitments under the agreement. Wairarapa Māori would get the reserves they needed, and all the conflict would be over.

Sadly, it was not so. The struggle continued for another twenty years, and the outcome was not a happy one. The Crown did pay the money for reimbursement of legal
expenses, but it completely failed to provide reserves that were ample, suitable, or in the district. What follows is the story of how the Māori of Wairarapa Moana in fact ended up with what no one in their situation would have chosen unless they had absolutely run out of alternatives – and by the end they were clearly worried that they might get nothing at all.

But they did get something. They got 30,000 acres of pumice land at Pouākani, near modern-day Mangakino. Pouākani is more than 300 miles away from southern Wairarapa, and in those days was not accessible by road. Now, when the land at Pouākani has finally started to turn a profit, Wairarapa Māori would probably say that getting Pouākani was a lot better than nothing. But for the generation of Wairarapa Māori that gave up the lakes, the difference between Pouākani and nothing must have been hard to spot.

7.6.1 Finding the right land
Lakes Wairarapa and Ōnoke, and the section of the Ruamāhanga River which joined them, were vested in the Crown in July 1896, just a few months after the gifting agreement was signed at Pāpāwai. Soon after, Government surveyors began surveying the eastern and southern margins of the lakes, identifying which areas of low-lying Crown land around the lakes might be reserves. Anxious to fulfil the Government’s commitments, Seddon pressured his officials to complete the surveys, saying: ‘I wish faith to be kept in respect to this matter, and want the thing done at once.”119 When a full survey of lakeside lands was completed in January 1900, surveyors found 2671 acres of Crown-owned wetland and grassland around the lakes. Of this, 271 acres was good-quality dry agricultural land; 1702 acres was scrub-covered good land submerged during high floods; and 698 acres was lesser-quality land submerged during ordinary floods. Officials considered that only adjoining farmers could safely use land in the latter category, because they could move stock onto adjacent paddocks during floods.120 The surveyors also estimated that over 19,000 acres could be reclaimed and made available for farming in the future by drainage and river diversion works.

The Native Land Purchase Department proposed to the Native Minister that the Surveyor-General and one or two Wairarapa chiefs could now meet and agree to a survey of the areas of land to be reserved, subject to the Minister’s approval. The department was proceeding on the basis that the Government’s commitments arising from the 1896 agreement amounted to small camping grounds and reserves,121 but how they reached that position is entirely unclear.

There was no further progress until March 1903, when Hoani Te Rangitakaiwaho and Charles and Te Whatahoro Jury wrote to Native Minister James Carroll, asking for the reserves. Carroll responded by setting up a meeting between relevant Māori and officials. This meeting took place in September 1903 in Greytown, and was attended by James Marchant (Surveyor-General and Commissioner of Crown Lands), and komiti leaders including Te Whatahoro Jury and Hēnare Parata. Marchant presented the survey maps, and stated that very little of the lakeside Crown land was fit to live on. He also noted that drainage works might free up more land, but that they would also negatively affect the lake eel fishery.122 Little came of the meeting until August 1905, when Marchant provided Carroll with a schedule of Crown lands which might be made available as reserves. In April 1906, Seddon’s Cabinet formally resolved to grant the reserves in accordance with the 1896 agreement. The Cabinet did not, however, resolve the officials’ uncertainty about exactly how much land was to be reserved, or where. There was little official appetite for engaging with the former lakes’ owners over options: senior Department of Lands official W Kensington wrote that it was ‘no use waiting to ascertain [the former owners’] view[s] which appear to mean that they wish the whole of the lands reserved for their use.”123

It is not clear what ‘the whole of the lands’ means here. If Kensington meant that Wairarapa Māori were expecting as reserves all the lakeside land that they had gifted to
the Crown, this would not have been such an outrageous expectation. They might reasonably have hoped for 4000 acres as reserves, because this was the quantity of lakeside land in the Tūranganui block that, according to Mackay’s royal commission report, the Crown had not purchased.  

Shortly afterwards, in June 1906, Seddon died, and it would be yet another decade until the matter was settled.

In April 1907, Kensington and Chief Surveyor Strauchon met at Featherston with Tunuiarangi, Te Whatahoro, and Parata in order to identify potential areas to be set aside. After the men examined the lakeside land, Kensington made an offer to settle the matter, but the offer itself became the subject of contention. Te Whatahoro understood Kensington to be offering small areas for houses and eel fishing, a 250-acre block at the mouth of the Tauherenikau River, and a 130-acre block at the mouth of the Ruamāhanga River that was under water. Frustrated, Te Whatahoro told Carroll that he would petition Parliament over the matter. Kensington, however, recorded that the area offered was in total 1600 acres: 600 acres south of the Mangatete Creek and 1000 acres at the mouth of the Ruamāhanga River.

Following the meeting, Kensington and Parata inspected the lakeside Crown land. They agreed that, given the flood-prone nature of much of it and the costs and legal complications of providing access, the best course was for the Government to sell off the 1600 acres identified by Kensington and use the proceeds to purchase land elsewhere in Wairarapa.

This decision was an important turning point, leading to reserve land being sought outside the Wairarapa district. Kensington maintained that Parata had agreed to act for the other Māori in settling the matter. Unsurprisingly, agreement to this new path was not unanimous. Whare and Rōpata Turei argued that it was important to keep the reserves on the lake, as eeling was still an important source of food.

In September 1908, Tunuiarangi, Iraia Te Whaiti, and others petitioned Parliament, insisting on lakeside reserves at the mouth of the Tauherenikau River and the mouth of Lake Wairarapa. They emphasised the importance of the eel fishery and their expectations of reserve land close to their kāinga at the mouth of Lake Ōnoke and at the northern end of Lake Wairarapa.

Meanwhile, in November 1907, the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1907 was passed, section 53 of which enabled the sale of lakeside Crown lands to fund the purchase of land to be provided in lieu of the lakeside reserves promised in 1896. Presumably, this was effectively the death-knell for lakeside reserves, although there does not appear to have been a response at the time.

Provision was made for the purchase of land to the value of £5000, but how this figure was reached is unknown. It may have been meant to equate approximately with the value of the 1600 acres identified by Kensington in April 1907, although why that should have been the limiting factor again is also not clear. In fact, a succession of arbitrary decisions, completely unrelated to the undertakings made in the 1896 agreement, were coalescing in a way that ultimately determined an outcome that came to be seen as – but really was not – inevitable.

In 1908 and 1909, officials sought to acquire land if not adjacent to the lakes, then within the Wairarapa district at least. Even before statutory approval for this expenditure had been granted, officials attended the auction of the Whangaimoana Estate, near Lake Ōnoke, with the intention of acquiring land to grant to the former lakes’ owners. However, because the price paid at auction was far higher than they expected (between £7 and £31 per acre, compared with the Government valuation of lakeside Crown lands of £3 per acre), no land was purchased. Meanwhile, survey and valuation work proceeded, in preparation for sale of the lakeside blocks. Kensington was adamant that no Māori ‘be allowed to retain or lease any lands adjoining European properties on the foreshore of Wairarapa Lake, as such a course would no doubt lead to considerable friction in time to come’. Plainly, the possibility of the former owners of the lakes retaining a foothold there was becoming increasingly remote.
Although there were differences of opinion about the acceptability of reserves outside Wairarapa, there was now a common view among the Wairarapa leadership that they should be of a size and quality appropriate for farming. Parata, Tunuiarangi, Iraia Te Whaiti, the Jurys, and Te Manihera Rangitakaiwaho all expressed this view at various points between 1907 and 1909.  

### 7.6.2 Finding any land

Efforts to find suitable land within the Wairarapa district had yet to yield results, and the alternative of reserves outside Wairarapa gathered momentum. Presumably the leaders of the day felt unable to challenge the framework that the Crown had slowly built around what land might be considered ‘suitable’. The limitation on money available; the characterisation of the Crown’s lakeside land as unsuitable; the ‘unavailability’ (read ‘unaffordability’) of land that might even approximate what the agreement offered, together comprised a network of imposed constraints within which there was no room to move.

From February 1909, officials met with Te Whatahoro to discuss the possibility of granting land at Wairarino or Pouākani. Both Hēnare Parata and the Turei brothers objected to the fact that the Government was dealing with Te Whatahoro in Wellington, stressing that Te Whatahoro did not have a mandate to speak on behalf of all the owners. Officials reassured them that no land would be purchased for the owners without proper authorisation.

By mid-1909, there was disagreement between the lakes’ former owners over how the Government might best honour the 1896 agreement – within the constraints that everyone seemed now to accept.

Tunuiarangi lobbied Carroll to spend some of the £5000 on land at Okorewa, at the mouth of Lake Ōnoke. Like Parata, he opposed the proposal to grant land at Pouākani. The Jury brothers, on the other hand, sought two small lakeside fishing reserves (200 acres at Okorewa and 50 acres at the mouth of the Tauherenikau River), in addition to a large tract of land at Pouākani. They proposed that the £5000 sum be spent on improvements and capital investment to stock the farms there. Both the Jurys’ and Tunuiarangi’s proposals were discussed at some length at an August 1909 hui arranged by Te Whatahoro, but it seems that no consensus was reached. Tunuiarangi grew increasingly anxious that Carroll and Te Whatahoro had reached a final decision on the exchange without seeking the consent of all lakes’ owners. He wrote to Carroll in March 1910, asking again for land to be set aside in Wairarapa. Meanwhile the Crown began to sell off its lakeside lands in April 1910, and by June the next year sales had yielded £4000.

### 7.6.3 Land at Pouākani?

By this stage, the Pouākani proposal was gaining impetus. In May 1910, Kensington received a survey plan of the block, with a description of the land as ‘open poor pumice country’, covered with tussock and scrubby tea tree. Carroll provided Te Whatahoro with plans of four potential central North Island sites: Kuratau, Pohokura, Hinaki, and Pouākani. By November 1910, Te Whatahoro had developed quite detailed plans to use a particular portion of the Pouākani land to raise stock, and approximately 7000 acres at Kuratau (west of Lake Taupō) for fattening and finishing off. Te Whatahoro described Pouākani as pumice land that was infested with rabbits, and stressed that the owners would need better quality land as well to support the 250 adults and 200 children he expected to settle there. He wanted the Pouākani land on a 32-year lease, with an option to purchase. In May 1911, Te Whatahoro wrote to Carroll to tell him that a number of Wairarapa people were ready to leave the following month for Pouākani to start farming the land, and asked that a train station be built on the block. Tunuiarangi maintained his opposition to Te Whatahoro’s plans, on the grounds that Pouākani land was too far away and would not be sufficiently productive to support the Wairarapa people. In February and May 1911, he again wrote to Carroll asking that land at Okorewa be set aside for fishing and horticulture. Whare
and Rōpata Rangitākaiwaho also wrote to Carroll opposing the Pouākani proposal, asking for land in Wairarapa.\textsuperscript{137} Carroll favoured the Pouākani option.\textsuperscript{138}

Officials were now set on pursuing the Pouākani exchange. In mid-1911, they began looking for a solution to the challenge of acquiring the Pouākani land, which was valued at £6097, when the 1907 legislation authorised expenditure on the reserves only up to £5000. (Eventually, in late 1914, new legislation – section 57 of the Reserves and Other Lands Disposal and Public Bodies Empowering Act 1914 – was passed to overcome this.) In June, Carroll wrote to Te Whatahoro assuring him that an access road to the nearest section of railway would be surveyed that spring. In the meantime, Carroll wrote, the block could be accessed using the existing tracks.\textsuperscript{139} In July, Kensington wrote to Tunuiarangi to tell him that the matter had been settled, and that 30,000 acres had been set apart for the lake owners. Tunuiarangi and Parata wrote to officials opposing the decision, and saying they would petition Parliament. At the same time, although the exchange was not yet formalised, Te Whatahoro again sought to make firm arrangements regarding the provision of road and rail access to the land.\textsuperscript{140} Over the following months, he kept up a regular stream of correspondence, urging the Government to complete the exchange, and to provide both access to the block and finance to develop the land.

Officials sat tight, ‘awaiting the consent of the Natives interests before proceeding any further in the matter’.\textsuperscript{141} But there is no evidence that the Government really tried to ascertain the extent of support among Wairarapa Māori for the Pouākani proposal. Rather, it seems that they were hoping that, with the effluxion of time, opposition would dissipate. This is in effect what happened.

In 1912 and 1913, Wairarapa Māori leaders were growing anxious that yet another opportunity would pass them by. In September 1912, Te Whatahoro told Native Minister Maui Pomare that he feared that the land might not be granted at all. In October 1913, Iraia Te Whaiti assured land department officials that everyone with interests in the lakes had agreed to accept the Pouākani proposal; in December he urged the Government to press ahead.\textsuperscript{142} In May 1914, Tunuiarangi, Te Whaiti and approximately 31 others petitioned Parliament asking that the exchange be completed. The last opponents of the Pouākani proposal had apparently given up.

The Government finally did the deed. After the passage of the 1914 legislation that authorised the spending of more than £5000, the Native Land Court sat at Greytown in January 1915 to determine the interests of the lakes’ owners in the land at Pouākani. In April 1916, the court vested the block in 230 owners, based on the original 1883 certificate of title to the lakes.\textsuperscript{143}
7.6.4 A white elephant?
Although the former owners of the Wairarapa lakes pushed hard in the end to get the Government to bring the exchange to fruition, it does not appear that they were in any hurry to move to Pouākani. Probably, they were just afraid that if they did not secure the deal they would miss out altogether.

It is not surprising that they did not rush to relocate. Most of the land was very poor quality, requiring money and a great deal of work to make it productive.

Of the 30,486 acres comprising the block:
- 20,000 acres (66%) was scrubby pumice land;
- 6000 acres (19%) was covered in heavy bush; and
- 4486 acres (15%) was good farming land.144

Te Whatahoro moved to nearby Pukemakō and repeatedly wrote to Pomare and Massey throughout 1919 requesting that the Pouākani land be surveyed.145 Despite initial resistance from Department of Lands officials, Te Whatahoro persuaded the Cabinet to meet the cost of surveying the periphery of the block. The job was completed in April 1920 at a cost of £981, with the surveyor finding that the vast bulk of the land was ‘very poor land in stunted manuka, manaoa and tussock’.146 The block remained inaccessible by road and uninhabited. According to historian Helen McCracken, during the 1920s the closest rail connection to Pouākani was to the north, at Putaruru. From Putaruru, one would have had to travel south by road to Tokoroa (which until the 1940s was only a hamlet), proceed along country tracks to the Waikato River, and then head upriver for 11 kilometres before, finally, reaching the Pouākani land.147 In 1929, in response to complaints raised by the owners, Department of Lands officials noted that there was no access to the block other than via the Waikato River, and they suggested laying a road along the southern bank of the river to connect with the Taupō Tōtara Company’s railway. The Government agreed to survey the access road but no road was formed until the 1940s.148

Thus, 20 years after the gifting of the Wairarapa lakes to the Crown, the lakes’ former owners became the owners of a large tract of poor quality land, far from their rohe (district) and inaccessible by road or rail. It is not surprising, then, that the land was neither settled nor used until the late 1940s, when access to the block was provided for reasons completely unrelated to the needs of its Māori owners.

But before looking into the fate of the land at Pouākani, we turn to an important issue: the customary fishery of Wairarapa Moana. When Māori gave their interests in the lakes to the Queen, did their fishing rights go too?

7.7 The Customary Fishery of Lake Wairarapa
In one sense, the struggle over Wairarapa Moana was all about the fishery. Wrestling ownership of the lakes from Māori was important to the Pākehā because they wanted to control the lake opening, and thereby manage the flooding of their farms. Māori wanted to maintain ownership of the lakes, and control of the lake opening, because of their enormous interest in ensuring that artificial drainage of the lakes did not jeopardise their fishery. As we have seen, this power struggle went on for decades. But, when the dénouement arrived and the gifting took place, Māori do not seem to have emphasised the fishery in the way that one may have imagined.

What rights in the Wairarapa Moana fishery did Wairarapa Māori surrender when they gifted the lakes to the Queen? As we did earlier in relation to the gift or sale question, we look first at the two versions of the gifting agreement, and then turn to contemporary reports of what happened and what was said in and around the signing at Pāpāwai and at the picnic at Tipapakuku.

7.7.1 Did Wairarapa Māori give up their fishery when they gifted the lakes?
(1) The English and Māori versions of the agreement
The English version of the gifting agreement concentrates entirely on the land title to the lakes. It conveys ‘the whole of the Wairarapa Lakes . . . as an estate of inheritance in
fee simple freed released and discharged from all Native claims and rights whatsoever. A fee simple title is the best title to property available, representing the absolute ownership of a parcel of land.

It would theoretically be possible for the Crown to take up a fee simple title to the land comprising Wairarapa Moana and for Māori to retain a right to take the fish there. Such a right in common law is called a profit à prendre, which is French for a right of taking. It works like an easement, and gives the holder the right to take natural resources – such as fish but also potentially petroleum, minerals, timber, and wild game – from the land of another.

However, the agreement makes no specific reservation to Māori of a fishing right of any kind. The confirmation that the fee simple is discharged from ‘all Native claims
and rights whatsoever’ would on the face of it include their fishing rights.

Similarly, the Māori version emphasises that Māori are giving to the Queen all their interests in the lake – ‘kua ata whakawhitia e nga maori te mana me nga take katoa o Wairarapa.’ There is no specific mention of the fishery, but the implication is strong that everything goes to the Queen.

(2) Context

In all their years of struggle to remain the owners of Wairarapa Moana, Wairarapa Māori were arguably motivated primarily by their need and desire to protect their fishery: those lakes were possibly the finest repository of eels in the lower North Island. Did they really intend to give this up when they conveyed their interests in the lakes to the Queen? Or did they think that, though they were no longer the lakes’ owners, they could keep fishing there, along with everybody else? This was, after all, how access to the sea fishery worked at the time.

It seems that, at the Tipapakuku picnic, Māori asked the Crown for an assurance that their customary fishing rights to the lakes would be protected after the gifting. Seddon complied, explicitly recognising in his speech the Government’s responsibility to protect Māori fisheries in the lakes under the Treaty. He also saw the reserves as guaranteeing continued Māori access to the lakes for fishing:

 Governments come and Governments go, but there is one thing I think that must be done, and that is to ensure to the Natives and to all her Majesty’s subjects the right of way to that lake. (Hear, hear.) It will be necessary also that there shall be a piece of land set apart, so that when the Natives go to fish they will be able to camp upon that land without running the risk of having that right denied, as might be the case if it passed into the hands of private individuals. Now in connection with that lake, and I hope that my words will convey my meaning. I desire it to be said here that the Acclimatisation Society shall not come and put their fish into the lake, and from the fact of doing that take away the rights which to-day you possess. (Hear, hear) I say that such a course would be against the spirit of our agreement today. I want my words in this respect to be recorded, because I shall pass away and you will pass away, but for all time I wish it recorded that the Natives shall not be impeded in fishing and obtaining from the lake the food they are entitled to by the Treaty of Waitangi and which they are entitled to by special treaty rights through the dispute which has occurred.

What was Seddon referring to when he talked about their entitlement ‘by special treaty rights through the dispute which has occurred’? We do not know. But in other respects his speech was crystal clear. He said that he intended his words to resonate beyond his own time, and although this did not happen (or not until now), those at the picnic would have clearly understood what was in Seddon’s mind that day:

- Wairarapa Māori would continue to fish in Wairarapa Moana;
- they would be doing so pursuant to rights that they possessed after the gifting had taken place;
- the rights emanated from the Treaty of Waitangi, and also from ‘special treaty rights’ of some sort;
- because the lake had passed into the hands of the Crown rather than those of private individuals, there was no risk that the Māori fishing right would be denied;
- the Acclimatisation Society would not be allowed to put ‘their’ fish into the lake;
- it was necessary for the lakes’ owners to be given land by the lake for encampment for fishing; and
- the Premier’s statements were to be recorded so that
the Māori fishing rights he described would be protected 'for all time'.

On 20 January, the New Zealand Times reported on the Māori speeches at the picnic:

They [Tunuiarangi, Te Rangitakaiwaho, and Te Whatahoro] all laid emphasis upon the fact that the handing over of the Native right in the lakes was a free gift and in no sense a sale. Tunui-a-rangi suggested that a defined line should be drawn, within which the Natives might be allowed to pursue their fishing operations without let or hindrance.\(^{52}\)

It is interesting to note that Tunuiarangi's speech (if the reporter captured it correctly) indicates that how their fishing rights would work had yet to be finalised.

An Evening Post article of 17 January 1896 that upset Māori by characterising the transaction as a sale was nevertheless clear that Māori retained their fishing rights:

The Government has offered the natives a sum of £2000 for their interests in the lake, and the natives have accepted the offer. They, however, are still to retain the right to fish in the lake, and certain reserves have been made along its foreshores for their convenience when on fishing excursions.\(^{53}\)

Subsequently, the Wairarapa Matuhi Press argued that, although Māori had gifted the lakes, under the Treaty they still retained equal fishing rights in the lakes with Pākehā:

Even though the local Maori had farewelld the Wairarapa Moana through traditional methods . . . [it] was still with them and their rights were the same as any other person under the Queen as a given right under the Treaty of Waitangi. . . . Although the local chiefs had handed this matter to the Queen, the authority, prestige remained in tact [sic] with local Maori, for the fish resources and having the same rights as the pakeha guaranteed under the Treaty of Waitangi.\(^{54}\)

None of the reports of what was said about the agreement indicates that anybody thought that its effect was that Māori had given away their fishing rights.

(3) A very curious situation
We are therefore confronted with a very curious situation. Both versions of the lakes agreement passed all Māori interests in Wairarapa Moana to the Queen, and there is no reason to suppose that either party was unable to understand its terms. Yet, both Seddon and Māori leaders who spoke about the transaction immediately afterwards contradicted its apparent effect as it related to fishing rights. In the minds of all the speakers whose words have been handed down, it was clear that Māori retained their rights to the fishery. This dichotomy is nowhere explained.

Why was it, then, that neither the Crown nor Māori regarded the lakes agreement as having disposed of the question of fishing rights? The focus was perhaps on the right to control the water in the lakes – the flooding and the opening to the sea – rather than on fishing rights. Perhaps they did not understand that an agreement that talked about land title might affect fishing.\(^ {55}\) Did they think that fishing rights would be sorted out later? (They were not, as far as we know.) Or was it assumed that the status quo would continue as regards the fishery? It was possibly just accepted that Māori would continue to fish the lakes as they had always done but that the fishery would no longer be what it had been because it would no longer be part of a large, natural wetland. And now it would be shared with Europeans and other Māori. Seddon told the gathered Māori that ‘the lake is vested in the Queen with the right for you to use and fish in. Every liberty given to the European in respect of that lake is given also to every member of the Native race in the Wairarapa, or elsewhere.’\(^ {56}\)

In his speech, Seddon addressed the question of fishing rights very deliberately. His words were not those of polite commentary: he had things of substance to say and
he wanted them remembered. He said as much. Although governments come and go, he wanted his words to be heeded beyond his own time. Given the context, we think it reasonable that all those gathered at the picnic – and it was a ‘monster picnic’, according to a newspaper report – would have felt able to rely on his words as outlining the Crown’s position. This impression would have been reinforced by the fact that the Māori speakers affirmed what Seddon said. If the speeches had disclosed disagreement, listeners might have felt some confusion about how things were to be.

(4) Māori fishing rights post-agreement

Where does this leave the question of Māori fishing rights in Wairarapa Moana?

The position is an unusual one. The Māori and English versions of the agreement are both plain on their faces: Māori were giving up all their rights in the lakes. The all-encompassing nature of the language in English and in Māori strongly suggests that all meant all: Māori were giving everything to the Queen. But paradoxically, it seems that this was not the intention, and in fact there was a meeting of minds – expressed in the speeches at the Tipapakuku picnic – on another position entirely.

It is not possible now to be very prescriptive about what was agreed as to fishing rights, because the only evidence we have to go on is really just fragmentary. It is not possible at all, we think, to extrapolate from the evidence anything as to the intentions about, for example, the gathering of harakeke (flax) or other non-fish resources in or around the lakes. If the leaders of the day did in fact turn their minds to those issues, no record survives as far as we can tell.

Seddon’s speech is the most substantial record of what people were thinking at the time about fishing in the lakes. He envisaged a regime that would protect Māori rights to fish in the lakes, but those rights were not exclusive, as he explicitly foresaw participation by ‘all her Majesty’s subjects’, including Māori from other places.

In the 1880s, when Māori owned the lakes, there were occasions when they objected to settlers fishing there (sec 8,3,3). Perhaps Seddon knew this, and so he emphasised that rights to fish in the lake would be shared from now on with Pākehā and other Māori.

Putting everything we know into the mix, this is what we can conclude about Māori fishing rights in the lakes after the 1896 agreement:

- when they gifted the lakes to the Queen, Māori did not give up their fishing rights in Wairarapa Moana;
- land would be set apart for Māori at the lake in order to preserve their access to it and to enable camping for fishing purposes, and the Crown would protect them from any denial of their rights;
- the right of Wairarapa Māori to go to the lake and fish there was not exclusive to them: others too (including other Māori) could go there and fish; and
- the Acclimatisation Society would not be allowed to introduce new fish species to the lakes.

This is our reconstruction, on the evidence now available, of the status quo as to Māori fishing rights in Wairarapa Moana that should have applied from 1896 onwards.

7.7.2 Fishing in the lakes after 1896

Evidence about fishing in Wairarapa Moana after 1896 is sketchy.

Hunting for information about Māori fishing in the lakes, researcher Robert McClean searched the twentieth-century files of the Marine Department, the South Wairarapa River Board, and the Wairarapa Catchment Board, and he also looked for any Government reports of the period. He found only ‘scraps’. These fragments suggest that, after 1896, Māori continued to protest about the use of the lakes, although in a more low-key way than when they were the owners.

Māori complained about the negative effects on their fishery of the continued opening of Lake Ōnake; drainage works; stopbanks; and the commercial fishing of eels, whitebait, and kōura. It does not appear that anyone in
authority was particularly engaged by the problem of protecting Māori fishing rights.

Māori certainly continued to fish the lakes, and during the Great Depression of the 1930s, they were even more reliant on whitebait, eels, and other fish than previously. The Marine Department estimated that, in the early 1930s, lower Wairarapa Māori sent about 10 tons of eels to Hawke’s Bay Ngati Kahungunu every year. A 1944 department report noted that Māori were running 'extensive eel fishing operations at Lake Ōnoke' in the 1940s.

McCLean told us that, although some officials in the 1920s, 1930s, and 1940s did recognise the customary right of Māori to continue to fish the lakes under the Treaty of Waitangi, they did not regard it as part of their role actively to protect such rights. For example, in 1933, in response to Māori objections to the planned establishment of an eel-canning factory in Greytown, the chief inspector of fisheries, A E Hefford, concluded that no intervention 'at the moment' was required to protect the Māori eel fishery. With much fanfare, the cannery – the first canned jellied eel factory in the world – commenced operation in 1934. It canned the smaller hao eels and exported them to London. Hao were the eels Māori liked best to eat. In 1937, the factory folded: the business was unprofitable and there was a 'lack of supply' of eels.

The Government also failed to intervene in major drainage works in the lower Wairarapa that dried up the wetlands where the eels lived. The initiative was for the benefit of local pastoralists and was quite decidedly to the detriment of the Māori eel fishery. In 1945, A M Rapson, a marine biologist, wrote:

It was subsequent to the original operations of the Greytown cannery that large scale drainage of Lake Wairarapa was carried out; this has resulted in the drying up of many thousands of acres of swamp land and miles of slow flowing streams which it is believed are the most suitable habitat for eels.

Meanwhile, the river board and the catchment board (formed in 1944) continued to open the Lake Ōnoke spit without reference to Māori or their fishing rights. For example, they often opened the bar during the height of the eel migrations. And in 1948, after the massive flood of 1947, the boards opened a new outlet from Lake Ōnoke that discharged even more fresh water than previously, substantially lowering the levels of the lakes. According to McCLean, 'the Māori eel fishery at the lake suffered and has not recovered since.'

In the 1960s and 1970s, the Government was enthusiastic about establishing an export industry in eels. Major operations began in Southland, Waikato, and South Auckland. A few small ventures were launched in Wairarapa, such as commercial eel fishing in two lagoons near Lake Wairarapa from 1969 onwards, and two small eel processing plants set up in Greytown and Masterton in 1972. Between 1983 and 1991, the two plants caught between 40 and 67 tonnes of eels, or 10 per cent of the national catch. But a major eel industry has not become established in Wairarapa. We do not know why, but if the eel-canning factory had to close in the 1930s for want of eels, no doubt the subsequent drainage works and the larger opening to the sea from Lake Ōnoke that was put through in 1948 have caused further decline in the eel population.

In 1993, a Government report noted that the 'important historical fishery for eels, based on fishing downstream migrants in April and May when the barrier bar to Lake Ōnoke was closed, no longer exists because the barrier is maintained in an open state.'

Commercial fishing has also had an impact on eel numbers. A National Institute of Water and Atmospheric Research report of 2002 described eel stocks in the Wairarapa ki Tararua district as 'abundant' but said that commercial fishing of the larger long-finned eels had severely depleted their numbers, to the extent that there was 'growing concern for the well being of this . . . species.'

We heard evidence from several claimants on their continuing customary use of their fishery in Wairarapa Moana, particularly eels, and we also heard directly from claimants who observed first-hand a decrease in the stocks
Stories of Wairarapa Moana

The moana remains a customary fishery

Evidence confirmed that Wairarapa Moana remained a destination eel fishery for tangata whenua well into the twentieth century.

Anna Maria Robinson told us that.

Our home is next to the Turanganui River. We spent our childhood in the river – swimming, fishing and playing. We relied on the river and the lake for a lot of our kai . . . The Maori people came from all over the Wairarapa to get eels from Lake Onoke each year. They would be dried on fences. People would camp with tents. We were not allowed to use gaffs to catch eels – we had to dig trenches in the sand and quickly throw the eels into sacks.

Whare Gray Te Hokimate (Sonny) Te Maari recalled that:

Eeling was an important part of the life of the people at Kohunui when I was growing up. Eeling took place in February through to April of each year. My great grandfather, Piripi Te Maari, fought to keep the Lake closed. The opening of the Lake drastically affected our ability to catch eels . . . I remember as a child that when the eeling season was underway you could not see the fences at Kohunui Pa for the eels being dried. It was a huge operation. People would come from all over the Wairarapa to carry out eeling. Eels were a staple part of our diet throughout a lot of the year. Otherwise, we depended on our coastal fisheries for crayfish, pāua, kina, pupu, mussels, and all sorts of fish including hapuka.

Akiaha Te Raki Painoiho (Pai) Te Whaiti described the three types of tuna fished – hau, paranui, and riko. Curing took place at Kohunui Marae:

Ben Couch and I were brought up by my grandfather and grandmother. We went with our grandfather by horse and cart to Lake Onoke to set nets for eeling. The people would go eeling every year between February and April. We caught the eels using hinaki (nets) and by digging trenches. What we could do is we would dig a trench in the sand from the lake and the eels would then swim into the trench. We then had to quickly chuck the eels into a sack as they swam into the trench. If you weren’t quick enough the eels would burrow down into the sand . . . The eels were cured and were eaten throughout much of the year. The fences around the marae and our homes would be covered in eels which were drying. We would go eeling at night. We were not allowed to use a light as the eels were very cunning and would be disturbed by the light. People would come from all over to go eeling in Lake Onoke – from Papawai, Te Oreore, Pahiutu. They would camp at the lake. Eels would also be exchanged at big hui for other kai such as kumara, titi.

Niniwa Kahurangi Neva Munro’s family would gather eels in the last week of February and the first two weeks of March:

We used hinaki. The people would gather at Kohunui and then catch the eels from Lake Onoke. This stopped when so many people left the district from the Pouakani lands in the 1950’s.

Haami Te Whaiti impressed upon us the continuing importance of both the coastal and the lake fisheries upon local Māori:

Obviously the coastal fisheries and the lake fisheries were of huge importance to our tipuna. They continued to be critical for the sustenance of our communities until more recent times: and they remain our customary fisheries.

Declining Kai in Wairarapa Moana

Whare Gray Te Hokimate (Sonny) Te Maari told us that:

The land between Kohunui and Turanganui and the Ruamahanga River and the Lake has changed significantly since I was a child. The Lake entrance was opened in the 1930s. The River course shifted in the 1950s and 1960s. I remember in particular that before all this work, the swamp, which was part of the Lake area, extended as far as the fence line across the road from the Marae. I would imagine that before my lifetime, and before the outlet was controlled,
Lake Wairarapa would extend as far as Kohunui when it was full . . . The issuing of commercial licences have depleted the eels in the lake.

Anna Maria Robinson observed changes too:

The river and lake [Önoke] are nothing like they used to be. The water quality is much worse and it is very hard to catch eels or whitebait and there is no longer any watercress left.

Akiaha Te Raki Painoihio (Pai) Te Whaiti told us:

The eels were plentiful in the days when I was growing up. The eel numbers are now far less than they were when I was growing up.

Niniwa Kahunangi Neva Munro (below) bemoaned the loss of water quality:

Over the years the water quality of our rivers and the lake deteriorated significantly. Much of the surrounding farm land is drained into the rivers and the lakes and I believe this has contributed to the poor water quality. We used to catch fresh water crayfish, cockabullies and whitebait at the Turanganui river but now you can only catch whitebait, but not very much. Also kakahi (fresh water mussels) are no longer as plentiful as they were.

of eels and other forms of customary kai from Wairarapa Moana.

We report further on customary fisheries in chapter 13B.

7.8 The Compulsory Acquisition of Land at Pouākani

We return now to the main thread of the narrative – namely, what happened after the lakes were gifted to the Crown and the Crown granted the Māori people of Wairarapa Moana land at Pouākani by way of reserves?

7.8.1 The coming of the hydro scheme

In 1916, the Pouākani land was vested in the former owners of the Wairarapa lakes; until the 1940s, it lay barren and empty.

It was the construction of a large hydro dam scheme that opened up the Pouākani 2 block. Government surveys during the 1930s identified the stretch of the Waikato River between Lake Taupō and Cambridge as having great potential for hydropower generation. In the decades that followed, a series of hydro dams were proposed and constructed on the Waikato at Karapiro, Arapuni, Waipapa, Maraetai, Whakamaru, Atiamuri, and Ohakuri. One of these, the Maraetai Dam, was located near the junction of the Mangakino Stream and the Waikato River, adjacent to the Pouākani 2 block.

When preliminary construction began on the Maraetai Dam about 1943, the workers got there by river barge. A metal road between Tokoroa and Pouākani was eventually laid in 1945 to provide access to the site. Because of problems experienced in the past with similar large-scale building projects in remote locations, the Public Works Department established a township, Mangakino, on the Pouākani land to house the families of workers employed during the construction of dams at Maraetai, Waipapa, and Whakamaru. The construction of the town and the dam began before notice was given to the land’s owners in
The Lost 200 Acres

Discussion of these 200 acres does not quite fit here, but it does not quite fit anywhere, because it is its own small saga. We have decided to put it here because the land is adjacent to Lake Ōnoke, and was probably regarded at one time or another as an extension of that lake.

The early twentieth century saw ongoing conflicts between Wairarapa Māori and farmers over flood protection. This has been called ‘the battle of the stopbanks’. The conflicts are familiar. They arose because, even though settlers now controlled the opening of Lake Ōnoke to the sea – and they ensured that it was open much of the time – big floods still happened sometimes. Farmers started to build major stop banks in the Ruanāhunga flood plain to protect their land. This affected wetlands that Māori wanted preserved for the gathering of kai (food).

A quarrel broke out in the late 1920s over a 200-acre parcel of untitled land adjacent to Lake Ōnoke that was sought for flood protection works. The land was at the junction of the Turanganui River and Lake Ōnoke. Because it lies in an area of volatile sand and water movement, its boundaries have changed over time, and boundaries and titles are difficult to pin down.

Researcher Andrew Joel looked into the history of these 200 acres. It is his opinion that up until the 1870s–1880s, the block was effectively an island between branches of the Turanganui and Ruanāhunga Rivers, and Lake Ōnoke. By 1900, changes in the courses of the rivers caused the area to become contiguous with the land on the eastern shore of Lake Ōnoke. It is possible that the land, or part of the land, was also created by the 1855 earthquake, and not just by changes in the river course and the accretion of river silt and other material.

In 1927, when they heard about the South Wairarapa River Board’s plans to acquire the untitled land for flood works, Rangi Tamihana and others filed a petition asserting that the block was Māori land. A pā, an urupā (burial ground) and cultivations had been located there until, in 1870, farmer John Russell bought the land next door, and effectively blocked their access. They had to leave.

When he looked into it in 1930, Native Land Court Chief Judge Robert Jones dismissed Tamihana’s claims and promptly vested the block in the Crown as part of the Wairarapa Moana block.

Looking into what happened, Andrew Joel found no evidence to support Judge Jones’s decision. Nothing indicates purchase by the Crown; Crown ownership seems to have been assumed. There is some evidence that the Government may have planned to set aside the disputed land for a ‘native reserve’. A 200-acre lot at the junction of Lake Ōnoke and the Turanganui River is marked ‘nr’ or ‘Native Res’ on the plan attached to the 1883 Native Land Court certificate of title for Wairarapa Moana block (opposite), on the 1896 court order, and on subsequent plans. However, Judge Jones said he could discern no legal authority for the granting of this reserve, and characterised it as an unauthorised accident. Similarly, he thought it accidental that these acres were left out of the 1896 agreement that transferred ownership of Wairarapa Moana from Māori to the Crown.

In his careful study of the ownership of the disputed land, Joel concludes that, on balance, it is unlikely that the Crown ever legally acquired the 200-acre block. Thus, when the certificate of title for the Wairarapa Moana block was amended in 1930 to include the disputed land, that land was still Māori land.

Tamihana and other Wairarapa Māori rejected Jones’s 1930 decision, and applied to the Native Land Court immediately afterwards for an investigation of title to the land. However, the case was dismissed ‘for want of prosecution’. Why the applicants did not pursue it we do not know. They would have needed a lawyer in order to run such a case effectively, and perhaps they could not afford one. Certainly, they had not lost interest in the cause. They petitioned the Government about the disputed land in 1933, and again in 1938.

In 1933, the land was transferred to the South Wairarapa River Board for flood protection works. It was leased out, presumably for farming, in 1934. The lease ran out in 2000, and it appears the land is now a ‘river protection and improvement reserve’ administered by the Wellington Regional Council.

This seems to be another case where Wairarapa Māori and
their land interests were casualties of an era in which sympathies lay with flood protection works rather than with preserving Māori property rights and mahinga kai (traditional food-gathering places). Ambiguity over title here was quickly resolved in the Crown’s favour – and without close scrutiny of the ambiguity, it seems. What was really required was a survey and a title investigation, and it seems likely that this would have resulted in confirmation of the land as Māori land. Rangi Tamihana and his supporters probably lacked the means to pursue this course – although we do not know this for certain. We do know that petitioning the Government was cheaper, though, and these people petitioned twice.

The regional council now owns the land. This means that it is classified as private land under the Treaty of Waitangi Act 1975, and by section 6(4A) we are precluded from recommending its return to its traditional owners. However if, as Andrew Joel believed after his research, the land was Māori land when it was brought under the Wairarapa Moana block title in 1930, it was effectively compulsorily acquired. The Māori owners should have been compensated then, and should be compensated now, even if the land can no longer be returned to them.

We recommend that the Crown either accepts the conclusions of its witness Andrew Joel or, if it wishes to go further, commissions a survey and legal opinion of the kind that would have resulted from a title investigation, if the Native Land Court had undertaken one in 1930. If the conclusions of Joel’s opinion are confirmed, a process to assess compensation should ensue. Compensation should then be paid, with interest, to the land’s traditional owners.
Wairarapa. The Crown compulsorily acquired about 850 acres of Pouākani land for the hydro scheme.

### 7.8.2 Taking the land without notice

At the outset, the Public Works Department notified officials from the Native Affairs Department and the Rotorua Native Land Court of the hydro scheme and its implications for the land at Pouākani. In January 1945, the registrar of the Rotorua Native Land Court wrote to the Public Works Department asking how much land would be required and the approximate locality, so that the matter might be put to a meeting of owners.\(^{175}\) Works officials, however, did not want to notify the owners until the exact area of land required had been calculated – it appears that they hoped to reduce the opportunity for the landowners to object. This advice to the Under-Secretary for Public Works in July 1945 indicates the officials’ attitude:

> Instead of supplying the plan to the Native Land Court it might be wiser for you to issue instructions for the land to be surveyed and taken so that it will be a ‘Fait Accompli’ when the owners are notified, unless you feel that the taking can be satisfied despite possible objections. If we were to refer the matter to the Native owners for consideration we would be completely lost because in order to preserve to themselves the betterment they will find numerous reasons for retaining the land in the vicinity of the proposed town.\(^{177}\)

Meanwhile, the department’s estimates of the land required for the project gradually increased. Early estimates had put the figure at 1000 acres, but by mid-1945 officials proposed that 5085 acres be taken.\(^{178}\) The escalation was partly driven by the department’s desire to take any lands that would increase in value as a result of the works. The officer quoted above also advised the department that ‘having the power to take more land than is necessary for a public work, [it] should proceed at the outset to take the land which is likely to receive substantial benefit from a scheme, before such betterment accrues.’\(^{179}\) However, the estimate of the land required had dropped again to 2300 acres in early February 1947, when the department was asked by the State Hydro Department to survey the land required for the dam and township. It took nearly two and a half years for the Public Works Department to respond to the Native Land Court’s first request for concrete information about what was proposed.\(^{180}\) The owners had still been told nothing.

Mangakino grew steadily in late 1946 and early 1947. A newspaper report in January 1947 described what had been done: 100 single men’s huts and 60 married men’s quarters, a school, playing fields, a post office, stores, a cook house, mess halls, and a hostel had been built.\(^{181}\) All
of this had taken place on private land without the owners’ knowledge. The process to acquire the land compulsorily under the public works legislation had not even started.

In May 1947, Prime Minister Peter Fraser visited Pouākani with Native Land Court judge John Harvey to evaluate the suitability of the Pouākani 2 block for an agricultural development scheme. During the visit, Fraser discovered that the owners had not yet been notified of the construction and development work and demanded to know why. The Under-Secretary for Public Works explained that, while it was normal practice to notify owners before entering private land, it was not required by law:

the land at Maraetai was entered upon under the authority of an Order in Council issued under the provisions of the Public Works Act, 1928, which gives the Crown the right to enter upon any land for the purpose of carrying out the necessary works.

It is not legally necessary to give any notice to the owners, but of course it is the Department's practice to give a courtesy notice to the occupiers of any land upon which it is necessary to enter and standing instructions to this effect have been given to departmental officers.

In the case of the Maori land at Maraetai the owners were absentee and the land was in its virgin condition, not being occupied or used in any way.

Under the circumstances there was no person in occupation to whom notice could be given and no one was physically disturbed or inconvenienced by the Department’s operations.182

7.8.3 The owners are told at last

After Fraser’s intervention, the department finally gave the owners notice of what was afoot.

At a meeting of officials in August 1947, Native Department officials were able to convince officials from the State Hydro, Public Works, and Lands and Survey Departments to reduce the amount of land to be taken. The option of leasing, rather than permanently acquiring, the land required for the temporary Mangakino township was also proposed.183

Then Fraser himself met with the owners at Pouākani in October 1947. George Te Whaiti protested that the low, flat site of the Mangakino township was the most valuable area on the block and that the proposal would ‘pick the fat’ out of the land.184 Fraser assured the owners that the department would take no more land than was necessary, and he directed that the land was to be handed back to the Māori owners upon the completion of the hydro construction work. He also ordered that the interests of the owners be protected and that the owners were to be ‘consulted on all matters affecting their land’.185

In September 1948, Cabinet approved a proposal for the permanent acquisition of 787 acres for the hydro works, with the 683 acres required for the Mangakino township to be leased from the owners at a rental set by the Māori Land Court. The lease would expire after 21 years, or six months after the completion of the Maraetai, Whakamaru, and Waipapa hydro stations, whichever came first. On the expiration of the lease, the Crown could remove its buildings from the leased land.186

The takings were gazetted in October 1949 and June 1950. By this time, the population of Mangakino had swollen to 3700, and the township now counted among its 717 buildings a hospital, a primary and a secondary school, a shopping centre, recreation areas, churches, and a cinema.

7.8.4 Compensation

It would be six more years before compensation was settled. Works officials applied promptly after the takings were gazetted to get the Native Land Court to determine the compensation, but then they diverted from this course to negotiate the amount directly with the owners. Officials took the unusual step of asking the owners to state what level of compensation they considered to be fair, and they responded by asking the department to make an offer. It took two years for the department to do this, and when it did, the owners’ solicitor described the offer as ‘absurdly’
Pouākani land compulsorily acquired for hydro works
low. The owners sought their own valuation. By then it was late 1953, eight years since preliminary works began on the Maraetai Dam. Meanwhile, Works officials pressed the owners to drop the leasehold proposal for the Mangakino township, wanting them to freehold the land instead.187

It was a further two years before the Māori Land Court compensation hearing took place. The court heard from valuers on behalf of the Crown and the owners. The Crown contended that the owners’ land had increased in value as a result of the hydro works, bringing roads and
Mangakino township in 1955: a temporary town?
other amenities where none existed before. The Crown argued that the landowners should not get the benefit of the increase in the value of their land, because it had paid for the improvements. The court agreed, and ruled that 50 per cent of the total compensation due to the owners should be offset as betterment. The court also preferred the Crown’s valuation to the owners’. So, in December 1955, the valuation was set at £510 for the 787 acres permanently taken and £34 annually for the 683-acre leased area, back-dated to October 1949. Compensation was paid to the Māori Trustee, to be administered for the benefit of the owners.188

7.9 Leasing the Land for Mangakino Township

7.9.1 A temporary town

The plan to lease the land for the temporary town of Mangakino arose in response to Prime Minister Fraser’s concern about how much land was to be acquired from the Māori owners of Pouākani. The idea was that, rather than buying the land for the town, the Crown would lease it. They estimated that the work on the dams would finish in 1969, so the lifespan of the town was to be 21 years. Accordingly, the 683-acre township lease was to expire on 1 October 1969, or six months after completion of the Maraetai, Whakamaru, and Waipapa Stations, whichever came first. At the expiry of the lease, the Crown would clear the land of all its buildings and structures, enabling it to be returned to the owners in its original condition.189 It is not clear whether the owners were at all involved in developing this proposal.190

7.9.2 Or perhaps a permanent town?

During the 1950s, at the height of the construction work, Mangakino expanded rapidly. By the middle of the decade, it had become home to 5000 people and had the highest birth rate in the country.191 In 1951, Mangakino was described in a New Zealand Geographical Society Record article as the ‘boom town of the Waikato’.192

Optimism about the town’s future created pressure to make it permanent. Many residents of the town, led by the Mangakino Development Association, wanted to stay there. Works officials were also enthusiastic about Mangakino becoming permanent, because then the department could sell, rather than remove, its buildings at the expiry of the lease, and it could develop its properties on that basis. Native Land Court judge John Harvey saw that, if it remained, Mangakino could be a long-term source of rental income for the owners.193 One of the few to demur was the Under-Secretary of Māori Affairs, who believed that, if the town were permanent, the owners would lose the portion of the Pouākani block best suited to farming. He also doubted that Mangakino could be sustained after the dam construction work was complete.194

The landowners held a series of meetings in 1955 and 1956 to discuss the possibility of establishing Mangakino as a permanent town. There was pressure from all sides to say yes. Harvey warned the owners that the Public Works Department might not remove its buildings from the land, instead permanently taking the land to protect its investment, paying compensation based on its unimproved value.195 Also raised was the possibility that the entire town would be shifted to Crown land at nearby Whakamaru if tenants could not get permanent tenure.

Works officials were the strongest advocates for a permanent town. They told the owners that, as the landlords of an entire town, they could expect an annual income from rentals on town sections of £7000 to £8000 in perpetuity.196

Persuaded by these arguments, the owners agreed.

7.9.3 Arrangements for the permanent town

In May 1956, the owners formed an incorporation to administer the future leasing of the Mangakino sections, and the following month they elected a nine-member
committee of management. Over the next three years, the incorporation and the Public Works Department negotiated a new arrangement under which the buildings would remain permanently on the land at the expiry of the lease and the township section leases would transfer to the incorporation.

In 1959, an agreement was reached whereby, at the expiry of the lease:
- all the buildings would remain the property of the Crown (unless sold);
- the incorporation would grant a perpetually renewable lease to any purchaser of a Crown building;
- the Crown would retain land for public buildings and purposes (for schools, parks, etc) without paying compensation to the owners; and
- the incorporation would pay the Crown £55,000 compensation for the value of the improvements to the land.\(^{197}\)

The incorporation's debt repayments would be paid out of its rental income from the town sections. Special legislation was passed to allow the incorporation to lease town land needed for public buildings, parks, and so on for terms of 99 years.

**7.9.4 Was the town viable?**

By 1959, the population of Mangakino had reached a peak of 6400. But that year saw the bulk of the construction work on the hydro scheme completed, and by 1964 the population had fallen to 2000.\(^{198}\) Throughout the 1950s, 80 to 90 per cent of the Mangakino workforce were Public Works employees, leaving the town's future prospects following the completion of the hydro works in serious doubt.

In 1960, Prime Minister Walter Nash established an interdepartmental committee to try to attract industry and employment opportunities to the town. Nothing much came of it though, and in February 1961 a Public Works Department report described the future of the town as 'bleak'. The report predicted that the population would continue to fall, before settling at 1000. Although the town offered existing infrastructure, ample land, a supply of labour, and security of tenure, its remote location and lack of rail access presented almost insurmountable challenges to attracting industry, the report said.

Mangakino's remoteness and lack of industry created their own problems for those who remained living there: as early as 1959 an official had noted social problems, such as youth unemployment, emerging within the town. By November 1961, officials described Mangakino as a 'ghost town' and felt that little could be done to improve its prospects.\(^{199}\)

It was in this context that, in the mid-1960s, the first Mangakino town section leases began to be transferred to the incorporation as the Crown leases expired. By 1975, the incorporation administered 680 Mangakino leases. However, the expected rental income failed to materialise. Far from being a source of revenue, the town leases became a liability for the owners.

This was for a number of reasons, mainly economic. Few employment opportunities emerged for the ex-Works staff who remained in Mangakino. The town's extremely low property values drew people on fixed low incomes, the elderly, and people more or less dependent on State income support. Unemployment remained high and incomes low. Official reports in 1976 and 1986 described the grim, intractable socio-economic circumstances in the town.\(^{200}\)

By the time of the mid-1990s recession, 69 per cent of adults in Mangakino were on an annual income of $15,000 or less.\(^{201}\) Tenants, many on fixed low incomes, could not afford to pay rents, and many ran up massive rent arrears, even though Mangakino's property values and rents were very low. In the late 1980s, for example, the annual rent payable on a typical town section (worth $5000) was just $250.\(^{202}\) The increasing indebtedness of Mangakino residents created further legal and administrative costs for the owners, as they sought to recover rent arrears. The incorporation also remained liable to the Taupō County Council for residents' unpaid rates and for rates owing on unoccupied sections.

Exacerbating the landowners' situation was the fact that,
Claimants’ Experiences at Mangakino 1

Memory Te Whaiti (below) went with her family to Mangakino for the employment opportunities. She told us how dislocated she felt:

In 1956 we moved to Mangakino . . . My family was very unhappy at our shift to Mangakino because it was so far away. It was more or less an all day trip to drive from Mangakino back to Moiki. I remember that my grandmother and the other older people in the family were against us having the land at Mangakino. They felt that we were in someone else’s territory, tramping on their land. The older people refused to move up there and even refused to visit. We had to travel to the Wairarapa to visit our whanau. We would only see our family at Moiki and Kohunui once a year at Christmas, or on the occasional holiday during the year. They were all very sad when we had to leave to go back to Mangakino.

7.9.5 Wairarapa people at Mangakino

A few landowners’ families moved to Mangakino. In the mid-1950s, the Wairarapa Māori who had moved there asked that a wharenui be built so that they could welcome visitors on their own marae.204 By 1959, 26 owners had moved to Pouākani to work on the development scheme farms (discussed in the next section), however, according to historian Warren Wairau, ‘only a very few Wairarapa families made the move to the actual township of Mangakino during the peak of the construction schemes.’205 Many subsequently returned to Wairarapa.206 In 2000, the Mangakino committee of management estimated that only 4 per cent of the approximately 1600 incorporation shareholders lived in the Mangakino–Tokoroa district.207

7.9.6 Mangakino a liability

Mangakino continues to struggle. At the 2001 census, the town’s population was 1281, a 14.6 per cent decrease since 1996. In comparison, the population for New Zealand as a whole had increased by 3.3 per cent over the same period.

As noted above, Mangakino’s low property values, long fixed-rent terms, frequent rent defaults, and high administration and debt collection costs meant that the returns to the owners from the township leases were at best negligible. In 1970, the committee of management reported a surplus of almost $22,000, but by 1981 it recorded a deficit
Claimants’ Experiences at Mangakino 2

Noeline Reti (at right, with her whānau) was brought up in Mangakino in the 1960s and 1970s and has remained there all her life:

When we moved [to Mangakino], we were isolated from our Wairarapa whanau, both physically and culturally. It was difficult for us to communicate with our whanau there because of the distance and isolation, and so we were forced to rely upon ourselves. Nowadays we are more isolated than ever from our Wairarapa whanau. We have been unable to maintain or develop our relationships with them and this has meant that we have lost a significant part of ourselves.

We have very poor housing in our rohe. These houses were built when the dam was being constructed for the workers. They were only intended to last for 20 years however most of the houses have been here for way over 50 years now. It is obvious to anyone who visits our town that the housing is not fit for living in. Buildings are substandard. Wiring for electricity is so unsafe that some people don’t have electricity and use gas bottles and candles for lighting.

To us, this does not seem fair. Our people cannot access electricity (and if they could they would have to pay for it!) when without our whenua and water there would be no power throughout most of the country. At one time, Whakamaru Power Station, Maraetai I and II, Waipapa and Atiamuri supplied electricity to most of the country.

of $6000, as the costs of administration and debt collection exceeded the rental revenue. That year, lessees owed $35,000 in unpaid rates and rentals to the incorporation.\(^{208}\) Mangakino had become a liability for its owners.\(^{209}\)

From the late 1970s, owners began to take steps to sell the freehold to some Mangakino properties in order to raise capital to pursue more profitable investments. Eventually, the incorporation was able to purchase commercial property in central Masterton with the profits from the sale of town sections. In 1994, gross returns from the Masterton property Pouākani House reached 27 per cent of the capital value. By contrast, the Mangakino sections returned 4.5 per cent and entailed enormous administration costs for the owners.\(^{210}\)

Revenue from the sale of Mangakino town sections was also used to establish the Wairarapa Moana Trust in 1987. The purpose of the trust was to provide social and education services to the descendants of the lakes’ owners. Between 1987 and 2000, the trust paid out $750,000 in education grants.\(^{211}\)
7.9.7 Exit strategy required

In 1990, the incorporation received legal advice that the leasehold arrangement was financially untenable, because costs exceeded income. The shareholders were advised that the Mangakino town sections should be sold off en masse. At a 1996 special meeting of shareholders, the owners voted overwhelmingly in support of freeholding some or all of the Mangakino sections. In the words of the chair of the meeting, the town had become an ‘unnecessary burden’ on its owners.212 In 2001, the Māori Land Court approved the owners’ application to freehold the approximately 500 remaining town sections. In 2002, the sections were sold to an Auckland property developer for an undisclosed sum (probably between $2.5 and $4 million), on the condition that the perpetually leased sections would be offered freehold to the lessees.213

The optimism of officials in the 1950s that Mangakino would become a profitable asset for its Pouākani owners proved to be entirely unfounded. In persuading those owners to depart from the original leasehold concept for
the town, they led them to forfeit forever the opportunity to recover their freehold acres.

And this opportunity was lost to no good purpose. The township sections provided very little – if any – financial return until they were sold. The failure of the scheme was not only financial, as many owners involved with the incorporation struggled for years to administer from a distance the leasehold tenure of a town that was probably always doomed.

7.10 The Development Scheme at Pouākani

7.10.1 Development schemes: a thumbnail sketch

Apirana Ngata initiated the Māori land development programme in the late 1920s. Its aim was to bring more Māori land into productive use by reorganising and combining the titles of small, multiply owned blocks to form larger, rational agricultural units. The Government provided finance to owners to develop their land, with the caveat that the land would be subject to a certain amount of departmental control.

By 1939, around 20 per cent of all Māori received a significant income from development schemes. The expansion of the programme was interrupted by the Second World War and its aftermath, when goods and labour were short, and as a result development cost. In the early 1950s, Sidney Holland’s National Government ploughed money into the schemes. But the Government also wanted the Board of Māori Affairs to have greater control over scheme lands, and it placed greater emphasis on increasing agricultural productivity for the national good. The desire of Māori owners for autonomy over their own lands was a lesser priority.

7.10.2 A development scheme at Pouākani?

The possibility of establishing a development scheme on the Pouākani block was first mooted by Native Land Court judge John Harvey in June 1946, and preliminary discussions were in train by the time construction work began on the Maraetaiti hydro scheme.

As we have mentioned, Peter Fraser visited Pouākani in May 1947. He came in his capacity as Native Affairs Minister to assess the suitability of the area for a development scheme. (His subsequent involvement in reducing the amount of land to be taken for the hydro scheme was a lucky by-product of that visit.) Fraser wanted the development scheme to go ahead. He met with the landowners at Greytown in September and gave them his assurance that they would not be ‘overburdened with an impossible debt’ in developing the land. The Pouākani owners voted unanimously in favour of establishing the scheme, and in September 1947 the Board of Māori Affairs, which was responsible for administering development schemes, approved the expenditure to develop 2000 acres of the Pouākani land.

7.10.3 Involving Wairarapa people

The purpose of the development scheme was to settle Wairarapa people on farms at Pouākani, achieving the dual aims of developing agricultural skills among those who went to farm there and producing a financial return from the land for its owners. George Te Whaiti, one of the leading owners, put it like this:

Let us hold our land. Leave the title in all of us but place our youth on it. Leave it to the Department to work out a scheme so as to ensure for us for all time that the land will remain for us and for our benefit. By such a scheme the small owner will benefit as well as the large one.

The first Wairarapa owners travelled to Pouākani to begin breaking in the land in late 1948. Pai Te Whaiti was one of those who went, and in his evidence he recalled that the Pouākani land was ‘full of scrub, tussock and tomos’, just like the land on the Desert Road today. The owners quickly made improvements. Pai Te Whaiti described to us how he worked with other young Wairarapa men to sow
Difficult Days on the Development Scheme

Painoaiho (Pai) Te Whati (right) was one of the original five Wairarapa Māori to take up a dairy farm at Pouākani, moving there in 1948. He recounted how:

The only pasture that would take the first year we were on was red clover. No other species would survive because of the pumice land. . . .

There were six of us on the six farms and had cows dying. Everybody had cows dying and nobody seemed to be helping us. . . . I went through the first year and lost 14 cows [out of a herd of 52]. I went through the second year and lost three or four and lost some more the third year. . . .

I had a lot of problems with the water too – the bores getting blocked up with pumice. When you see cows jumping over the top of one another to get their drink it is not very good. They trucked in water and that was all the water that I was getting for about a week and that was not producing milk either.

growth after Public Works Department contractors cleared the land. "20 By early 1950, over 5300 acres had been grassed, and roads, fencing, sheds, and water supplies had been built."21 The first six trainee settlers moved to Pouākani from Wairarapa in 1950.

7.10.4 The terms of the scheme

In July 1952, after discussions between the owners and the department, the Board of Māori Affairs approved terms of settlement for the scheme.

We now set out our understanding of how the scheme was supposed to operate. However, one of the problems that dogged the scheme throughout its life was that its terms and obligations were poorly understood by settlers and owners alike.

The settlers were to be selected from among the owners and their families and would be allocated individual 376-acre dairy units on scheme land. They would be paid an allowance during their first two years, while departmental supervisors trained and instructed them. Then, following this probationary period, the settlers would take sole charge of their units, under 21-year renewable leases from the owners. The annual rent would be set at 5 per cent of the unimproved value of the property. The Department of Māori Affairs would lend incoming settlers money to purchase the value of the existing improvements to their properties at the commencement of the lease and to purchase stock and chattels as necessary during the term of the lease. From the income they earned from farming, the settlers would pay rent to the owners and make debt repayments to the department.

At the termination of the lease, the owners would pay the settler 75 per cent of the value of any improvements
made to the units over the preceding 21 years. If for any reason the settlers chose to give up their leases before the full term, the owners would pay compensation for the value of the improvements at the same rate up to the date of their departure. The purpose of this 'compensation lease' arrangement was to provide an incentive for settlers to maintain and improve the leasehold properties.²²²

7.10.5 A faltering start
The Waiariki District Māori Land Committee was responsible for overseeing and approving almost every aspect of the operation of the scheme.²²³ It granted leases under the authority of the Board of Māori Affairs. Farming operations were under the supervision of the Department of Māori Affairs.²²⁴

On their first visit to Pouākani in July 1951, the committee members expressed concern about the very high cost of establishing the scheme.²²⁵ They estimated that the cost of developing the Pouākani land so that it was ready for settlement would be £65 per acre, compared with the usual cost for Department of Lands and Survey schemes of between £35 and £48 per acre.²²⁶

Things were not going well from the settlers’ perspective either. Pai Te Whaiti gave us a memorable account of what is was like at the beginning: only red clover would grow in the cobalt-deficient soil, cows died from bush sickness, and pumice blocked water bores.

The Department of Māori Affairs officers from Rotorua did not provide the help that was needed:

We had a dairy supervisor there and all he was doing was to show us how to put cups on the cows, etc. We already knew all that. I think everybody knew how to milk cows – the first five [Wairarapa settlers] I think they all knew when they went there how to milk because at some time or other they had done it at home. They did not need training for that.

The supervisor was showing us all the practical things which we mostly knew already. Nobody was talking to us about the business, what it was going to be like to be the lessee of a dairy farm and the responsibilities we would have.

The trouble came when they put the grass seed in. We had no training about things like pasture development, those sorts of things.²²⁷

The supervisors did not seem to know how to tackle the problem of cobalt deficiency:

They did not foresee all this [that only red clover could grow on the pumice land], they didn't go to the rehab farms down the road at Whakamaru and ask them for advice. . . . The supervisor only came when you asked for him. All he was worrying about was keeping the ragwort down. That seemed to be their main interest until they saw that the cows were dying. . . . It was only when we lost so many cows that they started coming round.²²⁸

In the meantime, the supervisors allegedly just ‘carried on and gave us the grass they thought would grow’.²²⁹ They provided fertiliser to spread on the soil but not the much-needed cobalt. It was only when they put on cobalt that the other pasture started to come through the clover, and then other problems like cattle bloat and bush sickness were overcome.

The improvements came too late for those, who, like Pai Te Whaiti, had already abandoned their farms.³³⁰ By the mid-1950s, half of the six original settlers were gone. Some of the new batch that replaced them did not stay long either.

The Department of Māori Affairs’ district field supervisor assessed the progress of the first six settlers in November 1953 and found that they ‘did not fully realise their financial obligations and the necessity of sound farming practice to meet their commitments’.³³¹ For their part, the settlers complained that the probationary allowance was too small and that departmental supervision was deficient. Plans to settle more units were scaled back.

But, by 1958, 28 dairy farms and two sheep stations had
been established and settled by owners or owners’ families at Pouākani. In addition to these leasehold units, the department directly managed a 7600-acre cattle and sheep station, the profits from which were to be used to fund the debt on the development scheme land.

### 7.10.6 Scheme fails to prosper

In the late 1950s, a combination of grass grub, weed problems, and low dairy export prices further reduced the profitability of the lessee units, and the Department of Māori Affairs directed that no further units should be established between 1958 and 1960.

In July 1959, the department investigated the operation of the scheme units. It identified a number of problems: some settlers had unmanageable debt, a greater level of supervision of trainees was required, settlers needed to improve their farming and bookkeeping practices, and the terms of the leases needed to be explained to settlers in ‘suitable language.’ As a result of the investigation, the Board of Māori Affairs agreed to ease the terms of the settlers’ loan repayments to the department.

By 1960, after the scheme had been operating for nine years, its results lagged behind the expectations of all the parties. Only half of the 60 lessee units initially planned had been established. The owners were frustrated by low returns and were concerned that the scheme was not operating as agreed. Meanwhile, three more settlers had left as a result of financial difficulties, and others had resorted to engaging sharemilkers to farm their units. Although the department had no policy against lessees employing sharemilkers, the owners objected because there were prospective Wairarapa farmers who were willing to take over any units that settlers did not wish to farm. In November, the settlers wrote to the Prime Minister and Minister of Māori Affairs, Walter Nash, raising a number of concerns relating to the terms of their leases and requesting further concessions on their high levels of debt. The Department of Māori Affairs investigated but offered no further debt relief.

When the department looked into further complaints from settlers in 1962, it discovered that none of the settlers had insurance policies on their units. The Secretary of Māori Affairs, Jack Hunn, conceded in relation to the insurance policies that there were ‘obvious weaknesses in our administration.’ The department launched another investigation. About a dozen settlers were considering surrendering their leases. In February 1962, senior officials met with the settlers at Mangakino, and the district supervisor interviewed all those who were in financial trouble. He found that the units were dilapidated and that few of the settlers had the means to undertake the work that would soon be needed on their fences and buildings. A good number of settlers wanted to install sharemilkers on their properties, but the supervisor noted that, if this were to happen, it would ‘defeat the objects of Maori Land Settlement.’ The settlers commonly paid 10 per cent of their gross income to the church, and he considered that this made it ‘patently impossible’ for them to succeed. He defended the field supervisor’s performance but admitted that he had not been ‘sufficiently forceful for the rather mixed bag under his supervision.’ The district supervisor made no mention of the effect of debt servicing, export prices, or other external factors on farm productivity.

### 7.10.7 All kinds of problems

In June 1962, the Department of Māori Affairs found that it had overcharged settlers on backdated loan interest charges. One of the settlers raised the issue in February, and the department’s investigation revealed that 10 settlers had been overcharged, though it is not clear by how much, nor if they were compensated.

Three more settlers gave up their leases in 1963, and the owners agreed to allow some sharemilking on the units. However, sharemilking was not practicable – the land was not in a fit condition and there were no suitable candidates – so the abandoned units were incorporated into the department-run station for grazing. Once again, the settlers approached the Prime Minister, Keith Holyoake, for
debt relief, but he declined to ease the terms of the department’s loans, noting that some settlers were farming the land successfully and that it was up the owners, not the department, to vary the terms of the leases.241

Through the 1960s, external pressures on the development scheme increased. Falling dairy prices and high development costs reduced the viability of development schemes nationwide, and the Government cut back its investment in the programme in 1962. The Pouākāni area suffered major droughts in 1963–64, 1964–65, and 1969–70. Between 1960 and 1969, 17 of the settlers at Pouākāni surrendered their leases. Most left because of financial problems (presumably caused by the combination of low production and high debt), or age and health issues. Making conditions even more difficult, dairy tanker collections in the area ceased when many settlers on the nearby Department of Lands schemes at Whakamaru and Maraetai took up an offer to relocate elsewhere. By early 1969, there were no volunteers among the owners and their families to take up the vacant lessee units. In 1970, five Pouākāni farms were vacant, and other settlers were threatening to leave.

Meanwhile, the owners’ debt to the department increased significantly as they borrowed money to pay the departing lessees compensation for their improvements. In some cases, the improvements were of no value to the owners, because dairy units were incorporated into the department-run Pouākāni Station. The owners’ debt level further reduced the profitability of the scheme and the dividends paid to shareholders. At an April 1970 meeting with the Secretary of Māori Affairs, Jock McEwen, the owners raised the possibility of selling the Pouākāni land because it was of no benefit to them.242

In May 1970, of the original 28 dairy and two sheep units, only 18 of the dairy units were still occupied and farmed, and debt on the scheme had reached $1 million. Meanwhile, the Pouākāni owners had received nothing from the development scheme units. Their only returns had come from trees on bush-covered portions of the block that had been milled for timber.243

7.10.8 A call for change
The owners were understandably frustrated that the scheme had failed to show any returns. In September 1970, they called for an inquiry into the department’s administration of the scheme.244

In August 1971, the department and owners agreed that the scheme needed to be restructured. They resolved to adjust the boundaries of the lessee units to create 18 larger, more economic dairy units and to calculate annual rents on new leases based on the total capital value of the land and improvements. Incorporating the value of the improvements into the rent from the outset meant that the owners were no longer liable to compensate the lessees for 75 per cent of the value of any improvements upon the termination of their leases. The new units would be offered to owners and existing settlers first, after which any not leased would be offered on the open market, with preference given to Māori farmers.245

Although productivity and profitability did increase after the scheme was restructured, dissatisfaction with the department’s administration continued through the 1970s.

The owners’ concerns centred on the level of development debt on the scheme and the poor condition of many of the lessee units. The owners blamed the department for not enforcing the terms of the leases relating to the maintenance and improvement of the properties. Several lessees had also been allowed to run up large rental arrears. By 1979, lessees owed the owners $27,500 in unpaid rents. Responding to these protests in 1974, Jock McEwen and local Māori Affairs staff accepted that the department’s supervision of the lease terms had been lax.246

7.10.9 Handing the scheme back to the owners
In 1977, the owners moved to have the scheme formally transferred to their control. (By then, Crown policy encouraged the handover of schemes to incorporated iwi bodies.247) It took a number of years to effect the transfer, however, because achieving a quorum of owners to approve the decision to take over the administration of the
scheme proved problematic. Eventually, in February 1983, the Maori Land Court vested the Pouākani scheme land in the Mangakino owners, who established the Pouākani 2 Trust to run the land productively on their behalf. The assets transferred to the trust were valued at nearly $12 million, and the debt owed by the scheme to the department had decreased from $1 million in 1970 to $312,000.

Thus, 36 years after the development scheme was established, the owners regained control of 4883 hectares of land from Pouākani Station and 10 of the 18 lessee dairy units. The eight remaining units were still farmed by Wairarapa Māori on compensation leases and were to remain under departmental control until those leases expired. 248

7.10.10 Pouākani owners versus the department

Although the scheme had worked better since the changes introduced in 1971, the productivity of the Pouākani farms in 1984 was just half the district average. At the time of the handover to the Pouākani 2 Trust, the owners once again took issue with the department’s administration of the farms in the scheme – especially the sheep farms. They complained that the fences and pastures on the department-run stations were in need of repair and that the ewes and lambs were in a poor state. The trust argued for financial concessions from the department on the grounds that it had failed to keep the units in an adequate condition and that a great deal of investment was required to bring the farms up to scratch. The department proposed an arrangement whereby the scheme debt would be repaid over 25 years, but the trust said no. If the department’s administration of the scheme had been inadequate – and the trust said that it had – the owners were entitled to compensation. 249 The department denied culpability. It said that the Board of Māori Affairs had chosen to prioritise the needs of the settlers over the ongoing maintenance of the properties. As a result, the department had had to compromise ongoing farm maintenance in order to maximise the benefits to individual settlers and to advance the greater objective of providing farming experience and employment for Wairarapa Māori. The Deputy-Secretary of Māori Affairs maintained that, if the department had enforced the lease terms, many lessees would have been forced off the farms before they had had a chance to prove themselves. 250

By the late 1980s, the trust found itself in financial difficulty as it fell behind in its debt repayments to the department. Farming returns were very low between 1985 and 1987, and the trust had invested heavily in improvements. Also, several of the remaining compensation lessees had surrendered their leases, and the trust had had to borrow more money to cover the costs of compensating them for their improvements.

In 1989, the trust applied again to the department to have its debt written off, and again the department declined. Officials and the Wairariki Māori Land Advisory Committee considered that it was the trust’s high administration costs, not the debt servicing, that was the source of its financial difficulties. 251 In June 1992, the debt owed on the scheme to Te Punī Kōkiri (the new name for the Department of Māori Affairs) was $420,000. Through the 1990s, the owners complained about the department’s refusal to write off debt, its continuing inability to enforce lease terms on the few remaining lessee units (which were still administered by the department), and delays in transferring full control of the last few lessee units to the trust. One lessee ran up an incredible $78,000 in rent arrears while under the department’s administration during the 1980s. 252 In early 1993, the trust made another concerted attempt to negotiate a debt write-off but with no success. The scheme debt was eventually settled in June 2000. 253

7.10.11 The Pouākani 2 Trust turns a profit

Since the handover of the scheme to the Pouākani 2 Trust in 1984, profits from the land have increased dramatically. In 1999 and 2000, the trust’s net operating surplus exceeded $800,000. In 1999, it began paying out 50 per cent of its net after-tax profit in shareholder dividends. It is not clear what individual shareholders receive, but they currently number over 2000, so for most the dividends
would be a relatively minor supplement to their incomes.\textsuperscript{254} Still, for people whose asset was tied up in a development scheme that returned nothing to them for 36 years, this change must be a welcome one.

The Pouākani 2 Trust has shown that this land can be farmed successfully. It has rationalised farm production, greatly increasing the productivity of the land by moving from sheep and beef to dairy farming.

In the late 1990s, the Mangakino Township Incorporation and the Pouākani 2 Trust elected to amalgamate, reducing administrative overheads and preventing further divergence in the ownership of the two entities.\textsuperscript{255}

\subsection*{7.10.12 Forestry}

In the 1940s, when the Pouākani development scheme was first discussed, the Pouākani owners took up another development opportunity that turned out to be a lot more profitable.

In 1946, the owners accepted an offer from the Morningside Timber Company to purchase cutting rights to 6100 acres of forested land in the south-west of the block that was considered to have poor farming potential. The Native Land Court acceded to the owners’ request that the timber royalties be paid out to the owners rather than used to repay development debt on the scheme.\textsuperscript{256} As a result, the owners received $255,000 between 1948 and 1970.\textsuperscript{257}

From the late 1960s, the owners also considered a series of proposals from New Zealand Forest Products to plant trees on unused portions of the block. Both the owners and the department recognised that forestry would be a more productive use of Pouākani land than further farm-land development, and in 1970 the owners entered a joint venture with the company. Two sections totalling 16,000 acres were leased to Forest Products by the Mangakino Township Incorporation and planted in \textit{Pinus radiata} and \textit{Eucalyptus}. The incorporation would receive a nominal annual rental on the land while the trees grew, plus a much more significant share of stumping when the trees were harvested.

In the late 1980s, the owners expressed concern that Forest Products was growing low-value pulping trees on the land in order to avoid paying stumping on high-value trees. In April 1991, after lengthy negotiations, the terms of the lease to the company were altered and the owners’ share of the stumping increased. This greatly increased the returns to the owners. By the 1990s, the forestry income exceeded the income from the town rentals, and by 1996, it enabled the owners to invest in other forestry assets outside Pouākani. In the late 1990s, the agreement with Forest Products was further restructured to even out fluctuations in the forestry income.\textsuperscript{258}

The income from forestry rose dramatically from less than $10,000 per year during the 1970s to over $500,000 per year between 1999 and 2001. Nevertheless, the number of shareholders meant that the dividend paid to individuals remained negligible.

\section*{7.11 Tribunal Analysis and Findings}

In this section, we set out our conclusions about the many issues that arise from the Wairarapa Moana saga that we have related here.

We resist the temptation to engage in extended analysis at this point, because our approach is prefigured in the long narrative that already takes up a significant portion of this report. Our analysis and findings therefore take the form of a summary of what we consider are the principal arguments raised before us and our assessment of them.

\subsection*{7.11.1 Introduction}

The jurisdiction of the Tribunal directs us to consider Crown conduct in the context of the principles of the Treaty. In the Treaty, the Crown made solemn undertakings to Māori, but for much of our history those undertakings were simply ignored. Today, the application of the principles of the Treaty to past conduct of the Crown is sometimes criticised as ahistorical. It is said that it applies
unrealistic standards to the assessment of actions in the past.

The passage of events that saw the change of ownership of Lakes Wairarapa and Onoke and their surrounds from the tangata whenua to the Crown, and ownership by Wairarapa Māori instead of land at Pouākani, led to a century of loss. The tale that we have recounted here shows that this turn of events was entirely unfair – not just because the people affected were Māori with Treaty rights but because they were citizens with property rights.

Colonisation imported a system of law, and Māori, like other citizens, are entitled to its benefits. The story of Wairarapa Moana and Pouākani is a story of Māori property rights being overridden, disregarded, and dishonoured. In Wairarapa, more weight was always given to the interests of settler farmers, even when those interests were lesser interests than those of tangata whenua and lacked a comparable basis in law. And, at Pouākani, the interests of the Crown came first.

All of this brought conflict for the Māori of Wairarapa – decades of conflict. Conflict comes at a high cost, emotionally and spiritually. And people whose experience tells them that their rights do not matter feel ultimately that they are people who do not matter. Over time, this becomes a way of being that is erosive of self-esteem. It affects people’s ability to succeed both privately and professionally. It is a condition from which the Treaty should have, but did not, protect them.

7.11.2 Māori ownership of the lakes and control over the lake opening

The Crown accepts that, at the time when McLean purchased the land blocks adjacent to Wairarapa Moana, he explicitly promised that Māori would control the opening of the lakes to the sea.²⁵⁹

The ownership of the lakes, surrounding land that they did not sell, the attendant control over the opening to the sea, and customary fishing rights were all property rights, protected under article 2 of the Treaty. The failure of the Crown to support Māori in their desire to retain those rights was a breach of the most fundamental Treaty guarantee.

From 1860 to 1896, when the lakes were the subject of a tuku to the Crown, the Government was increasingly under pressure from settlers to acquire, deny, or just override the owners’ right to control the lake opening. The Crown was constantly seeking ways to yield to that pressure without actually breaking the law, when its focus should have been upholding the property rights of the lakes’ owners. The owners’ struggle to retain their hold on what was rightfully theirs put them to enormous trouble, expense, and stress. What else might men like Piripi Te Maari have been able to achieve had they not been endlessly wrangling with their Pākehā neighbours and with central government? The Crown’s failure to act decisively to guarantee and to uphold Māori property rights was a serious breach, resulting in significant prejudice to the Māori of Wairarapa Moana for a period of nearly 40 years.

(1) ‘Hiko’s sale’

‘Hiko’s sale’ was an example of the stress, anxiety, and confusion that the Crown’s failure to protect legitimate property rights caused.

Government agent Edward Maunsell’s attempt to purchase the lakes was an instance of the Crown yielding to pressure from the settlers to deliver them from Māori control over the opening of the lakes to the sea.

In 1876, Maunsell brought to Wellington a group of Wairarapa leaders who signed up to a transaction called ‘Hiko’s sale’. Later, this purported sale was determined to be of much more limited effect than the Crown had hoped, merely transferring to it 17 out of 139 shares in the lakes. Nevertheless, the Crown’s actions breached the Treaty because:

- the deal was negotiated surreptitiously in Wellington with a select group of owners rather than openly and by hui involving all the interest-holders in the lakes; and
- the lakes had not been the subject of an investigation
into title by the Native Land Court, and the Crown’s willingness to proceed without one in covert negotiations with a handful of purported owners in Wellington shows an expedient indifference to who owned the rights and to whether they wanted to sell them.

Stress and confusion ensued for those owners of the lakes who were not part of Hiko’s sale and who opposed it. It also dragged them all into title determination processes in the Native Land Court whether they wanted the title to be determined or not. In fact, most clearly did not want it, but it happened anyway, and of course they had to pay for it. (These expenses were among the many lakes-related costs that burdened Wairarapa Māori, and they almost certainly played an important part in the ultimate decision to gift the lakes to the Crown.)

Ultimately, Hiko’s sale probably did not change the course of events relating to the lakes. It is simply a particularly vivid example of the lengths to which the Crown was prepared to go in order to rescue settlers from being subject to Māori authority over opening the lakes to the sea.

(2) Other Crown failures to uphold property rights of Wairarapa Moana owners

Other examples of the Crown’s failure to uphold the property rights of Wairarapa Moana owners are listed below:

- Following Hiko’s sale, Piripi Te Maari and 138 other owners petitioned Parliament on the matter, and the Native Affairs Committee responded by agreeing that a majority of the lake owners had not consented to the sale. The Crown’s response was not to confirm their support for the Māori owners’ property rights but to try again to negotiate for control over the lakes, successively sending Sir George Grey, Native Minister Sheehan, and Native Minister Ballance to try to persuade them to sell (see sec 7.2.2).

- In 1886, Native Minister Bryce attended a hui of lake owners called by Te Maari. At the hui, the owners agreed to a compromise under which the lake mouth would be artificially opened in April. The settlers were not satisfied and formed the South Wairarapa River Board to assume control over the opening of the lake. Even though the Solicitor-General said that the river board lacked the authority to open the lake mouth, it did so annually for many years without any Crown intervention (see secs 7.3.3, 7.3.4).

- In 1890, the Crown sensibly appointed a royal commission to investigate the lakes issues. Royal commissioner Alexander Mackay produced a report that leaned much more towards a compromise position than towards the Māori owners’ strict legal entitlements. The Government nevertheless failed to take up the opportunity to implement a practical solution that would have allowed Wairarapa Moana Māori to remain its owners. It failed to clarify the ownership of the surrounding land in terms of Mackay’s findings. Instead, it continued in its attempts to gain legal title to the lakes as the surest means of giving the settlers what they wanted: ownership of the lakes and the surrounding land and authority over the lake opening to the sea (see sec 7.4).

We note that we also consider that the 1893 decision of the Court of Appeal in Piripi Te Maari v Matthews was wrong in law and internally inconsistent. Our statutory role is in relation to the Crown and the principles of the Treaty, and we have no jurisdiction to criticise a court decision. Nevertheless, from the distance of more than a century, we simply make the historical comment that the court’s analysis seems to be yet another product of the political climate of the day.

7.11.3 The gift of the lakes to the Queen and the offer of land at Pouākani to Wairarapa Māori

The proposal to gift the lakes to the Crown occurred for Māori in the cultural context of tuku, which appears to have been understood by Prime Minister Seddon. Even if it would be going too far to say that the Treaty required the Crown to respond within Māori understandings of what tikanga required, the circumstances certainly called
for the Crown to act to uphold its honour and the honour of the Māori parties. This involved acting in accordance with Seddon’s statements about the nature of the transaction and the Crown’s intentions and the terms of the agreement. Although the agreement stated in its English and its Māori versions that the reserves to be provided had to be suitable to the Crown, this was not a basis for derogating from the other terms.262

For the reasons given in section 6.5, 6.6, and 6.7, fulfilment of the Crown’s obligations meant:

▷ acknowledging that the owners of Wairarapa Moana had made a very generous gift of the lakes to the Queen;
▷ acting promptly and in a spirit of generosity to give full effect to the undertaking to provide reserves that were ample (English version) and that were also entirely suitable for the owners’ needs and in the vicinity of the lakes (Māori version); and
▷ protecting the customary fishing right of Wairarapa Māori in Wairarapa Moana.

Instead, the Crown:

▷ Soon resiled from Seddon’s characterisation of the transaction as a gift, presumably because it did not want to acknowledge the moral obligations implicit in receiving such a generous gift.
▷ Failed to ascertain before entering into the agreement that it could comply with its terms as to reserves (this it conceded).263
▷ Failed to do what was fair and honourable when it became plain that locating suitable land for reserves near Wairarapa Moana was not going to be easy: namely, leave no stone unturned to find suitable land and pay the price that the market dictated. The Crown’s failure to check out the availability of suitable land for reserves before entering the agreement meant that the problem that it subsequently faced was of its own making. However, it had the remedy at its disposal. It could have bought the land at Whangaimoana that came up for auction during the period when the reserve land was being sought.

But the political will for such a solution was lacking. Instead, over a period of 20 years, the Crown moved to the position where it felt entirely justified in reneging on every criterion for a reserve that the agreement had specified, maintaining that it was impossible to provide what was promised. In fact, what it had done was unilaterally rewrite the agreement. It constructed its own framework of constraints (primarily concerning the cost and location of the reserves), and it bullied the owners into accepting that a solution had to be found within them.

▷ Offered Wairarapa Māori land at Pouākani that was vastly inferior in quality to the farmland in the vicinity of Wairarapa Moana and that was otherwise unsuitable in every way, being:
  ▪ absurdly far away for people with few transport options and little money;
  ▪ without road (or any other) access;
  ▪ completely undeveloped and incapable of development by people lacking money and expertise in farming; and
  ▪ critically, for Māori people, not their ancestral land but the ancestral land of others not of their iwi or even their waka;
▷ Failed to ascertain in a free, fair, and open way the level of support for the Pouākani proposal among all the owners – or even all the leaders – preferring to deal with well-disposed leaders and to leave others by the wayside until so much time had elapsed that opposition was worn down.
▷ Put Wairarapa Māori in a stressful and divisive situation where they had to decide whether to accept the offer of the land at Pouākani in the absence of any alternatives that even vaguely approximated what the Crown had undertaken in the agreement to provide.
▷ Compromised tribal leadership by creating a situation where the fear of missing out altogether led rangatira to promote acceptance of the Pouākani option, even though it was manifestly unsuitable.
▷ For the first 36 years of granting the land at Pouākani,
did nothing to assist in its use or development (eg, by providing road or rail access or development finance).

Did nothing to acknowledge or protect the customary fishing rights of Wairarapa Māori in Wairarapa Moana, instead allowing drainage works and commercial eel-fishing to proceed, with predictable negative consequences for the tangata whenua's customary eel fishery.

This conduct grievously breached the Crown's obligations to act towards its Treaty partner with the utmost good faith, and so as to actively protect their interests.

Counsel for the Crown acknowledged that the Crown's failure to find lakeside reserves and the delay in vesting and surveying the Pouākani lands were 'regrettable.' Plainly, it is our assessment that the Crown's culpability is of an entirely more serious order.

7.11.4 Compulsory acquisition of land at Pouākani

When finally the Crown looked to develop land at Pouākani in the 1940s, it did so not for the benefit of the Māori owners but ostensibly for the benefit of the nation. It exercised its powers of compulsory acquisition under the Public Works Act 1928 to take nearly 800 acres for the construction of the hydro dam at Maraetai, and it leased nearly 700 acres of land for the construction of the workers' town that became known as Mangakino.

In chapter 8, we report on our inquiry into public works takings in Wairarapa ki Tararua. We review the relevant Treaty jurisprudence and conclude that the compulsory acquisition of Māori land breaches the Treaty in all but the rarest of cases. Those cases are when land is taken as a last resort in the national interest. We find that none of the takings we review there meet this criterion. However, the compulsory acquisition of land for hydroelectric works in a period when electricity is required to power economic expansion is arguably the kind of situation that may meet the test. The Crown did not contend that this taking met the test. Rather, it submitted that the test in the Turangi Township Report 1995 set the bar too high and was 'an unreasonable fetter on implementation of reasonable policy.' There was no evidence that the Crown explored alternatives to taking the claimants' land, so we cannot 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. The basis upon which the owners of the land taken for the Maraetai Dam were compensated was accordingly wrong in Treaty terms, because it did not oblige the Crown to pay for the special value and potential of the land for hydroelectric purposes.

In relation to the compulsory acquisition of land for the Maraetai Dam, the Crown said that in the 1940s it was normal administrative practice for the Department of Public Works to give 'courtesy notice' to occupiers before entering on to private land, although there was no legislative requirement to do so. There was no notice of any kind here, and counsel conceded that the Crown breached the Treaty when it entered and constructed buildings upon the land at Pouākani before informing the owners that it proposed to acquire their land compulsorily. We agree, and we note that we think that the Crown's wrongdoing in this regard was exacerbated by the circumstances of the land at Pouākani. The Crown was able to treat the land as vacant or abandoned, and to help itself to the resources there as if it were public land, because of its own Treaty
breach. Pouākani was uninhabited and undeveloped precisely because the Crown had foisted on Wairarapa Māori as reserves land that they could not use.

The actions of the Crown in compulsorily acquiring 787 acres of Pouākani land for the Maraetai Dam and compulsorily leasing 683 acres as a site for the Mangakino township breached the principles of the Treaty because:

- The owners will never get back the land that is under the dam and under the town, and these acres were the best farmland in the block.
- The Crown's process for taking the land for the dam was not only wanting as regards notice; its process for assessing and paying compensation was poor, with many years' delay, and unnecessarily stressed the owners.
- Leaving aside the point made above about the Treaty requiring compensation for the hydro potential of the land, the compensation paid was niggardly in the extreme. The compensation principles applied allowed the Crown to pay a price that was discounted because it had not provided road or rail access to the land since 1916 and because the only ‘betterment’ that had occurred came as a result of the hydro works, and the landowners were considered to be entitled to only some of the benefit of this (see sec 7.8.4).
- The owners have not been compensated for the loss of productivity of the Pouākani land as a result of approximately 191 hectares of power line corridors located there, although evidence presented showed financial loss resulting.
- The Mangakino township was never going to be viable after the works finished, and encouraging the Pouākani owners to take over the leasing scheme ‘principally to ensure that the Crown could achieve the best possible price for houses erected on the land’ breached the Crown’s duty to actively protect Māori interests. Even if (and we doubt this) officials genuinely believed that Mangakino would thrive and that the leases would prove to be an asset for the Māori landowners, a Crown properly focused on the welfare of these Māori would have tested that optimism more rigorously by conducting a study before transferring the leases to the Māori owners, and it would have developed a mechanism to rescue the owners from their plight in the event that the predictions of those who doubted that Mangakino was viable came to pass.
- In fact, the basis upon which the owners took over the management of the Mangakino leases – especially the fixed terms for 14 years – was uncommercial, and it exacerbated the problems that the owners faced as a result of the failing town. The Crown did not properly advise or assist the owners to manage the risks of taking over the scheme.

The Crown particularly failed to fulfil its duty of active protection and its duty to act with the utmost good faith.

7.11.5 The development scheme

(1) Introduction

Although the development scheme is not as large and pivotal a matter as some of the other issues affecting the owners of Wairarapa Moana and Pouākani, we spend more time on our analysis here because we think that the evidence and arguments are more evenly balanced between the claimants and the Crown.

The scheme produced little or no financial return to its owners. Only a very few Wairarapa Māori settled on the land and earned a living there as farmers. The land itself, and the buildings and other improvements on it, was in such a poor condition after over three decades under the supervision of the Department of Māori Affairs that massive investment was required following its handover to bring it into a profitable state. Essentially, the scheme failed. The claimants and the Crown broadly agree on that proposition. Where they disagree is on the extent to which the Crown is culpable for that failure.

(2) Was the scheme’s failure the Crown’s fault?

Given how Wairarapa Māori acquired the Pouākani land
and given that for the best part of 40 years the Crown gave no assistance at all to make the land habitable or usable, the onus was really on the Crown to make this development scheme work. Everyone embarked upon it with enthusiasm, but things went awry almost immediately. Was that the Crown’s fault? Could the Crown have done better? Should the Crown have done better?

The Crown argued that the Board of Māori Affairs, the Department of Māori Affairs, and the Prime Minister, Peter Fraser, had all consulted with the owners over the establishment of the scheme. The terms of the compensation leases were unanimously approved by the owners in 1954 and were aimed at encouraging settlers to maintain and improve their properties over the duration of their leases. The owners were adamant that the Pouākani land should be leased only by the owners or owners’ family members. Counsel argued that the financial failure of the scheme was the result of the conflict between its two key objectives: first, to enable some owners to settle the land and become farmers and, secondly, to develop the land into a profitable asset for the owners. In order to achieve the first of these goals and give the settlers a reasonable chance of success, the department had to be lenient to individual settlers, which meant that maintenance was deferred and the long-term profitability of the scheme was compromised. Problems such as low dairy prices, drought, and weed infestations led to many settlers surrendering their leases, which greatly increased debt on the scheme. As a result of the problems with the compensation leases, the owners in 1971 approved the restructuring of the scheme under a capital value lease system. However, under this system too, many settlers failed to perform basic maintenance on their units. According to counsel, it was the difficult farming conditions, not the choice of lease system or the quality of the department’s administration that was the root cause of the scheme’s problems.

In respect of the Pouākani Incorporation’s demands for a write-off of the debt on the scheme, counsel noted that investigations in 1985 and 1989 by departmental officials found that there had been no mismanagement of the scheme. These investigations found that the department had deliberately allowed lessee farmers to make poor-quality improvements to their units because it sought to ensure that they could ‘obtain a living, even if it was at the expense of fertiliser and maintenance.’ According to officials, the incorporation’s financial difficulties in the late 1980s were the product of comparatively high administration costs rather than the debt resulting from the investment required to bring the property up to productive standards following its handover. The department had in fact paid some survey costs and had written off an amount of scheme debt as a means of offsetting the rent arrears owed by one particularly problematic settler. Counsel noted that the Pouākani scheme was now run on a full commercial model and was a highly profitable asset for the incorporation.

We have set out the Crown’s argument in some detail because we think that it has merit. It is difficult to assess so many years later, and on the basis of general evidence, how poorly the department administered the scheme because we do not know enough about how the day-to-day problems presented and how they were handled.

It is true that, since it took over, the Pouākani Incorporation has made a much better job of running the land, but it has some real advantages compared with the Department of Māori Affairs. The conflicting objectives discussed above are no longer present: the incorporation’s imperatives are solely commercial. Also, there is a lot more technical know-how these days about making pumice land productive.

Then there is the perennial question: Do bureaucrats run businesses well? We have no comparative data about, for example, Land and Survey farms on comparable land and how well they fared. But the concept of putting young, inexperienced farmers to work on remote, difficult farmland under the guidance of civil servants does not necessarily seem like a recipe for success. How knowledgeable were the supervisors as farmers or as trainers? Were they good at guiding, instructing, teaching, and supporting raw Māori boys who were a long way from home? And, if they were not, were there others available who were any better?
Perhaps the flaw was not in the management of this particular development scheme but in the concept of development schemes generally. And, if the concept was flawed, it was always more likely to come seriously to grief when faced with dire farming conditions like the pumice land of Pouākani. In many ways, the development scheme model is perhaps better viewed as a policy experiment, and one that went badly wrong – at least at Pouākani. Could the department have done better if officers had tried harder? Been smarter? Known more? Been kinder or more hard-headed? It is very hard now to answer any of these questions convincingly.

Then there is the Treaty prism that the Tribunal must hold up to this area of Crown endeavour. How did the development scheme do in the light of Treaty principles? This, too, is difficult. Because of its sound intention of developing Māori land, one cannot say that the development scheme policy was in principle flawed in Treaty terms. And, yet, many schemes failed, and at considerable cost to Māori (as in the case before us). Should it have been apparent that the concept was flawed? What blame can be attached to trialling a well-intentioned but difficult policy?

There clearly were operational problems, possibly many of them, but in order to find the Crown’s conduct wanting in Treaty terms, one would need to be able to say that the department should have known more and done better, and explain how. We do not believe that we have sufficient evidence to make such findings in the Pouākani context, let alone more generally.

(3) The two main problems
The two fundamental and interrelated problems that seem to have prevented the scheme from achieving its objectives were its low productivity and its high level of debt. Throughout the life of the scheme, returns were very low and settlers struggled to survive on the minimal income they were able to derive from their units. Similarly, because the overall development debt owed by owners was very high, what little the scheme returned was immediately swallowed up in servicing that debt, leaving nothing to be distributed to the shareholders. The frustration for individual lessee settlers of trying to service their own debt out of an already minimal income led many to defer essential farm maintenance or to surrender their leases early, or to do both, thereby increasing the overall scheme debt.

We look now at low productivity and high debt as the factors most responsible for the scheme’s failure.

(a) Low productivity: As we have discussed above, at the time the scheme was established, the land at Pouākani was poor quality and completely undeveloped and required considerable improvement before it could be farmed. Although most had done farm work, the settlers had not managed farms, and they struggled in adverse conditions to make effective use of their units. The pumice land at Pouākani presented considerable difficulties in irrigating and establishing pasture, and the supervision and assistance provided by the Department of Māori Affairs appears to have fallen short. It is hard to tell now, though: in the face of failure, it was surely inevitable that the settlers and owners would complain about the department’s supervision. Equally inevitably, the officials in turn blamed the settlers.

Whatever the reasons, the lessees generally did not, perhaps were not able to, uphold standards for maintenance on their properties. This served to further reduce the productivity of the scheme, and as Warren Wairau noted, deferred the cost of proper maintenance to a later date. It may also have made the Pouākani land more vulnerable to the various weed and pest infestations it suffered. Poor farming practices could not, however, have insulated the scheme from other challenges it faced in the 1960s and 1970s: repeated serious droughts and low dairy export prices. All of these tribulations, and the tight financial position of the lessees who remained, made it increasingly hard for the owners to find suitable Wairarapa Māori candidates to settle on the farms as lessees. Thus, from the mid-1960s, vacated lessee units were incorporated into the department–run sheep station because new settlers could not be found. Still, the owners steadfastly opposed offering
leases to anyone other than owners or family members of owners.277

(b) **High debt**: Why were debt levels on the scheme so high? First, in the post-war period, when the scheme was established, the shortages of goods and labour kept prices high. Breaking in the remote Pouākani block was a massive job, and from the outset owners and settlers ran up considerable debt to the Department of Māori Affairs. As early as 1947, when the department spent £49,000 to develop the first 2000 acres, the owners were alarmed by the high cost of developing the land. This level of costs continued, and in 1951 the Board of Māori Affairs also expressed concern about it. The lessee settlers found it very difficult to service their own debt to the department, and by 1955, some had already abandoned their farms. During the 1960s, more and more settlers walked off their land. The single biggest cause of lessees abandoning their farms was financial problems – the result of low production and high debt.278

Officials sometimes observed other factors increasing settlers’ debt: for example inadequate bookkeeping and financial management practices and the payment of tithes to the church. It should be noted that some lessees avoided falling into debt, however: the 1959 investigating committee found that levels of debt ranged from £96 to £1243 between the 28 settlers.279

As more settlers surrendered their units, the owners were required, under the terms of the compensation leases, to pay out to the departing lessee 75 per cent of the value of the improvements they had made to their farm. The intention of the compensation leases was good: they were supposed to motivate good farm maintenance and agricultural practice. But, as lessees gave up their units, the compensation paid to them massively increased scheme debt. This phenomenon was foreseen by the local Māori Affairs district officer, who wrote in 1954 to the under-secretary expressing concern at the massive uncertainty created for the owners by being liable for the value of improvements 21 years into the future. He signalled the possibility that they would need to increase their level of debt to cover such costs and said that capital value leases would remove this uncertainty and were the norm in the district.280 Nevertheless, the department thought that compensation leases would better promote good farming practice.

Following the restructuring of the scheme in the early 1970s, no further compensation leases were entered into. Debt reduced considerably, but this did not resolve the problem of poor farm maintenance. A valuer’s report commissioned in 1991 found that, at the time of the handover, farm pastures were poor, buildings badly kept, weed control inadequate, and other farm improvements generally substandard. Two factors were behind the poor condition of the farms in 1983. First, because capital value leases had offered no compensation for any improvements made to the units, most lessees had failed to invest in maintaining and developing their properties. (It seemed that this was a case of ‘damned if you do and damned if you don’t.’) Secondly, the supervision of leases by the department had been ineffective and had allowed the lessees to breach lease covenants for the maintenance of improvements, application of fertiliser, and control of weeds.281 Following the handover, the trust borrowed $745,000 between 1983 and 1990 to bring the farms up to standard. By investing in soil analysis, fertiliser, pasture resowing, weed control, irrigation and fencing, new buildings, farm consultancy and legal advice, and new accountancy and farm management programmes, and by engaging experienced sharemilkers, the trust was able to significantly increase stock numbers, and farm production and profitability, between 1983 and 1991.282

(4) **The parties’ different emphases**

We think that low productivity and high debt were the chief reasons for the failure of the scheme, but they were not the only ones. The claimants and the Crown emphasised different factors. The claimants argued that the main
causes of the scheme’s failure were within the Crown’s control: the Department of Māori Affairs inadequately supervised the settlers and engaged in poor farm and financial management. The Crown’s argument we have summarised already: it emphasised external factors (such as drought and low dairy prices) and the conflicting objectives of looking after the settlers (who were the owners’ whānau) and returning a profit to the owners. The department inevitably struggled to find a balance between allowing certain settlers to defer proper maintenance on their units (in order to give them a ‘fair chance’ on their farms) and strictly enforcing lease terms in the owners’ interests.

(5) The Department of Māori Affairs’ role

Although the Department of Māori Affairs’ supervision was an issue, it is a very difficult one to evaluate in hindsight. There were certainly some identifiable areas of failure.

We are influenced by Pai Te Whaiti’s criticisms and by the comments of the Under-Secretary of Māori Affairs, Jock McEwen, in 1970 that ‘supervision must have been rather lax for such deterioration as had been experienced on the farms surrendered to have taken place’\(^{283}\). Likewise, a 1991 valuer’s report identified poor supervision as a factor behind the underperformance of the scheme.

That there was poor communication on important matters is apparent from the fact that, in the early 1960s, it came to light that neither the owners nor the settlers had a working knowledge of the terms and conditions of the scheme leases or of various other aspects of the scheme. The owners were surprised and dismayed, for example, to find that they were liable to pay the lessees most of the value of their improvements if they abandoned their farms. On the other hand, many lessees did not understand their obligation under the leases to maintain their farms.

The responsibility for seeing that lease covenants were observed, and farms properly maintained, lay with the departmental supervisors, and obviously this was a problematic area. However, Warren Wairau recognised the difficulties that the department faced in finding a compromise between showing lenience to the settlers, protecting the interests of the owners, and fulfilling its official duties:

Departmental officials involved in the intricate matter of trying to serve the interests of the State, the owners and the settlers had to try and accommodate all parties, either at Pouakani or elsewhere. In attempting to manage a large farming enterprise with many associated risks and variables, it was inevitable that decisions made could be perceived as incorrect with the benefit of hindsight.\(^{284}\)

The dilapidated state of the units upon handover suggests that the supervisors leaned too heavily on the side of lenience in requiring settlers to fulfil lease terms. On the other hand, how do we now decide whether the supervisors’ failure to require settlers to fulfil their lease conditions was a humane response to the young farmers’ real difficulty in farming this hard land or incompetence on the part of the supervisors?

The compensation leases are a similarly equivocal factor. Although the department’s decision to use compensation leases can be seen as a mistake, there is no evidence that it was made otherwise than in good faith. The change to capital leases happened soon enough after the debt implications of the compensation leases became evident, but lessee maintenance of the farm units remained a problem. Neither the compensation leases nor the capital value leases adequately served the interests of the owners.

In any case, we do not believe that supervising the lease terms was make-or-break for the scheme. We consider that the factors that undermined the scheme’s viability mainly flowed from earlier Treaty breaches (the poor quality and remoteness of this land, which the Crown wrongly granted as reserves pursuant to the Wairarapa Moana gifting agreement) or were outside the Crown’s control (low export
prices and intermittent serious droughts). Together, these factors meant that high development debt and low productivity were almost inevitable. The department’s indifferent administration and supervision no doubt made a bad situation worse. Some of the factors referred to would have affected all farms in the area to differing degrees: the department must bear some responsibility for the production levels at Pouākani falling well below the district average by the time of the handover.

Most importantly, in our view, the decisions made by officials in relation to the administration of the scheme were not made in bad faith. Given the external pressures on the scheme, it is hard to be categorical about what the Crown could have done differently to produce a substantially better outcome. The owners might have recovered the initial cost of development and received greater ongoing returns if the block had been sharemilked from the outset. However, this was simply not contemplated in the 1940s and 1950s, either by the owners or by the department. Both were steadfast in the belief that only owners and their relatives should be sent to settle the land. It would be anachronistic to blame the owners or the department for not taking a different approach: that was the kaupapa of the day and its underpinning is completely understandable. After all, this was what Wairarapa Māori thought this land would be used for, and here was a chance to fulfil that dream. It was consistent too with the Government’s Māori land development policy. Even if the settlers and the department were fighting a losing battle, we applaud their efforts. The settlers were incredibly brave in the face of great adversity.

(6) Conclusion
We do not think it is possible on the evidence we have before us to find that there was Treaty breach in the operation of the development scheme. Although it was the case that aspects of the Department of of Māori Affairs’ administration of the scheme – particularly the relationship and communication between settlers and supervisors – left a lot to be desired, we do not think that this was determinative of its success or failure. Moreover, we do not consider that the department acted in bad faith. We agree with this comment by Warren Wairau:

Despite some initial concerns, the Department was principled in forging ahead with the development scheme regardless of the costs. To not have done so would have been a greater injustice than any other that has arisen from the scheme. As the undeveloped block had been given to the Wairarapa Maori by the Crown for their benefit, the only honourable option for the Department was to commence its development.\footnote{285}

Finally, we repeat our view that the development scheme owes its failure to nothing so much as the fact that this was very poor land, in a totally unimproved state, miles from anywhere. If the Crown had granted Wairarapa Māori the decent land in Wairarapa that would have been the proper response to the gift of the lakes, they would never have needed a development scheme! It is this background that makes very regrettable the conduct of the department in refusing to write off the debt on the scheme. However, we understand that this matter has now been settled between the trust and Te Puni Kōkiri, and the Wairarapa owners of Pouākani have moved on.

We are heartened and impressed by the success of the agricultural enterprise on Pouākani 2 today. Operating in the modern era, the incorporation does not have to deal with the constraints of the past; the community of owners is now willing to see the land as a business. On this basis, and with the owners in charge, the business is running well.

Our finding is that there is no Treaty breach in relation to the Pouākani development scheme.

7.11.6 Prejudice
The Crown’s conduct in respect of Wairarapa Moana and Pouākani prejudiced Wairarapa Māori in that:
Their mana in and around Wairarapa Moana, and their spiritual connection with the moana was, if not lost, then dramatically undermined.

- This loss of mana affected their status and identity.
- The costs of many decades of conflict brought about by the Crown’s conduct were high and included the emotional and spiritual costs of the stress of participating in a dispute on a long-term, relentless basis; very considerable financial costs; and the loss, as a result of engaging in the conflict, of other opportunities that they could otherwise have pursued.
- Because the Crown did not grant reserves beside or near Wairarapa Moana, Wairarapa Māori had no base there for fishing or other hapū or tribal activities, nor any presence there as tangata whenua. Their connection with their ancestral lakes has thereby been reduced and diminished.
- Their traditional leaders were undermined by the unavailability, as a result of the Crown’s conduct, of options that would really promote the welfare of Wairarapa Māori – either the lakes themselves or the reserves that were promised. As a result, the leaders were left with no alternative but to lead their people towards options they would never have chosen or promoted had real choice been available.
- The relationship between Wairarapa Māori and Waikato Māori was jeopardised by the grant to the former of land in the southern Waikato, where they were not tangata whenua.
- Wairarapa Māori received no benefit at all from the Pouākani land for the first 40 years of their ownership of it. It was, in fact, a detriment, as they struggled in vain to get the Crown to provide access or development assistance or both. At the same time, their wetlands were being drained, and commercial eelers were allowed access to their fishery. They had to live with the manifest unfairness of this ‘exchange’: while they had years of enduring adverse effects, the Crown and settlers instantly benefited from the gift of the lakes, from the attendant right to control the outlet from Lake Ōnoke to the sea, and from the sale of land around the lakes.
- Before they derived any benefit from the Pouākani land, nearly 800 acres of it were compulsorily acquired for hydro works, and another nearly 700 acres were compulsorily leased for the Mangakino township. The process by which the acquisition was undertaken showed them no respect at all as owners, and the compensation principles applied were designed to ensure that the price they received was very low.
- In human and financial terms, running the Mangakino leases took a huge toll on the community of Pouākani landowners in Wairarapa.

7.11.7 Recommendations

We recommend that, in addition to the general redress that responds to the Treaty breaches identified in this chapter, the Crown should:
- Return to Wairarapa Māori the ownership of the bed of Wairarapa Moana.
- Gift to the tangata whenua as a reserve any land in Crown ownership adjacent to either of the two lakes Wairarapa and Onoke.
- Work with the tangata whenua to design a special arrangement for the management and control of Wairarapa Moana (including Lake Wairarapa, Lake Ōnoke, and such of their surrounds that are not in private ownership) that recognises and gives effect to the status of Wairarapa Māori as its rightful owners and kaitiaki. This arrangement should fully reflect the special relationship between the tangata whenua and their customary fishery in the lakes and go well beyond the existing wetland plan in providing for the primacy of tangata whenua interests in the lake.
- Compensate the Pouākani owners for the opportunity cost of the burden of the administration of
the Mangakino leases for nil real return for approximately 40 years.

- Reassess the compensation paid to the owners for the land taken for the Maraetai Dam in the light of new, Treaty-compliant criteria, including:
  - compensation for the unique qualities and hydro potential of the land; and
  - compensation for all ‘betterment’ effected by the hydro works.
- Compensate the Wairarapa Māori owners of the land at Pouākani for the loss of productivity occasioned by the power line corridors.³⁸⁶

In relation to the 'lost 200 acres', we set out our recommendation earlier at page 689. For the sake of completeness, we repeat it here in the recommendations section.

We recommend that the Crown either accepts the conclusions of its witness Andrew Joel or, if it wishes to go further, commissions a survey and legal opinion of the kind that would have resulted from a title investigation, had the Native Land Court undertaken one in 1930. If the conclusions of Joel’s opinion are confirmed, a process to assess compensation should ensue, and compensation should then be paid, with interest, to the land’s traditional owners.

Notes
1. Alexander Mackay, ‘Claims of Natives to Wairarapa Lakes and Adjacent Lands,’ AJHR, 1891, G–4, p 19
2. Ibid, p 5
4. Document A37 (Crocker), p 12
5. Document A5 (White), p 33
6. Mackay, ‘Claims of Natives’, p 19
7. Document A5 (White), p 33
8. Mackay, ‘Claims of Natives’, p 29
10. Mackay, ‘Claims of Natives’, p 30
11. Ibid, p 35; doc A5 (White), p 31
13. Document 17(c) (Crown counsel), p 3
14. Mackay, ‘Claims of Natives’, p 23
15. Mackay, ‘Claims of Natives’, p 7
16. Document A37 (Crocker), p 31
17. Ibid, p 32
18. Ibid
19. Ibid, p 36
20. Mackay, ‘Claims of Natives’, p 7
21. Document A37 (Crocker), p 43
22. ‘Te Manihira’, DNZB, vol 1, pp 498–499
23. Document A37 (Crocker), pp 45–46
24. H Hanson Turton, comp, Māori Deeds of Land Purchases in the North Island of New Zealand, 2 vols (Wellington: Government Printer, 1877), vol 2, deed 198, p 410
25. Mackay, ‘Claims of Natives’, p 32
26. Document A51(f) (Stirling), pp 2788–2789; doc A37 (Crocker), p 46
27. Document A37 (Crocker), p 49
28. Mackay, ‘Claims of Natives’, p 19
29. Ibid, p 23
30. Document A37(a) (Crocker), pp 45–59
31. Judgment of Justice Richmond, Supreme Court, AJHR, 1891, G–4, no 78, p 60
32. Judgment of Native Land Court Judge FMP Brookfield, 26 October 1882, AJHR, 1891, G–4, no 77, p 59
33. The 1882 hearings confirmed the 17 shares, but the 1883 hearings confirmed that the lake had 139 owners, and the certificate of title was issued on 13 November 1883: see Brookfield’s judgment of 26 October 1882 (AJHR, 1891, G–4, no 77, p 59), followed by Macdonald’s judgment of 13 November 1883 (no 79, p 60).
34. The Wairarapa komiti opposed Pahoro’s claim because it did not want any claim to be put forward by an individual owner of the lakes; it wanted the owners to act collectively: Document A37 (Crocker), p 59; doc A50 (Stirling), p 145.
36. Mackay, ‘Claims of Natives’, p 4
37. For instance, Piripi Te Maari, in giving evidence to the 1891 royal commission, stated:

   The upheaval of the land along the margin of the lake has left a strip of dry land. The Government have sold this land to the settlers. No title was issued to the Natives to the strip of land alluded to . . . [We] have not received any compensation from the Government for parts sold to Europeans.

38. Document A50 (Stirling), p 144
39. Document A37 (Crocker), p 60
40. ‘Piripi Te Maari-o-te-rangi’, DNZB, vol 1, pp 467–468. See doc A50 (Stirling), pp 142–148 for more on the role of the komiti in issues relating to the lakes.
41. Mackay, ‘Claims of Natives’, p 6

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42. Document A37 (Crocker), p 62
43. Document A50 (Stirling), pp 146–147
44. ‘Piripi Te Maari-o-te-rangi’, DNZB, vol 1, pp 467–468. According to evidence heard by Mackay in 1891, the lake owners proposed in September 1887 that the lakes, the lakebed, and the land adjacent to the lakes remain in Māori ownership, but that the Government have the power to open the lake mouth once flood waters had risen beyond posts placed on the high-water mark. No action was taken by the Government in respect of this proposal: Mackay, ‘Claims of Natives’, p 9.
45. Document A5 (White), p 50. It appears that the board was originally named the Ruamahanga River Board, but changed its name to the South Wairarapa River Board by about 1887: see doc A37 (Crocker), pp 63–64.
47. Document A37 (Crocker), p 67; Piripi Te Maari v Matthews (1913) 12 NZLR 13 (CA).
50. Hoani Turi and 49 others to the House of Representatives, 28 June 1890, AJHR, 1891, G–4, pp 55–56.
56. The Te Kumenga and the 3000-acre Te Taheke (or Puata) blocks, purchased in December 1853 and January 1862 respectively.
58. Ibid, p 11.
62. Ibid.
63. Ibid, p 11.
64. Ibid.
65. Ibid.
66. Ibid.
68. Document A37 (Crocker), p 76.
69. There is some disagreement, however, as to the actual role of Māori women in the confrontation. A Pākehā newspaper article claimed that a group of Māori youth took hold of the shovels, while the women staged a sit-in in the trench: New Zealand Times, 17 May 1892 (doc A37 (Crocker), p 76). A Māori newspaper article said that it was the women, and not youths, who took hold of the shovels – and praised their action, stating that ‘The women were acknowledged as heroes for their bravery’: ‘Wairarapa Moana’, Wairarapa Matangi Press, vol 1 no 2, 30 September 1903 (doc A77, tab 4, p 3, translated by Tumanako Waiwai).
70. Piripi Te Maari v Matthews (1913) 12 NZLR 13, 17–18 (CA). Counsel for the owners also argued that the ‘normal’ condition of the lakes where when they were ‘full’, and not flooded. Further, he claimed that the Public Works Act and the River Boards Act did not give the power to ‘alter the normal level of a lake’ for the benefit of Pākehā farmers and to the detriment of Māori (because their fisheries would be all but eradicated).
71. Piripi Te Maari v Matthews (1913) 12 NZLR 13, 22 (CA).
72. Document A37 (Crocker), pp 77–78; Piripi Te Maari v Matthews (1913) 12 NZLR 13, 15–26 (CA). The dissenting judge found that, because the lake mouth was naturally blocked by a sand and shingle spit for four or five months a year, it could not be considered a ‘natural watercourse’ or consequently a ‘public drain’: Piripi Te Maari, p 25.
73. Document A37 (Crocker), p 78.
74. Ibid, p 79.
76. In November 1895, the Crown requested that the Native Land Court examine its interests in the lakes again. The gifting occurred while the Crown’s application was still being processed by the courts: Document A55 (McCracken), p 7. It appears that, as suggested later in the main text, Māori did not want to face yet another costly court hearing, and wanted to settle the matter directly with the Government.
77. Document A37 (Crocker), p 79.
78. Ibid, p 82.
79. Document A69(a) (McIntyre), p 3.
80. See the statements by Hoani Paraone Tunuiarangi and Alfred Matthews in document A37 (Crocker), p 84.
81. Ibid, p 84.
82. Ibid, p 80. Tamahau’s reference to ‘giving effect to the words of our chiefs who have passed away from us’ is intriguing. It could be read a general reference to tipuna, but given the recent death of Piripi Te Maari who was the leading chief in lakes’ dealings for over a decade, it raises the possibility that Piripi had suggested the idea of the gifting before his death.
83. Document A69 (McIntyre), p 50; doc A37 (Crocker), pp 81–82.
84. MA 1, 5/13/57, ArchivesNZ, Wellington (doc A37 (Crocker), p 80).
85. MA 1, 5/13/57, ArchivesNZ, Wellington (doc A69 (McIntyre), pp 5–6).
86. Ibid (pp 6–7).
87. Ibid (pp 7–8). McIntyre’s reproduction of the agreement omits one name from the Māori version, that of Eruhu Piripi te Maari. However, the name does appear in the original text of the agreement.
88. ‘Every single owner’s authority over, and claims in respect of, their lakes.’
This places in inverted commas the phrase to which the named Ministers are to give effect, and makes the paragraph more like the English version.

112. The approach of the Orākei Tribunal was approved and taken up by the Mohaka ki Ahuriri Tribunal in its report: Waitangi Tribunal, The Mohaka ki Ahuriri Report, 2 vols (Wellington: Legislation Direct, 2004), vol 1, p 18.


118. Ibid.


129. Ibid.


133. Ibid, p 25.


137. Document H 2 (Parker).

138. Ibid.

139. Ibid, p 23.


141. Ibid, p 25.


143. Ibid, p 29. After lobbying by the owners, in 1921 the court
reinvestigated the allocation of shares in the lakes. It found that the court's 1915 decision to issue equal shares to every person on the 1883 certificate of title was inconsistent with custom. A new certificate of title was issued in January 1924: ibid, p 30.

144. Document A55 (McCracken), p 42
145. Ibid, p 35
146. Ibid
147. Ibid, p 42
149. Our translation of this passage is 'Māori have deliberately ceded their power over and all their claims in respect of Wairarapa Moana'.
150. 'Wairarapa Moana,' Wairarapa Matuhi Press (doc A77, tab 4 (Waiwai), p 4)
151. Document A69 (McIntyre), p 12
152. Ibid, pp 11–12
153. Ibid, p 10
154. 'Wairarapa Moana,' Wairarapa Matuhi Press (doc A77, tab 4 (Waiwai), pp 3–4)
155. It is interesting to note that, by contrast, the deed for Hiko's sale specifically mentioned that 'eel fishery rights' would be surrendered to the Crown: Turton, Maori Deeds, vol 2, deed 198, pp 410–411. Perhaps this is explained by Maunsell's later commentary that his 'original intention was only to purchase the fishing-rights': Edward Maunsell, 'Evidence Taken before Wairarapa Lake Commission, Greytown, April 1891,' 1 May 1891, AJHR, 1891, G-4, p 32.
156. Document A69 (McIntyre), p 12
157. Ibid, p 11. McIntyre says that the newspaper cutting was unidentified but thinks it was probably the Evening Post of 17 January 1896.
158. Document A69 (McIntyre), p 12
159. Document A41 (McCLean), p 50. McIntyre's report is even more sparse: see doc A69 (McIntyre), pp 15–49.
160. The commercial exploitation of whitebait in the 1930s and kōura in the 1940s was carried out by small, if not tiny, operations: see doc A41 (McCLean), pp 57–59.
161. Document A41 (McCLean), pp 53–54
162. Ibid, p 60
163. Ibid, p 61
164. Document A41 (McCLean), p 55. As an example of the protests, see the letter from JT Carter of Featherston to Apirana Ngata, the Native Minister, objecting to the factory on the ground that it would 'no doubt greatly interfere with the rights of the Maoris': doc A69 (McIntyre), p 45.
165. Document A41 (McCLean), p 57
166. Ibid, p 61
167. The catchment board, according to McClean, dominated the history of the lakes in the era 1944 to 1989 because it was given control of all watercourses in the Wairarapa in 1947: doc A41 (McCLean), p 9.
169. Ibid, p 61
170. Ibid, pp 61, 118–119. The fishing was regulated by the Wellington Acclimatisation Society. In 1978, 16 tonnes of short-fin eels were taken from Mathews Lagoon.
171. Document A56 (Parkyn and Chisnall), p 29
172. Document A41 (McCLean), p 61
173. Document A5 (White), p 58
174. Document A56 (Parkyn and Chisnall), pp 19, 30
175. Document A55 (McCracken), p 52
176. Ibid, p 53
177. Document A29 (Wairau), p 35
178. Document A55 (McCracken), p 58
179. Ibid, p 60
180. Document A29 (Wairau), p 37
181. Document A55 (McCracken), pp 63–64
182. Ibid, pp 64–65
183. Ibid, pp 66–69
184. Ibid, p 70
185. Ibid, pp 70–71
186. Ibid, p 71
187. Ibid, pp 78–79
188. Ibid, pp 79–82
189. Document A29 (Wairau), p 45
190. Document A55 (McCracken), p 71
191. Ibid, p 82
192. Document A29 (Wairau), p 46
193. Document A55 (McCracken), pp 83–84
195. Ibid, p 52
196. Ibid, p 53
197. Ibid, pp 57–58. The £53,000 debt was fully repaid by June 2000: p 73.
198. Ibid, pp 59
199. Document A55 (McCracken), p 103
Sidebars


Page 663: ‘Piripi Te Maari-o-te-rangi’. Source: Angela Ballara and Mita Carter, ‘Piripi Te Maari-o-te-rangi’, DNZB, vol 1, pp 467–468. It appears that Piripi Te Maari-o-te-rangi was also of Rangitāne descent, through the Ngāi Tūkoko hapū: see doc A60 (Chrisp), p 33.

According to the *Dictionary of New Zealand Biography* and Te Ara, Piripi’s hapū were Ngāi Tūkoko, Rakaiwhakairi, Ngāi Rakairangi, Ngāi Manuhiri, Ngāi Hinewaka, and Ngāi Hineraumoa. Chrisp noted that Piripi identified Ngāi Tūkoko as his Rangitāne hapū in south Wairarapa at an 1883 Native Land Court hearing. At the hearing, Piripi claimed land around Lake Wairarapa through Tūkoko, his ancestor, whom Piripi noted belonged to both Rangitāne and Ngāi Kahungunu: doc A60 (Chrisp), p 33.


According to Joel, the block of land forms the majority of the block appelleated as section 98, Turanganui district, so 1924. Joel contends that section 98 also includes 86 acres of the old Turanganui riverbed, which he argues is not part of the original 200-acre block under discussion: doc A120 (Joel), p 3.

The 1883 and 1896 plans are reproduced in document A120(a), supporting documents 26 and 5 respectively. An example of a subsequent plan is the undated and untitled Survey Office plan of Ōnoke district, reproduced in document A120(a), supporting document 27.


Maps


215. Ibid, pp 128–131, 139
217. Document A55 (McCracken), p 136
218. Ibid, p 143
220. Document H7 (Te Whaiti), p 4
221. Document A55 (McCacken), p 141
222. Ibid, pp 144–148
223. The committee was comprised of a Māori member with practical knowledge of land development, the local Māori Affairs district field supervisor, and a senior Lands official, and was chaired by the registrar of the Department of Māori Affairs.
224. Document A55 (McCacken), p 147
225. Ibid, p 145
227. Document H7 (Te Whaiti), p 6
228. Ibid, pp 7–8
229. Ibid, p 9
230. Ibid, p 10
231. Document A55 (McCacken), p 149
232. Document A29 (Wairau), p 96
233. Ibid, pp 97–98
234. Document A55 (McCacken), pp 154–158
235. Ibid, pp 158–159
236. Ibid, pp 160–163
237. Ibid, p 164
238. Ibid, p 165
239. Ibid, pp 165–167
240. Ibid, pp 167–168
241. Ibid, pp 168–169
242. Ibid, p 169–172
244. Ibid, pp 104–105
247. Document A55 (McCracken), p174; doc A29 (Wairau), p113
248. All but one remaining lessee units passed to the trust during the
249. Document A29 (Wairau), p120
250. Ibid, p121
251. Ibid, p125
252. Ibid, p127
253. Ibid, p137
254. Ibid, pp161–162
255. At the time that the Pouākani 2 Trust was established, its ownership was identical to that of the Mangakino Township
Incorporation, but the two entities’ ownership had diverged as a result
of their different succession rules: see doc A29 (Wairau), p161.
256. This was done subject to section 281 of the Native Land Act 1931,
which required dividends to be paid to the Māori Land Board or Native
Trustee, to be used only with the consent of the Native Land Court.
257. The words in the English version were ‘The term “ample reserves”
in this paragraph shall be interpreted by the [Ministers]’, and in the
Māori version the whenua to be provided needed to be ‘e tika mai ana
ki ti kawanatanga’. Equally, though, the Māori version emphasised that
the duty to ensure that suitable land was carefully set aside had to be
conscientiously fulfilled (‘ata whakaoti’). See the full text quoted above
in section 7.5.2.
258. The Crown conceded that it ‘did not ensure that it could success-
fully implement the reserves provision in a timely way’ It also acknow-
ledged that it failed to ensure that the parties had a clear understand-
ing of what would constitute ample reserves and where those reserves
would be located: doc 117(j) (Crown counsel), p3.
259. Document 117(c) (Crown counsel), p3
260. Both the Crown and the claimants agreed that Mackay’s findings
and recommendations were consistent with the Treaty: see doc 117(c)
(Crown counsel), p5; doc 110 (counsel for Ngā Hapu Karanga), para
213.
261. Piripi Te Maari v Matthews (1913) 12 NZLR 13 (CA)
262. The guarantee in article 2 that Māori may keep their land until
they want to sell it is a fundamental tenet of the Treaty, and compulsory
acquisition cuts right across it: see ch 8.
263. On the issue of what the officials believed, we accept Ngā Hapū
Karanga’s submissions: doc 11(c), pp8–10.
264. Document 117(a) (Crown counsel), p35
265. Document 117(a) (Crown counsel), p35
266. Ibid, pp34–35; doc 117(c) (Crown counsel), p16
267. The guarantee in article 2 that Māori may keep their land until
they want to sell it is a fundamental tenet of the Treaty, and compulsory
acquisition cuts right across it: see ch 8.
268. Document 117(a) (Crown counsel), p35
269. Document 117(c) (Crown counsel), p15
270. Document 117(j) (Crown counsel), p3
271. Document A80 (Colley), p6, apps 1, 2
272. Document H6 (Smiler), p14
273. As regards the presence of power lines on the land, forestry
consultant George Colley estimates that the incorporation has lost
$575,714 in earnings and interest from stumpage and rental pay-
ments: doc A80 (Colley), p6. He has also calculated the potential
future earnings that the incorporation might have expected to earn
if there were no power line corridors on the land: doc A80, apps 1, 2.
DEED

WAIRARAPA MOANA DEED

ENGLISH VERSION

Papawai Greytown
13th January 1896

We the members of the various committees appointed by and on behalf of all the owners of the Wairarapa Lakes to deal with all questions affecting the ownership and conveyance thereof to Her Majesty the Queen do hereby agree as follows:—

—Ist The whole of the Wairarapa Lakes are hereby conveyed surrendered and assured to Her Majesty the Queen as an estate of inheritance in fee simple freed released and discharged from all Native claims and rights whatsoever.

—IInd In consideration of the conveyance and surrender aforesaid the Government of New Zealand shall pay to the Native owners under a scheme to be hereafter arranged the sum of £2,000 (two thousand pounds) and shall out of any lands which shall come into the possession of the Government through such conveyance or out of any other lands acquired from Natives and still in possession of the Government make ample reserves for the benefit of the Native owners.

The term ‘ample reserves’ in this paragraph shall be interpreted by the Honorable the Native Minister together with the Honorable the Minister for Lands.

—IInd The Native Land Court shall forthwith make an order in favour of Her Majesty the Queen in terms of paragraph one.

As witness our hands:
Tiriti Maika Purakau
Tiamana O Te Komiti
Kaporeihana
Retini Tamihana
Eruha Piripi te Maari
R H Manihera
Oraia Te Ama Te Whaiti
Hoani Ngatuere
Henare Parata
M Kahungunu Maara
Tiamana o te Komiti o te Iwi
Aporo Hare
Raharuhi Tuhokairangi
Hamuera Tamahau Mahupuku
Parotene Nuku
Te Whatahoro
Kingi Ngatuere
Enoka Hohepa
Hoani Te Tohu Rangitakaiwaho
Wiremu Hutana
Ratima Ropiha
H P Tunuiarangi
Takana Kingi
Māori Version

Papawai Kereitaone
13 Hanuere 1896

Ko matou ko nga tangata rangatira he mea no ia komiti no ia komiti i whakaturia e te iwi me nga tangata whai take ki Wairarapa Moana hei Whakahaere hei whakaoti rawa i nga raruraru katoa mo Wairarapa Moana kia tika ai te whakawhiti aua Moana kia kuini Wikitoria e whakaae ana onatou katoa ki enei tikanga

1 E whakaaï pono ana matou ki ti tuku i Wairarapa Moana kia kuini Wikitoria hei whenua tuturu mana tuku iho tuku iho mo aki tonu atu a kua whakakorea katoa tia atu i konei te mana me nga take katoa o ia tangata o ia tangata whai hea ki ania moana

2 A i te mia kua ata whakawhitia e nga maori ti mana me nga take katoa o Wairarapa Moana kia kuini Wikitoria ka utua e te kawanatanga o Niu Tirenī nga moni e rua mano pauna (£2000) – me whakahaere i runga i etahi tikanga hei muri nei whakariti ai – kaati ka ata rahui tia etahi waahi to tika hei oranga mo nga Maori whai tak? ni aua moana i roto i nga whenua e tai mai ana kite ringaringa o? karauna i raro i taua ota whakawhitia etahi atu whenua maori ranei e tika mai ana ki ti kawanatanga i roto i tenei takiwa

   Kaati ko tenei kupu – ‘Rahui to tika hei oranga mo nga Maori whai tai ma Honore te Minita Maori me ti Honore Minita mo nga whenua e ata whakaoti ena kupu

3 Ma ti kooti whenua Maori e whakaputa i tenei wa titahi ota whakatau kia kuini Whikitoria i runga i nga kupu o ti rarangi tuatahi o tenui pukapuka

Heoi ka Hamatea nei e matou o matou ingoa ki raro nei

Tiriti Maika Purakau
Tiamana o Te Komiti
Kaporeihana
Retini Tamihana
Eruhu Piripi te Maari
RH Manihera
Oraia Te Ama Te Whaiti
Hoani Ngatuere
Henare Parata
M Kahungunu Maara
Tiamana o Te Komiti o Te Iwi
Aporo Hare
Raharuhi Tuhokairangi
Hamuera Tamahau Mahupuku
Parotene Nuku

Source: MA 1, 5/13/57. ArchivesNZ, Wellington (doc A69 (McIntyre), pp 6–7). McIntyre’s reproduction of the agreement omits one name from the Māori version, that of Eruhu Piripi te Maari. However, the name does appear in the original text of the agreement.
Te Whatahoro
Kingi Ngatuere
Enoka Hohepa
Hoani Te tohu Rangitakaiwaho
Wiremu Hutana
Ratima Ropiha
H P Tunuiarangi
Takana Kingi
TIMELINE

PUBLIC WORKS TIMELINE

The timeline on the following pages lists events relating to public works takings both nationally and in the inquiry district.
Nationally

6 February 1840: The Crown and Māori sign the Treaty of Waitangi, which brings in English law, including powers to take land compulsorily for public works.

The Crown negotiates with owners about land required for roads – compulsion is not needed.

The New Zealand Wars erupt, and in their wake come land confiscations. The Imperial Government relinquishes control over Māori affairs to the settler government. The Crown moves away from consulting Māori and begins to acquire land for roads compulsorily.

1840

1853

1860

22 June 1853: The Castlepoint deed is signed, making provision for roads over reserves. The Crown acquires 275,000 acres in its first purchase in the district. Ten reserves are set aside for Māori. The deed states: 'We consent to allow the Queen’s high roads to be made over our reserves whenever the Governor of New Zealand shall think fit to make such roads, which are to be used by us and the Europeans.'

Locally

The Crown and tangata whenua discuss and agree travel routes from Wellington to Wairarapa and from Wairarapa to Hawke’s Bay. There is little conflict: Māori see the roads as having mutual benefit, and welcome roadbuilding jobs.
1862: The Native Land Act 1862 empowers the Governor to take up to 5 per cent of Māori land for roading without compensation. The Native Land Act 1865 requires the land to be taken within 10 years of the title determination. Later, the ‘5 per cent rule’ is extended to railway purposes and customary Māori land.

1863: The Land Clauses Consolidation Act 1863 gives the Government general powers to take land for public works for the first time. It is not clear if it extends to Māori land.

1864: The Public Works Lands Act 1864 makes it clear that the Government could take both Crown-granted and customary Māori land. The latter may be taken even if it is occupied or is a wāhi tapu. Compensation for non-Crown-granted Māori land is the same as that under the confiscatory New Zealand Settlement Act 1863 – if the land is deemed ‘rebels’, no compensation is payable.

1866: The Provincial Land Taking Act 1866 gives local authorities the power to take land compulsorily for public works, but it was unclear if they could take Māori land.

1869: The Land Clauses Consolidation Act 1869 is amended to clarify that the ‘5 per cent rule’ is extended to railway purposes and customary Māori land.
Nationally

This is a boom-time for public works as settler infrastructure expands – especially railways. Land-taking powers are included in many Acts, and central and local government are less inclined to take account of Māori interests or negotiate with them about public works.

1870: Roads are formed and used through Whakataki reserve lands, apparently without consultation. Tapetu Matene objected in 1874. Land is also taken from the Whakataki reserve for the Tinui Valley road, but the details are murky.

1873: Tangata whenua clash with the Masterton Highway Board about it not consulting owners before compulsorily acquiring land and it not paying compensation: survey pegs are pulled out on the road from Hurunui-o-Rangi; and near Riversdale, Kenana Harawira and Te Ao Anaru protest against the road through the Motuwairaka reserve.

1876: The Public Works Act 1876 is enacted when provinces are abolished: it confirms the power of new local authorities to take all types of Māori land by compulsion.

Locally

1870: Māori protest about roads across Te Ore Ore plain east of Masterton. Two hundred and seventy one acres of fertile, well-situated land are taken from the Okurupatu block; land in the Te Ore Ore block is also taken, and here kāinga are affected. Disputes last more than a decade, and concern consultation and compensation.
**1882:** The Public Works Act 1882 introduces harsher provisions for taking Māori land. Crown can now take any Māori land for public works simply by gazetting an Order in Council. Protections available to other landowners do not apply; provisions for compensation different for customary land.

**1880–90:** Settler numbers increase, and so does readiness to assert legislative powers, and reluctance to negotiate with Māori about public works. Conflict over compulsory purchases becomes more common. After Parihaka, where part of the dispute was about removing survey pegs and obstructing roads, the settler mood is even more intransigent.

**Late 1880s:** The Crown wants 16 acres of customary land at Kopuaranga (part of the Manawatū purchase) for railways and roads. The Native Land Court has to determine title so that compensation can be paid. Although the owners are paid, the costs of survey and partition are deducted. With interest, this swallows up half the compensation, and the owners had not wanted their land to go through the Native Land Court in the first place.

**Late 1880s:** The construction of the Wellington to Napier railway reaches the Seventy Mile Bush area. A total of 587 acres are compulsorily acquired. Most owners were compensated, but compensation was usually very slow, sometimes taking years. The Native Land Court determines compensation where no Crown grant had been issued.

**Tangata whenua feel the effects** of uncompromising approach now taken to public works: they much prefer negotiation to compulsion, and they object more and more. Awareness and concern grows about the different provisions for taking Māori land.
Nationally

Pākehā settlement continues to grow, with more public works: bridges, water supplies, rubbish dumps, scenic and recreation reserves. Land is taken compulsorily, sometimes under general public works legislation, and sometimes under statutes for particular purposes like scenery preservation and railways.

1894: The Public Works Act 1894 allows authorities to take ‘native lands’, but not clear what that means: the Act is poorly drafted. All types of Māori land subject to different compensation provisions from general land. Responsibility for applying to the Native Land Court for compensation now lies with the taking authority, not with the owners: creates significant potential for delay.

1903: The Public Works Act 1903 expands the definition of ‘public works’ to include yet more works like road frontages, forest plantations, and recreation grounds.

1890: The Public Works Department prepares a proclamation notice for a road taking of just over 12 acres of Maori land in the Kaitoke block in the Tahoraite survey district. The notice does not make it clear whether the land was taken under public works legislation or the 5 per cent rule. Another acre taken in Kaitoke in same year was probably a pā site.

1890: Hori Herehere and others oppose the Dannevirke Road Board’s taking of their land without talking to them first. He pulls up survey pegs and ends up going to court – not because he opposes the works themselves, but because the process is wrong.

1897: The Akitio Road Board draws up plans to compulsorily acquire 60 acres for two roads through Mataikona reserve (Aohanga Station) that were already in use: Coast road and Owahanga road. No record of consultation with owners or compensation paid. No objections recorded either.

1899: The Dannevirke Borough Council starts a practice of taking Maori land in Tahoraiti block for council purposes.

1899: The Dannevirke Borough Council starts a practice of taking Maori land in Tahoraiti block for council purposes.

1900: Even though the owners gift the land, the Crown treats it as a taking under the Public Works Act 1894. The school closes in 2001. The Crown will give back the site and school building but wants the owners to pay for the school house.

1899: The Dannevirke Borough Council starts a practice of taking Maori land in Tahoraiti block for council purposes.

Locally

1890: The Government takes two acres in Ngapuketura native reserve for Ōkautete Native School. Even though the owners gift the land, the Crown treats it as a taking under the Public Works Act 1894. The school closes in 2001. The Crown will give back the site and school building but wants the owners to pay for the school house.
Takings for roads continue to predominate in Wairarapa ki Tararua, but now also compulsory acquisition of land for railways and local authority works. Māori often support public works objectives, but reject compulsion: they want to be treated as a partner with whom authorities talk first. In the hands of local authorities, implementation of statutory process is often poor, and Māori do not like their involvement. Maori are not represented on local bodies. The 5 per cent rule continues to apply to Māori land taken for roads; compensation is not payable.
Nationally

1911: The Scenery Preservation Board takes Tahoraiti 2 section 13 (38 acres) for the Makirikiri scenic reserve – apparently at the request of the Dannevirke Borough Council, which earlier tried twice to acquire Māori land in the Tahoraiti block for a bush reserve. When determining compensation in 1912, the Native Land Court hears from witnesses that the smell from the nearby sewerage area reduces the value of the land. Control of the reserve vests in the council in 1913; the Tararua District Council manages it today.

1927: The 5 per cent rule is abolished.

1926: The Castlepoint County Council takes a further 1 acre 20.1 perches from Whakataki for the Castlepoint road, which was already built. The owners were probably not compensated.

1928: The Public Works Act 1928 sets the public works framework for the next half-century. It continues the principles and policies developed in previous Acts; the separate and discriminatory provisions for Māori land are little changed – Māori customary land provisions are especially discriminatory. There is no provision for offering land back once it is no longer needed. Public works are defined very widely.

1929: The Castlepoint County Council takes land from Whakataki reserve for Mataikona Road. The land proclaimed for the works is 41 acres 1 rood 2 perches from Whakataki 10B6A2 and 15.7 perches from Whakataki 10B. The owners had agreed to give land for the road in 1912, but no funding meant that road not built till 1920s. It is not clear whether the council consulted the owners in the 1920s. It seems that payment was made, however.

Locally

Downloaded from www.waitangitribunal.govt.nz
An official view begins to crystallise that it is ‘impossible’ to notify or negotiate with Māori owners, and compulsory purchase is therefore ‘easier’. This may have led to the idea that it is more convenient to take Māori than general land.

1930: Construction begins on Palliser Bay Road, before the road is legalised. In November 1932, the Featherston County Council acts under the Public Works Act 1928 to give notice that 166 acres 19 perches are required for the road. Fifty-five of these acres were Māori land in the Te Kopi, Kawakawa, and Mātakitaki blocks. The taking goes through in 1934, and the Native Land Court orders the council to pay £200 compensation. The council does not consult with the owners. Did the owners know what was going on? The council takes more land for the road in 1935 (10 acres 1 rood 8 perches from Mātakitaki 1); 1936 (8 acres 1 rood 7 perches for road from the Te Kopi blocks, then a further 1 acres 19.6 perches for a stock paddock); 1967 (12.2 perches of Te Kopi 2 sub 5, an urupā, and 3 roods 39.3 perches from Te Kopi 2 sub 2 in an exchange); 2001 (a negotiated purchase of 1.48 hectares of Te Kopi 2 sub 2 and 0.61 hectares of Te Kopi 2 sub 362).

1940: The Crown takes two acres in Mataikona 18 under the Public Works Act 1928 for the Aohanga Native School site. The school finally closes in 1966, and in 1973 the Crown gives the site back to the owners – but they had to pay for the school buildings.

1943: The Native Purposes Act 1943 makes easier the offer back to Māori owners of compulsorily acquired land – but authorities are obliged to offer land back only if not needed ‘for any other public purpose’, and its offer back is ‘expedient’.

1946: The Wairarapa South County Council embarks on a scheme to replace the bridge over the Ruamahanga River on the Gladstone to Carterton road. The proposed route runs through Hurunui-o-Rangi Marae. The council sets about compulsory purchase in 1948. Works underway before taking procedures complete. Six acres 1 rood 35 perches are taken, and compensation is paid.
Nationally

The political environment changes profoundly in the 1970s, following Whina Cooper’s land march and the occupation at Bastion Point. The raising of Māori political consciousness from this time on means that the compulsory acquisition of Māori land is no longer simply tolerated. Local authorities change their approach in response to fear of political protest. They acquire land for public works by negotiation rather than compulsion, and use Māori land much less.

Locally

1955: The Wairarapa South County Council publishes under the 1928 Act its intention to take eight acres in Hurunui-o-Rangi part P1–3 ABCDE for a gravel pit to be used in building the Gladstone to Carterton road. The owners object and the council makes a minor boundary change. In 1958, the Native Land Court determines compensation for land and gravel. In 1982, when the gravel is gone, the council sells the land to a farmer.

1956: The Wairarapa South County Council acquires 10 acres 2 roods 36 perches from Taratahi 3911C11 for a gravel pit. The owners make no response to notices. Later, the owners and the council agree on compensation.

1956: The Dannevirke County Council continues its practice of compulsorily acquiring land from Tahoraiti 2 block for public purposes – this time just over 134 acres from Tahoraiti 2A27 for an aerodrome. In the 1930s, owner Eriata_NOPERA struggles to gain fair treatment from the Dannevirke Airport Association and the council, which want to lease the aerodrome land at below market rental. In the end, a lease operates satisfactorily from the 1930s to the 1950s. As the expiry of the lease looms, the council moves to compulsory purchase, although the owners do not want to sell. Central government agencies sympathise, but say they cannot intervene. Taking proceeds. In 1976, the Dannevirke County Council acquires a further 12 acres for the aerodrome from a neighbouring farmer, and in return gives him 16 acres from the Māori land taken in 1956. Again, in 1980, a neighbour exchanges eight acres for 14 acres of the original Māori land taken. The use of surplus land for exchanges was – and is – permitted by public works legislation.
Public opposition to authorities’ taking powers grows, focus on offer back increases: Māori protest against land loss, and authorities fear civil disruption of compulsory acquisitions. In 1978, the National Party’s manifesto says it will change the Public Works Act to allow only negotiated purchases (but it does not).

1981: The National Government’s opposition to compulsory acquisition comes to a head in a court case with the Dannevirke Borough Council. The council wants to take Māori land for a rubbish dump and is permitted to do so under law. So, the Government loses court case. Afterwards, it does not change legislation so as to outlaw compulsory acquisition of Māori land for public works.

1981: The Public Works Act 1981 standardises procedural requirements for Māori and general land. Encourages negotiated purchase. All acquisition of Māori land comes under the supervision of the Māori Land Court. Obligation to offer land back much stronger – but authorities can still wriggle out of it. A 1982 amendment requires land be offered back at market value or less. The Act remains in force, but has been ‘under review’ since the early 1990s.

1976: The Dannevirke Borough Council is once more eyeing Māori land in Tahoraiti 2 for a public work – this time a new rubbish dump, to be located on Tahoraiti 2A13B and Tahoraiti 2A14A2. The council talks to Tahoraiti 2A13B owner Arani Te Peeti but he is reluctant to sell, and the council proceeds under the Public Works Act 1928 to acquire compulsorily a total of 5.59 hectares. But when the documents are sent to the Commissioner of Works in Wellington in 1979, he says the Minister wants purchase by agreement with the owners. Many interchanges follow. The council justifies its approach: it needs the dump straight away and anyway doubts the Minister’s power to require a negotiated purchase. The Minister insists. Local Māori are increasingly opposed: the land to be taken is near owners’ houses and Mākirikiri Marae. A confrontation is feared. The council seeks a judicial review of the Minister of Works’ refusal to recommend that the Governor-General sign the proclamation. Although it expects to lose the case, Cabinet decides to play politics and defuse the situation by opposing the council in court. The chief justice’s decision goes in favour of the council: it complied with the Public Works Act procedures and the Government’s preference for negotiated purchase is not in the Act. The taking proceeds in 1981, and the parties’ legal representatives settle compensation in 1984. The council has since stopped taking land in Tahoraiti 2 for public works.

1977: The Masterton County Council realigns the intersection of Castlepoint and Mataikona Roads, taking land under Public Works Act 1928: 1 acre 34.1 perches from Whakataki 2 (dividing it in two), and 2 roods 7.9 perches from Whakataki 3. The council appears not to have complied with legislation, and it is not clear if it paid.

1980–90s: Māori focus turns to ensuring that they get back land that was taken for public works.
Wairarapa ki Tararua public works takings
CHAPTER 8

PUBLIC WORKS

8.1 INTRODUCTION

8.1.1 Terms of reference
This chapter examines the Crown’s acquisition of Māori land for public works in Wairarapa ki Tararua from the 1850s until the 1980s.

Before proceeding further, we make two points of clarification. First, in public works jargon, ‘a taking’ is a compulsory acquisition of land for public works. Secondly, our focus is very much on public works for which Māori land was compulsorily acquired. We have evidence of a few examples of local bodies negotiating the purchase of land for public works with its Māori owners, obviating the need for it to be taken by compulsion, but these kinds of purchases were not the subject of claims before us, and we have not inquired into them.

8.1.2 Another illustration of powerlessness
The compulsory acquisition of Māori land for public works is a national topic, and this part of our report is about powerlessness at the local level.

Although authorities derived their powers to take private land for public works from legislation formulated for national application, the effect of the exercise of those powers is local. Also, in Wairarapa ki Tararua, it was mainly local authorities that compulsorily acquired Māori land – almost exclusively so in the twentieth century. Thus, for claimants in this inquiry, public works takings were substantially a manifestation of the power of local government. The works for which the land was taken were conceived and implemented in the towns and on the country backroads of this inquiry area. There were no hydroelectric power plants, major motorways, mines, or dams. With the exception of the railway, the public works for which land was acquired were mostly modest undertakings typical of any sparsely populated, predominantly rural region – roads, bridges, and small civic amenities (rubbish dumps, scenic reserves, and so forth). Thus, the whittling away of Māori landholdings by compulsory acquisition for this or that council project is yet another illustration of how powerless Wairarapa ki Tāmaki nui ā Rua Māori have been to control their own immediate environment. They could not even retain ownership of their own ancestral land when a road board, county council, or catchment authority conceived
the idea that it must be pressed into use for a road, flood channel, rubbish dump, or sewage pond.

### 8.1.3 How much land was taken?

The sites required for activities of this kind are usually not large. But, as the timeline shows, there were numerous takings, especially in the nineteenth century, and many involved Māori land.

Compulsory public works acquisitions did not begin until the early 1860s, but Māori land was certainly deployed for roading quite extensively before then. This land was simply pressed into community service, although exactly how much, or precisely how, no one knows.

Our focus is on land that was expressly taken compulsorily. The record of such acquisitions is probably better because of the legislative requirements, but of course it is impossible now even to guess how many takings we do not know about.

Historian Bruce Stirling tallied up 607 acres of Māori land that were compulsorily acquired in this district prior to 1900, and compensation was paid in only a few instances. This total does not include land taken in the Seventy Mile Bush for railways purposes, which amounted to another 587 acres at least (see sec 8.2.6(3)).

However, from the evidence we have seen, we agree with Stirling’s assessment that ‘it is unlikely that all land taken for roading and other public purposes has been identified in the existing research’. In the early period especially, the record is dominated by situations where takings were disputed because papakāinga land was involved or compensation was insisted upon. Stirling comments:

In most instances, the right to take land for roads without compensation, was built in to the Native Land Court title under which almost all Maori land was held by 1900, meaning that the taking of land for roading was such a pro forma exercise that little record may have been generated.

The evidence of compulsory acquisitions in the twentieth century is much fuller, as better records were kept. We relied for much of our analysis of public works legislation and policy on the work of Cathy Marr and her co-authors. Their coverage was not comprehensive but responded instead to the content of the claims. They selected case studies that were important or typical and that otherwise reflected general public works practices and attitudes over time. Except for the Waiohine takings discussed later in this chapter, they chose not to investigate land acquisition for the major river control and flood management schemes in the region. These factors together mean that there is not even an approximate reckoning available of the Māori land taken for public works in the twentieth century.

As to the quantity of land taken for public works overall, Marr was asked at a hearing in Dannevirke in May 2004 for her opinion on ‘the extent to which public works takings contributed to land loss’ in the inquiry district. Her reply was that although it is now impossible to know for sure, she estimated that it was ‘more in the thousands of acres than the hundreds of thousands of acres’.

### 8.1.4 Ahakoa te nui, te mamae

Thousands of acres must be reckoned as a substantial loss to Māori. Even so, the number of acres of Māori land taken for public works is not in itself a reliable indicator of the level of grievance felt by the claimants: ‘ahakoa te nui, te mamae’ (irrespective of the size, the pain caused). Sometimes distress relates as much to the way in which the land was taken. This may be the case when land is taken in the face of owners’ opposition, or without proper (or, in some cases, any) consultation or compensation, or with obvious indifference to the cultural significance of the land.

Importantly, it seems to us that the harm that we find was done to Māori families throughout this region from the compulsory acquisition of their land could easily have been avoided. The small scale of the works for which the land was taken means that it was not really necessary to
take Māori land – these were not strategic works like a hydro dam where engineering requirements make only one site viable. Mostly, they could have gone more or less anywhere. And, because a range of sites would have been suitable, it was also not necessary for the acquisition to be compulsory. Authorities wanting to build public works could have stayed in the market until they found someone who was willing to sell their land for the right price. Today, land for public works is purchased by negotiation, and for the kinds of works in this district inquiry area, this approach would have worked in the past too. But, for about a century from the 1870s to the 1970s, authorities routinely resorted to the compulsory acquisition of Māori land for public works because it was regarded as less trouble, and cheaper, to do it that way. It does not take much scrutiny to ascertain whose convenience was served and it was not the Māori landowners.

8.1.5 Tribunal thinking on compulsory acquisition

Our analysis proceeds from tenets developed by the Waitangi Tribunal in its reports on public works takings in a number of districts.\(^8\) We discuss the Tribunal’s public works jurisprudence more fully later in section 4, but for the purposes of introduction a thumbnail sketch will suffice.

The Waitangi Tribunal began looking at public works and the Treaty in the Te Maunga railways inquiry in 1994. The thinking of that Tribunal was significantly developed by the Ngāi Tahu and Tūrangi township Tribunals in 1995.\(^9\) Since then, Tribunals engaged on public works claims have asserted the fundamental right of owners of Māori land to keep it until they wish to sell it. This is one of the essential guarantees of article 2 of the Treaty and compulsory acquisition is in direct conflict with it. The Crown has sought to argue that the compulsory acquisition of Māori land for public works is an exercise of executive power that is a necessary part of its ‘kawanatanga’ (right to govern) in article 1. But what then of the guarantee that Māori could keep their land until they chose otherwise? The balancing of these competing interests has given rise to important jurisprudence. In sum, the various Tribunals that have considered these matters agree that the compulsory acquisition of Māori land for public works can be justified in Treaty terms only in exceptional circumstances, where the national interest is at stake and there is no other option. This is now the test that every compulsory acquisition must meet in order to be legitimate in Treaty terms. In all other cases, taking land for public works where either consent or compensation is absent breaches article 2 of the Treaty. Tribunals have also found that article 3 of the Treaty is breached where Māori land is taken in preference to general land, because this is a failure to treat Māori like other citizens.

8.1.6 Three questions

Looking at the operation in this inquiry district of the regime for taking land for public works, we have identified three questions that require answers.

The first one is the threshold question, which previous Tribunals have already explored in principle:

*Was the compulsory acquisition of Māori land for public works in Wairarapa ki Tararua consistent with Treaty principles?*

We apply this question to the evidence in this inquiry.

In Wairarapa ki Tararua, it was local bodies that usually took Māori land compulsorily for public works. The Crown argues that a distinction needs to be drawn in Treaty terms between acquisitions undertaken by the Crown and those undertaken by local authorities, because local government is not the Crown but a creature of statute. The Tribunal’s jurisdiction concerns Treaty breaches by the Crown, so we must ask and answer this question:

*When local authorities exercise statutory powers to acquire land compulsorily for public works, what is the Crown’s responsibility?*

Compulsory acquisitions of Māori land usually breach
the Treaty for the reasons outlined in section 1.5, but a simple finding to that effect does not get us to where our jurisdiction requires us to go. We need to look also at prejudice. In order to ascertain how negatively Māori were affected by the public works regime, we need to look into the regime and its implementation. We therefore pose this third question:

Even if the public works taking regime implemented by the Crown was in breach of the Treaty, was the public works regime procedurally fair and were takings carried out in accordance with that regime?

The answers to this question will enable us to assess the extent of the Crown's Treaty breaches and the seriousness of their consequences.

8.1.7 Structure

Thinking about the taking of Māori land for public works has changed enormously in the time since the colony was founded. In those nearly 180 years, many public works Acts have been passed into law, implementing changes in policy great and small. On the ground, down at the council offices where people thought up projects and went about compulsorily acquiring land for them, attitudes and approaches were similarly altering, in response both to local circumstances and to the mood and political imperatives of each passing decade.

We have chosen to divide public works history in Wairarapa ki Tararua in two: the first section deals with the period up to 1928, the second with the period since. The law that was passed in 1928 really spelled the end of a long period in which public works policy and law as it affected Māori land changed quite frequently, as New Zealand grew into a nation state. It also marks the end of the era of the 5 per cent rule (see the sidebar over). The Public Works Act 1928 was an important consolidating enactment that reflected a settled approach to public works that continued for at least half a century.

The two sections each begin with an overview of the historical and legislative context for takings in the period. Case studies follow, chosen to illustrate compulsory acquisitions that were either important or typical, or both. The emphasis is on those acquisitions of most concern to claimants, and the examples cover a range of periods, locations, purposes, and taking authorities. Because there were many takings and because many were poorly documented, we do not discuss every one in detail.

We have, though, made a timeline that seeks to show graphically what was happening on both the national and local scenes down the years since 1840. It plots the material covered in the chapter in schematic and summary form, briefly describing all takings, including those not chosen as case studies. We have also compiled an appendix alphabetically listing all the compulsory acquisitions on which we received evidence.

The chapter concludes with our analysis of the issues raised by the three key questions explained above and with our findings and recommendations.

8.2 The Compulsory Acquisition of Māori Land to 1928

8.2.1 The first 20 years

The legal norm of a Crown right to take land for public purposes – along with protective provisions like the giving of notice, the hearing of objections, the paying of compensation, and a right of offer-back and repurchase – was established in England by the mid-nineteenth century. It was regarded as having been introduced into New Zealand with British acquisition of sovereignty in 1840.10

Early takings in Wairarapa ki Tararua were limited to land for roads. In some cases, the Crown's right to take the required land was written into purchase deeds, such as those at Castlepoint and the east side of Lake Wairarapa. Elsewhere, the Government negotiated the use of Māori land with Māori leaders. There is evidence that some of
the first roads were laid with the support of local Māori, sometimes with their labour.\textsuperscript{11}

However, these cooperative joint ventures between settlers and Māori to push roads into undeveloped country were not the partnerships they could have been.\textsuperscript{12} From the settlers’ point of view, they were often simply a means of getting what they wanted in an environment where Māori communities were still in a position of considerable power.\textsuperscript{13} Arrangements were arrived at that allowed for the use of the land, but they did not really clarify on what terms. Was the land gifted? If leased, how long was it for? Had underlying ownership of the land changed? Difficult questions like these were evaded in the interests of meeting the practical requirements of the moment.\textsuperscript{14} It was ad hoc, and payment was the exception rather than the rule.

In the first 20 years of colonisation, it would have been possible for Māori and Pākehā to establish a mutually acceptable basis for developing community assets. The common-good aspect of contributing land for public works would have sat well with traditional Māori concepts of manaakitanga (sharing) and making resources available for the good of all. Initially, Māori wanted to encourage settlement among them, expecting that mutual benefit would result. This could have formed a basis for Māori and Pākehā to sit together to decide not only where roads needed to go and who would build them (this is what seems to have happened)\textsuperscript{15} but more fundamental concepts. What process should be followed for gaining Māori agreement to contributing land for roads and similar projects? On what basis would land contributed by Māori be used and owned? Involving Māori in establishing a basis for how arrangements would be made that suited the local circumstance would have been so much fairer than the imposition upon them of compulsory acquisition under statute – legal norms that were imported from England without Māori consent or understanding. Those norms had grown up in entirely different circumstances that made them fair for the landowners of England but not fair for Māori landowners, who lacked any political representation and had mistakenly thought their property rights protected by the Treaty of Waitangi.

\subsection*{8.2.2 The first public works legislation}
It was not until the early 1860s that Pākehā settlers began to outnumber Māori. Settlers and their governments became increasingly intolerant of Māori concern about land sales and their desire for consultation about takings for public works. Pākehā in positions of authority became more inclined to impose an official line on Māori and less likely to engage with them on their terms. In our view, this trend indicates that the negotiation about the use of Māori land for public works that took place in the period when towns were being established reflects Māori numbers and power at that time rather than settlers’ respect for and acknowledgement of Māori rights.

Moreover, in New Zealand, the 1860s were war years, and relations between settler and Māori were at an all-time low.

The first general legislation enabling the compulsory acquisition of land was introduced simultaneously with wartime measures like the confiscatory New Zealand Settlements Act 1863 and at a time when Māori were excluded from representation in Parliament.\textsuperscript{16}

From 1860 to 1865, two developments came together that increased the power of authorities to take Māori land for public works. They were the enactment of the Land Clauses Consolidation Act 1863 and the Public Works Lands Act 1864 and the extension of the 5 per cent rule to Māori land through native land legislation (see the sidebar over).

The Land Clauses Consolidation Act 1863 provided the original general machinery for public works takings, but it continued the pattern developed in England of assuming that authority for specific takings would still need parliamentary approval.\textsuperscript{17} In 1864, the Public Works Lands Act was introduced. For the first time, the Government was now specifically authorised to take Māori land (both
The ‘5 Per Cent Rule’ Invidious for Owners of Māori Land

In the early years of the colony, various enactments enabled the Government, when it first sold Crown land in sparsely settled outlying areas, to act within a limited period of time to take a percentage of the land for future roading (later also rail) needs. Some of the normal expectations of compensation did not apply to such land. At first, the rule applied only to land held under a Crown title and was intended to assist in the settlement of the new colony.

It became accepted that 5 per cent of a block could be taken, and the practice continued through a confused tangle of legislative provisions for much longer than originally intended – until 1927, in fact. In this report, we call the practice of taking 5 per cent of a block for road or rail without compensation the ‘5 per cent rule’.

Initially, Māori land was exempt, but the Native Land Acts of 1862 and 1865 extended the rule to Māori land. Once it had gone through the Native Land Court, all land was caught, whether sold or not and at a time when Māori were not represented in Parliament and were not consulted on how the rule would be applied. The rule was then extended into various public works and related measures. It was used to meet Pākehā settlement needs and as a means of forcing the ‘opening up’ of Māori land, regardless of whether Māori wanted roads. Later, the rule was extended again so that customary Māori land (land that had not been through the Native Land Court) could be taken. For most of the period within which the rule applied, the Crown had 15 years after the land was brought before the court to take 5 per cent of it for roading or railways. The Crown was not required to consult with landowners, although they did have some protections: some kinds of land that were occupied or cultivated were exempt, although not areas valuable to Māori like wāhi tapu and eel weirs.

The rule applied inequitably to Māori and settler-owned land. It applied to general land only for five years after sale or survey. And it applied to less and less general land, as districts became more closely settled and surveyed; whereas it applied to more and more Māori land, as it was brought before the Native Land Court. Five per cent of Māori land was routinely taken as it went through the court, and procedural protections and good documentation that would enable monitoring fell away. For owners of multiply owned land, the ability to challenge takings was notional only because of the practical difficulties of doing so. This, and the absence of compensation, probably encouraged the laissez-faire attitude to documentation and procedure.

The impact of the application of the rule to Māori land in its more than 60 years of operation was the effective confiscation of a substantial (but now incalculable) amount of Māori land without compensation.

Crown-granted and customary) for a range of public works purposes. Under this Act, Māori land did not have the same protections as were provided for general land. For example, a proposed public work could simply be notified in an Order in Council and taken without reference to the owner: the normal requirements for notification, objections, and other protections did not apply.¹⁸

Soon after the Public Works Lands Act 1864 came into effect, the Government also began using the 5 per cent rule to take Crown-granted Māori land for roads under the Native Land Act 1865, without compensation. The rule later extended to railways and was repeated in public works Acts and related legislation as well (see above).

In terms of authorisation for public works, a great deal was going on in this period. Statutes provided compulsory acquisition powers to central government that were later extended to local government (see below). There were different provisions for customary land and land that had a Crown-granted title. The 5 per cent rule also ran in parallel with the public works powers, but different kinds of protections, procedural and substantive, accompanied the application of the 5 per cent rule and the public works Act.
powers. For instance, pā land could be taken under public works legislation but not under the 5 per cent rule. According to the report written by Cathy Marr and others, all of this created:

a climate of confusion (and opportunity) that appears to have been a significant factor in promoting the general view among taking authorities that Māori land was a cheaper and often easier option to take when land was required for public purposes.

The case studies will show that this perception persisted right up to recent times.

8.2.3 The extension of compulsory acquisition powers to local authorities

At the same time as the 5 per cent rule was developed, central government began another major trend of conferring compulsory acquisition powers on local authorities, including powers in respect of Māori land. The Provincial Compulsory Land Taking Act 1866 enabled provincial governments to take land for general public purposes without requiring a separate Act of Parliament each time. The powers initially extended only to Crown-granted Māori land, but local authorities’ powers were consolidated and amplified in the Public Works Act 1876, and their greater ambit included the power to take customary land for public works purposes.

The wider powers of local authorities were little supervised by central government, giving the authorities free rein. Māori themselves were not knitted into the settler system in any way that would enable them to ameliorate the exercising of those powers. They were not represented on road boards, harbour boards, provincial councils, county and borough councils (after 1876), or (later still) river boards and drainage boards. As local authorities’ powers increased to rate Māori land and to take it compulsorily for public works, antagonism between them and Māori communities grew. This was no doubt exacerbated by the trend for local authorities to use their power to take over from Māori operators transport nodes like bridges, ferry crossings, and toll gates.

In the 1870s, Donald McLean created a system whereby officials from the Native Department negotiated with Māori communities over public works requirements, especially where tensions erupted over the imposition of powers without consultation. One such occasion occurred in Wairarapa, where considerable conflict broke out in the 1870s in relation to the Te Ore Ore road (see sec 8.2.6(1)). Government officials were apparently successful in negotiating a solution. But, by the late 1870s, this mediatory policy was abandoned as settlers and the Government felt more confident about imposing public works provisions without the need to propitiate Māori. This was the legal and policy context for the taking for road and rail at Kōpuranga (see sec 8.2.6(2)). It was an environment within which Māori interests were seldom served, especially when local government managed the process. According to Marr et al:

Local authorities were often clearly unresponsive or even antagonistic to Māori concerns. However, they also lacked the funds and expertise of central government and still had to find their way through the tangle of legislative provisions open to them. Many were chronically short of funds and when placed in a government-created environment of legislative confusion, inadequate monitoring and discriminatory provisions concerning Māori land, it is hardly surprising that councils chose what often appeared to be the easiest and cheapest option for public works – Māori land.

In Wairarapa, conflicts about this set of circumstances began in the 1870s, and tensions continued well into the twentieth century. In fact, takings for roads in places like Castlepoint and Palliser Bay extended over many decades and provided a theatre for conflict over consultation and compensation (see secs 8.2.6(4), 8.3.6(1)). The Tautane reserve road was a case where a taking by a road board responded fully to the concerns of Pākehā farmers and much less to those of the local Māori community. It
also showed that, compared with local authorities, central
government agencies (which were involved in the survey)
were much more willing to contact local Māori and inform
them about what was happening.\textsuperscript{29}

\subsection{8.2.4 The public works boom}
The 1870s saw a policy programme of expanded popu-
lation through assisted immigration and accompanying
public works growth to meet the needs of the growing
numbers of New Zealanders. The extended legislative
provisions enacted in this period were ‘clearly aimed at
meeting settler interests as Māori were increasingly eco-
nomically and politically marginalised.’\textsuperscript{30} The emphasis on
the development of the settler economy left little room for
Māori interests, especially when they conflicted with the
perceived needs of settlement. All the major public works
Acts referred to the right to take Māori land for road and
rail without compensation (the 5 per cent rule).\textsuperscript{31}

In this district inquiry, as European settlement expanded
across the region, there was a growing need for more and
different kinds of public works. The construction of the
Wellington to Napier railway, much of it through dense
bush and deep ravines, was a major undertaking requiring
special legislation to allow the acquisition of land along the
route.

The passage of Acts such as the Immigration and Public
Works Act 1870 and the Public Works Act 1876 were a
reflection of the settlers’ energy and enthusiasm for cre-
ating and expanding infrastructure like roads, bridges,
ferries, water supplies, and, especially, railways. The pro-
cedural protections were requirements for public notifi-
cation, the consideration and hearing of objections, and the
payment of compensation, although the enthusiasm for
railways meant that the protections were fewer. Each new
project required a special Act of Parliament. There were
no obvious differences in the treatment of Māori and gen-
eral land for public works takings, except that a surveyor
required the written permission of the Native Minister
before entering Māori customary land.\textsuperscript{32} However, perhaps

unintentionally, some of the provisions may have impacted
more negatively on Māori. For instance, the Public Works
Act 1876 ‘contained a measure that all roads in public use
were to be declared vested in the Crown (s 80). This meant
that many traditional roads that Maori had allowed settlers
to use now automatically became Crown roads and Crown
land without compensation.’\textsuperscript{33}

Such a provision was repeated in legislation well into the
twentieth century.\textsuperscript{34}

\subsection{8.2.5 Discriminatory treatment for Māori land}
The Public Works Act 1882 was significant. Passed soon
after the Government crushed the Māori passive resis-
tance movement at Parihaka, this Act reflected the more uncom-
promising attitude that would be applied to the taking of
Māori land for public works in coming decades.\textsuperscript{35} While
many of its provisions relating to general land were similar
to 1870s legislation, it contained separate – and, according
to Cathy Marr, ‘explicitly discriminatory’ – provisions for
taking and paying compensation for Māori land. The kinds
of works for which land could be compulsorily acquired
now extended to surveys, tramways, drains, harbours,
docks, canals, mining works, telegraph, lighthouses, and
buildings.\textsuperscript{36}

Throughout the 1880s and 1890s, there were numer-
ous amendments to the Public Works Act 1882. Some of
the harsher measures in the Act were later moderated, and
some of the protections provided for general land were
extended to Crown-granted Māori land (although not to
customary land).\textsuperscript{37} However, the inclusion of separate pro-
visions for Māori land in general public works legislation
was now well established and would endure for decades.
It is likely to have further encouraged authorities in the
belief that Māori land was ‘generally easier and cheaper to
take, with generally less consultation required and only the
minimum of protections.’\textsuperscript{38}

The Public Works Act 1894 was described in parlia-
mentary debates as being mainly consolidatory, but its
particularly poor drafting created a climate of confusion
Procedures for Taking Land

For much of this period, when land was taken under public works legislation, the taking authority generally had to ‘gazette’ the taking – that is, to place a notice in the New Zealand Gazette, the official newspaper of the Government. The notice had to stipulate the nature of the proposed public works and describe the lands required. Anyone affected by the proposal could send ‘well-founded objections’ in writing within 40 days of the first publication. Any objections had to be duly considered, and the taking needed the consent of a Minister or local authority to proceed. However, these procedures were not always observed for Māori land, for the following reasons:

- Māori land might be taken under a range of Acts other than public works legislation, such as the successive Native Land Acts. Their provisions for notification, consent and compensation were different from public works Acts and were not always consistent.
- The Public Works Act 1882 empowered the Crown to take any Māori land under any title for a Government work by an Order in Council, without complying with any of the normal protections and requirements, such as those for notice and objections. (After 1887, this provision applied only to customary land.)
- Takings of customary land were treated differently from Māori freehold land. For example, section 2 of the Public Works Act 1894, which required the taking authority to call for objections to any proposal, applied only to Māori freehold land, not customary land. Later, customary land could be taken for public works without public notification if it was not registered under the Land Transfer Act 1915, which, usually, it was not.
- Under some legislation, the Crown could simply declare as a public road any road over native land that had been used as if it were a public road (eg, section 384 of the Native Land Act 1931). There was no requirement for notification.

Even when statutory procedures were complied with, Māori landowners did not always know about proposed takings. In the early years, this might be because the land was not fully described in the Gazette notice. Later, the taking authority had not only to gazette a proposed taking but also to serve notice on all people with an interest in the land (required under part 2 of the Public Works Act 1928). Māori owners might still remain unaware because taking authorities often found this requirement ‘too cumbersome’ if the land was in multiple ownership.

about how Māori land was to be treated. The Act excluded ‘Native land’ from ordinary procedural protections, but it was not clear whether ‘Native land’ was only Māori customary land or whether it included Crown-granted land as well. This confusion continued into the twentieth century: in 1909 a Supreme Court judgment called the definition of ‘Native land’ in the Public Works Act 1894 ‘insensible’.39

In order to take customary land, only a certified map and a Gazette notice was required before proclamation by Order in Council.40 For Crown-granted Māori land, however, the regime continued more or less as previously. Compensation for Māori land was a separate scheme. Where land was taken by local authorities, it was up to them to apply within six months of a proclamation to have the Native Land Court determine any compensation. This took the initiative out of the owners’ hands and led to delays.41 Sometimes, the owners may not even have been aware of a hearing. There are examples in the cases presented to us of owners not attending hearings – the Dannevirke gravel pit case, for example, and also the Tautane road taking (see sec 8.3.6(5)).42 The explanation may be that they did not know what was going on. The Native Land Court relied heavily on estimates provided by taking authorities, and generally low compensation seems to have resulted.43

Over the next couple of decades up to the passage of
the 1928 Act, the pattern established in the 1890s continued. The definition of 'public work' continued to widen. The 1908 Act brought in road frontages and road access, land for forest plantations, recreation grounds, and land for the preservation of scenery. The expanding definition provided ever-greater opportunities for the compulsory acquisition of Māori land: the takings for the Mākirikiri scenic reserve are a good example (see sec 8.3.6(5)(d)).

Finally, a feature of this period was the general disinclination to offer land back to Māori owners once it was no longer required for the original purpose. Māori expected land to be returned when it was no longer needed, and this was one of the premises of compulsory acquisition when the principles were developed in England. Arguably, it might have been expected to apply even more forcibly to Māori land, given the guarantees of the Treaty and given that compensation was not paid for some land taken, most notably under the 5 per cent rule. But we heard that ‘in the period up to 1928 in particular almost any alternative public purpose was considered preferable to returning land to Māori ownership’. The strong development ethos of the time, together with the settler view that Māori land was an inferior title to be extinguished as quickly as possible, may also have worked against offer-backs. Certainly, legal provisions increasingly limited the duty to offer land back to situations where surplus land was not required for other public purposes.

8.2.6 Case studies
The following case studies illustrate how the legislative regime described thus far shaped the taking of Māori land for public works in Wairarapa ki Tararua in the period up to 1928.

(1) Te Ore Ore road takings
On the Īkuru block on the flat, fertile Te Ore Ore plain near Masterton, there was a track known as Luxford’s line, which was used by upper Taueru and Moroa settlers from the 1850s. The first sign of trouble came in 1870, when Māori threatened to cut down the bridge over the Whangaehu just beyond Te Ore Ore. We have no information about why this threat was made, but later newspaper comments indicate that the owners of the Īkuru block were gardening there. The newspaper reported that the road was ‘being rapidly encroached upon by Māori cultivations’.

As at 1870, no steps had been taken to formalise Luxford’s line as a road, but the intention appears to have been to do this as soon as the block went through the Native Land Court. To this end, surveyors were sent in to plot the road line. They met opposition from a group under Wi Waka, and a confrontation ensued. It appears that only the intervention of local rangatira Mānīhera Rangitākaiwaho and Ihāia Whakamairū averted an escalation of the conflict.

The Masterton Highway Board sought assistance from the provincial government in 1873, but because the Īkuru block was still customary Māori land, the provincial government considered it could do nothing. Progress stalled while the board then sought assistance from central government. In August 1876, reports were sent to Wellington stating that Māori were now threatening to destroy another bridge over the Whangaehu. This prompted action. The Native Department referred the matter to Government agent Edward Maunsell, who reported in September 1876 that he had seen Wi Waka, who was claiming compensation for the road to the bridge since it passed through his land. Maunsell reported further to the Native Department in 1876 and 1877, seeking guidance on how to take things forward in relation both to Wi Waka and to other land near Te Ore Ore that was also required for roading. Exchanges between Maunsell and the department stuttered along, with Maunsell apparently unable to make headway in gaining Māori owners’ agreement to their land being taken for the road. Even after high-level intervention by the Native Minister, John Sheehan, who visited Wairarapa more than once and raised this issue with the Wairarapa kōmiti at Pāpāwai, there was no progress. No record exists of what Māori thought of what
The Late Manihera Rangitakaiwaho.

On Saturday night last, at Papawai, near Greytown, Manihera Rangitakaiwaho, a native chief, died, who was well-known throughout the whole of the Wairarapa as one who had been a firm friend to the Government during the native disturbances that troubled the colony some years back. The following particulars will be interesting to many of the settlers, especially those who have spent their best days in the district.

Manihera was born in the Wairarapa and at an early age was sent to Missionary Williams’ school at Waerengaahika, Gisborne, where he received a fair secular and religious education. Before he got through his studies Tutapakihirangi, then chief of the Wairarapa, in 1841, went and brought him home. It was owing to this chief’s influence we were told that Messrs Bidwill, Clifton, and Caverhill, were enabled to take up land in the Wairarapa, and it was he who instructed Manihera in order that he might take his place as chief of the tribe. After Tutapakihirangi, who was drowned at the mouth of the Lake in 1846, Manihera became chief and with the above European settlers successfully managed affairs. Sir Donald McLean aided Manihera and backed him, Wi Kingi and Raniere up in their work. Through these three natives the Government succeeded in getting the native lands for sale. Manihera and Ihai were the first natives in the Wairarapa who were allowed to sit upon the bench to watch the interests of their own people. Manihera worked amicably with Sir Donald McLean all through the troubled times and it was by the influence of the former that the Government got land outside his own district; he went to Napier and induced Taraha and Hapuku, two notable chiefs, to open up the land in the Hawke’s Bay district.

It was principally through their influence that the Wairarapa settlers escaped trouble during the war with the natives in Taranaki and other parts. Nearly every Maori at that time joined the Hauhaus and the Maori King, and there was much bitter feeling displayed towards Europeans, but Manihera stood firm and would not allow himself to be drawn into fighting, and though “the relations were strained” the district enjoyed peace all through. Many years ago Manihera gave 400 acres of land to the Government upon which to erect a native college or school. It was the spot where Mr Varnham at present resides. Manihera always considered that the Government had not acted straightforward in this matter and during his last days he often spoke of the alleged agreement to erect the building not being carried out. Manihera was one of the first Native Lands Court assessors appointed, and was also appointed to act with the Native Commissioner in all questions relating to Native Affairs. It was through him that the roads running through the Te Ore Ore blocks—the one to Castle Point and the other to the Taueru—were passed through the Court. In connection with this business there was nearly fighting, the Masterton natives being strongly opposed to the opening up of the roads. The Hauhaus natives built a fighting pah called Takitimu at Masterton. The West Coast and Hawkes Bay Hauhaus came to this pah and succeeded in getting nearly all the Wairarapa natives to join them. The situation was critical and the troopers were called out. The Hauhaus refused to leave and fighting seemed unavoidable, when Manihera and Ihai asked Mr Wardell and the commander of the troopers for three days’ grace and they would do their best to stop any fighting. These two chiefs went to the pah and they succeeded in persuading the Hauhaus to leave the district. All through Manihera has been loyal to the Government. Sir George Grey recognised this and some years ago paid a visit to Manihera at Papawai, when there was a great meeting. Manihera lost his first wife at Gisborne; by her he had fourteen children and out of that number only three survives. By his present wife he had eight, but they are all dead. The whole of his deceased children are buried at Papawai; where for the last few years, he has been living in quiet retirement. He grieved much over the deaths in the family and never appeared to be living apart from the remembrance of them. His second wife is still living. For about twelve years he has been suffering with hereditary scrofulous consumption, and medicines were of no avail. A little after 10 o’clock last Saturday night he breathed his last. He was a very abstemious man and his knowledge of scripture would put many a European Church member to the blush. There has been great mourning over his death and large numbers of Maoris from all parts have visited Papawai to hold the customary tangi over the dead.

Manihera has left a will in favor of his wife, daughter and two sons. The power of chief he has delegated (as is customary among the Natives) to Wi Mahupuku, who will see to all matters connected with the tribe. The questions relating to land in dispute between the Natives and the Government has been delegated to Wi Mahupuku and J. A. Jury.

Telegrams announcing the death have been sent to Mr Ballance, the Native Minister, Major Kemp, Henare Tomoana, late M.H.R., Renata Kawepo (both of Napier), Henera Matua, of Porangahau; Henare Potae, of Gisborne, Sir George Grey, and Mr Wardell. A large number of invitations have also been sent to old settlers in the Wairarapa.

In consideration of the services rendered to the Government in the troublous times in the past by Manihera we think his memory should be perpetuated in some way, and we would suggest that the present administration should erect a monument over his grave.

Wairarapa Standard obituary of Mānihera Rangitākaiwaho, 10 June 1885

was happening, but they remained opposed while agitation for the road steadily grew in the settler community. Tensions ran high.

Then, in May 1878, there was a sudden breakthrough. In a deal arranged by the resident magistrate, Herbert Wardell, Māori apparently agreed to the compulsory acquisition of 271 acres from the Ōkurupatu block for a road. Little detailed evidence of the agreement remains, but a mutually acceptable road line seems to have been arrived at, with the cost of fencing to be met by the Government.49

While compensation for some of the land had been paid to owners by January 1879, the specifics are murky. Disputes over compensation and title dragged on for some time. Ihāia Whakamairū, who had helped to avert open conflict when tensions ran high in 1878, wrote a letter threatening to block the road to Taueru unless they
Maunsell appears to have sorted it out, because on 18 June 1880, Ihaia wrote saying that they were no longer proposing to close the road.

An obituary later credited Maunsell with achieving agreement to these roads passing through the Te Ore Ore blocks – although according to another commentary, this was ‘only at the price of earning the enmity of the Te Ore Ore people.’ Disputes about compensation carried on, though, and these fell to Wardell to handle. There were differences between hapū with interests in the land as to who was entitled to what compensation. Wardell effected settlement only after about a year of negotiations.

Exactly why the roads at Te Ore Ore were so hotly disputed is not really revealed in the account presented to us. This does not seem to be a case (as others were) where there was neither consultation nor compensation. Perhaps it was that the early steps to change the road from a track across Māori land to a formal road were poorly taken at a time when Māori still expected their rights as owners of customary land to be accorded respect. It is difficult to tell whether the stakes were so high because of bad management of the process on the settler side or because Māori fiercely opposed the road for other reasons. What those reasons may have been is only hinted at in the record. The road ran through a kāinga on the Te Ore Ore block, which may have caused disruption, and perhaps it also passed across areas particularly prized for producing crops. Because their land was close to Masterton, Māori would presumably have wanted to use the road themselves to transport crops from their large māra (cultivation areas) to market. However, the pre-existing track would have sufficed for this purpose. It would be unsurprising if they simply saw no further benefit to them from having the road formalised and were therefore unwilling to agree to give up ownership of the land for the purpose, particularly if the road was high-handed. Certainly, 271 acres is a great deal of land to lose from a flat, fertile, well-located block. We cannot really tell why so much was required: the 271 acres taken from the 5500-acre Ōkurupatū block were the largest single taking for public works in Wairarapa ki Tararua. This was a period in which there was no power to take Māori customary land by compulsion, so that option was not available. Negotiation was the only means of securing the land wanted for the project. Even though Māori were adamantly that they did not want to give it up, and went to some lengths to demonstrate that unwillingness, their objections were nevertheless overcome. We have no information that really tells us how this was achieved. The owners at least received compensation for their land, in a period when compensation for road takings was probably the exception rather than the rule.

This case study shows that, even when Māori owners of customary land were adamantly opposed to their land being taken for roading, their rights as owners were not respected. The challenge for the settler government was not to find another way forward but to devise how best to overcome the owners’ objections. This is a reality very far removed from the ‘tino rangatiratanga’ (full chiefly authority) promised by the Treaty.

(2) Kōpuaranga road and rail takings

By the 1880s, the law had changed, and the Government could compel customary land into the Native Land Court for a title investigation under the Public Works Act 1882, even when the owners opposed it. That was what happened in the following case.

In the late 1880s, the Crown sought to buy 16 acres of customary land at Kōpuaranga for the expansion of the railway and roads. The land was part of a 210-acre block set apart as a reserve in the 1853 Manawatū–Wairarapa deed. The land was acquired in two stages. One portion was taken for the railway in 1887, another for roading in 1888.

In 1892, the Government asked the Native Land Court to determine title so it could pay compensation to the owners of the 16 acres. To do so, the court required the entire Kōpuaranga reserve to be surveyed. Members of Ngāti Noti and Ngāti Pōhatu were awarded title over the block, which was then partitioned in two. Although compensation was paid to the owners, the costs of the survey and
partition were charged against the block. With interest, these costs swallowed up half the payment.\(^5\) Moreover, in order to effect this taking, the much larger parent block was forced through the court and thus acquired Crown-granted title. This made it easier to partition for subsequent purchase.

Thus, the Government wanted to acquire land at Kōpukaranga for important public works – a situation that should have put the landowners in a position of strength. Instead, everything that ensued was on the Government’s terms. The Government imposed survey and partition as a pre-condition to acquiring the land, yet it was the owners who had to pay the costs of both. An important consequence was that, through no desire of the owners, the large parent block went through the court and was thus more easily able to be purchased.

\(3\) **Seventy Mile Bush railway takings**

The taking of land in the Seventy Mile Bush area was ostensibly dictated by the construction of the railway from Wellington to Napier. However, according to historian Peter McBurney, the railway was only part of an unstoppable drive ‘to acquire the whole of the Bush district from Māori, in order to push through the railway and make the land available for settlement.’ As a result, Māori aspirations to hold on to their land – particularly the Mangatainoka block – ‘were never going to be accepted by Government officials, given that it represented some of the best land in the district and stood in the path of the proposed railway.’\(^5\)

The construction of the railway began in 1871, but progress was painfully slow. There were repeated delays during the 1870s because of the engineering challenges presented by the terrain, and construction stopped in the 1880s when the country was gripped by economic depression. It was not until 1897 that the last section of the line, between Eketāhuna and Woodville, was finally completed.

Construction reached the Seventy Mile Bush area in the late 1880s. The proposed route passed through several reserves still in Māori ownership, and these lands were compulsorily taken for public works – either under special legislation (the Railways Act 1871) or pursuant to public works Acts.

The table over gives 19 examples of takings for railways, totalling a little over 587 acres. It appears that compensation was paid for the majority of them, but as McBurney told us, compensation was usually very slow, sometimes taking years. In the case of the 17 acres taken from Tahoraiti 2 block 3, the block was already subject to a Crown grant and was therefore outside the Native Land Court’s jurisdiction. Consequently, the court dismissed the Māori owners’ application for compensation in 1887. We do not know whether they ever did receive any compensation.

The result was that, by one means or another and whether paid for or not, land in Seventy Mile Bush was steadily taken in the latter part of the nineteenth century, including land that was particularly fertile and favoured for retention, as in the case of the Mangatainoka block.

We note also that the Crown disposed of surplus railway lands in the 1980s without protection of Māori interests. Former owners theoretically had a right of repurchase under section 40 of the Public Works Act 1981 and section 23 of the New Zealand Railways Corporation Restructuring Act 1990, but it is unclear how punctiliously authorities complied with these provisions. It was not until 1991 that the Railways Corporation began to consider disposals of surplus land in the light of Treaty claims.\(^6\)

We do not know whether land in this district that was compulsorily acquired for railways was subsequently on-sold as ‘surplus’ without reference to the original Māori owners, and it is difficult to obtain this information. Cathy Marr and her co-authors told us that:

> a major issue still appears to be the difficulties and expense in tracking documentation of disposals in practice. Most agencies claim they need to hire and charge for consultants for such purposes and the split of records amongst various agencies as a result of restructuring and the contracting out of responsibilities to private providers and agents has apparently added to these difficulties.\(^7\)
<table>
<thead>
<tr>
<th>Date of taking</th>
<th>Date of compensation</th>
<th>Block</th>
<th>Area taken</th>
<th>Compensation paid</th>
</tr>
</thead>
<tbody>
<tr>
<td>20 November 1883</td>
<td>19 September 1885</td>
<td>Mangatainoka 1B</td>
<td>10a 1r 20p</td>
<td>£ 50</td>
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<tr>
<td>12 May 1884</td>
<td>Unknown</td>
<td>Tahoraiti 2 block 3</td>
<td>17a 1r 14p</td>
<td>Unknown</td>
</tr>
<tr>
<td>12 May 1884</td>
<td>3 October 1888</td>
<td>Umutaoroa*</td>
<td>1a 1r 23p</td>
<td>£ 15</td>
</tr>
<tr>
<td>9 June 1885</td>
<td>21 April 1887</td>
<td>Otanga</td>
<td>43a 3r 29p</td>
<td>£ 65 14s</td>
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<tr>
<td>9 June 1885</td>
<td>21 April 1887</td>
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<td>44a 3r 22p</td>
<td>£ 67 19s</td>
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<tr>
<td>9 June 1885</td>
<td>21 April 1887</td>
<td>Te Ohu</td>
<td>81a 3r 31p</td>
<td>£123 15s 9d</td>
</tr>
<tr>
<td>23 March 1888</td>
<td>6 December 1888</td>
<td>Ōrangi Wiariuhe</td>
<td>85a 0r 31p</td>
<td>£132 15 6p</td>
</tr>
<tr>
<td>23 March 1888</td>
<td>Unknown</td>
<td>Tahoraiti 2</td>
<td>28a 1r 21p</td>
<td>Unknown</td>
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<tr>
<td>1 July 1888</td>
<td>14 April 1892</td>
<td>Eketāhuna reserve</td>
<td>16a 2r 30p</td>
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<td></td>
<td></td>
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<td></td>
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<tr>
<td>19 February 1889</td>
<td>25 October 1889</td>
<td>Mangatainoka 1BC2</td>
<td>13a 2r 23p</td>
<td>£104 10s</td>
</tr>
<tr>
<td>19 February 1889</td>
<td>Unknown</td>
<td>Mangatainoka 1BC4</td>
<td>12a 1r 30p</td>
<td>Unknown</td>
</tr>
<tr>
<td>19 February 1889</td>
<td>25 October 1889</td>
<td>Woodville section 200, block 8</td>
<td>11a 0r 12p</td>
<td>£ 55</td>
</tr>
<tr>
<td>28 February 1890</td>
<td>12 December 1891</td>
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<td>64a 1r 0p</td>
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<tr>
<td>29 December 1893</td>
<td>20 February 1896</td>
<td>Mangatainoka K2</td>
<td>31a 0r 13p</td>
<td>£ 55</td>
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<td>20 February 1896</td>
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<td>12a 2r 31p</td>
<td>£ 76 3s 3p</td>
</tr>
<tr>
<td>29 December 1893</td>
<td>20 February 1896</td>
<td>Mangatainoka 1BC2</td>
<td>18a 2r 25p</td>
<td>£149 50s</td>
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<tr>
<td>19 October 1895</td>
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<td>Āhuatūranga reserve†</td>
<td>22a 2r 0p</td>
<td>£180</td>
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<tr>
<td>28 January 1897</td>
<td>28 January 1897</td>
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<td>48a 1r 7½p</td>
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<td>23a 2r 38p</td>
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<td></td>
<td></td>
<td>587a 3r 80½p</td>
<td>£1824 75 3p</td>
</tr>
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</table>

* Umutaoroa was also referred to as Manawatū† Napier minute book, vol 12, pp 171–177
† Āhuatūranga reserve was known as Woodville section 200, block 8: New Zealand Gazette, no 78, 24 October 1895, p 1665; Napier minute book, vol 41, 21 January 1897, p 115

Takings of Māori land for railway purposes in Seventy Mile Bush

(4) Castlepoint road takings

Māori land in the Castlepoint reserves was first taken for roads in the 1880s and was still being taken for road realignments 100 years later. The research makes no attempt to tally the number of acres taken, but it appears from our calculations that it was at least 50 acres. However, this is probably a gross underestimate because the records for some early takings are scant. For instance, it is not clear when or how much was taken from the Whakataki reserve for Tinui Valley Road. No file record of the 1898 taking from the Mataikoana reserve was located, so nothing is known about that either. These are only two examples of takings about which almost no information is now available.

The Castlepoint deed of 1853 specifically envisaged roads being laid over the reserves that had been set aside for tangata whenua. The deed dealt with the issue summarily but seemed to envisage that no compensation would be
Hōri Herehere and the Road to Manawatū Bridge

In 1890, a dispute arose about taking Māori land for an approach road to the Manawatū Bridge. The Dannevirke Road Board did not talk to the Māori owners before commencing the survey that would allow the road to proceed.

Hōri Herehere (right) and other locals tried to get the road board to listen to their concerns, and when it would not, they pulled up the survey pegs.

Herehere was convicted under the Public Works Act 1882 but appealed, arguing that, while his people had not opposed the use of an earlier route over their land, due process had not been followed for the construction of the new road. The chief justice quashed his conviction, agreeing that the local body had not obtained the special authority it needed to take the land. Herehere consented to the work going ahead after two local businessmen effected a rapprochement between the board and the Māori landowners.

The Bush Advocate reported that Herehere ‘gives his good wishes to the whole people of Dannevirke, and would like it known that if he had been applied to in the first instance no difficulty would have been raised’ (emphasis added). This is a contemporary expression of how, for Māori, the issue was sometimes really about proper process and respect rather than opposition to the public work.

paid for land needed for roads when the Governor decided to construct them. Arguably, it would have been expected that further discussion would take place as to where and when the roads would be laid. However, these provisions in the deed were not relied on later and may have been forgotten. Instead, first the Crown and later road boards used public works legislation to take land compulsorily and usually without consultation or negotiation. In some cases, it is uncertain whether compensation was paid. Typically, the roads were already formed and in use when the land was acquired.

In this early period, when Māori objected to roading it was typically not because they opposed development but because of the way the authorities went about it. Māori did not like works being undertaken by road boards and other local authorities without consultation. The evidence shows that the taking authorities usually complied more or less with the requirements of the public works legislation, but it is not at all apparent that compulsion was really required. The Castlepoint deed probably authorised the Crown to use the reserve land for roads, although so many years after the signing of the deed, consultation would have been required about how, where, and when. However, acquisition by compulsion was the order of the day as far as the local authorities were concerned, and that is how matters proceeded for the building of the several country roads that impinged on the Castlepoint reserve land.

Except in the case of Mātaikona Road, there is no evidence that the owners of the Castlepoint reserve land were consulted. There is little surviving record of objections, but it is difficult to know what to make of that. Because of the failure to involve the landowners before the commencement of the process to take the land and form the road, they would often have been confronted effectively with a fait accompli, rendering objection pointless. It is also possible that they knew about the content of the Castlepoint deed and thought that this gave the authorities a right to form roads over reserve land. There is fragmentary evidence of only one instance of opposition. In 1874, Tapetu Matene wrote to the Masterton Highway Board, objecting to the line of the road through the Whakataki reserve. We lack contextual material to explain the
The background to this objection, nor do we know whether it generated any response.

Compensation appears to have been paid to owners in some instances – records show the Native Land Court awarding £25 in 1908 and £2 10s in 1929 for takings from the Whakataki reserve. In other cases, though, it appears that compensation was not paid.

The example of the roads through the Castlepoint reserves illustrates with what casual ease a local board could take Māori land over a long period, what poor records were kept, and how little the owners were engaged in the process. It cannot be inferred simply that the owners were happy for their land to be continually nibbled away for roading. But, apart from one lone objecting voice, we now have no way of knowing what the owners thought, because the legislation did not require the authorities to engage with them and there is no record of their response.

It was as though the land was freely available for the highway board’s purposes.

The public works regime simply denied owners of multiply owned Māori land the dignity and authority accorded owners of general land.

8.3 The Compulsory Acquisition of Māori Land since 1928
8.3.1 Introduction
The Wairarapa ki Tararua public works takings of the earlier period were mainly for roads and railways. These purposes remained important in the twentieth century, but now land was also acquired for local amenities (rubbish dumps, sewage ponds), scenic reserves, recreational facilities, and an aerodrome. Once the power of local
authorities to take land compulsorily for public works was confirmed in the last quarter of the nineteenth century, local councils and boards gradually became the main taking authorities. In the twentieth century, central government was only rarely the initiator of public works activity in this inquiry district, but it was not uncommon for the Public Works Department to work behind the scenes to support and advise local authorities.

In the early part of the century, the practice of formally acquiring land already being used for roads persisted, and the 5 per cent rule continued to be applied in some instances. As the case studies illustrate (see sec 8.3.6), there was often little consultation with owners whose land was compulsorily taken, and documentation of what really happened is now hard to find. It is not always possible to ascertain whether compensation was paid.

In 1927, Ngata had enough influence to repeal the discriminatory 5 per cent provisions. As then Native Minister Joseph Coates informed the House, the time had come when Māori should have the same right as Pākehā in claiming compensation for land taken for public works – a principle that no one in Parliament was prepared to challenge.68

Meanwhile, there were considerably fewer protections for Māori customary land.59 (There was presumably little remaining customary land in this inquiry district by this period, although we had no evidence on that point.)

Although theoretically land no longer required was to be offered back to those from whom it was originally taken, in practice local authorities remained averse to returning land to Māori, and in practical terms, vesting land in Māori ownership was difficult.70

Separate compensation provisions continued for owners of Māori land, with the Native Land Court continuing to determine all compensation for all kinds of Māori land. The court had enormous discretion as to how much should be paid and to whom.71 The judges of this court were not expert valuers, of course. By contrast, the valuation of general land was referred to the Compensation Court, which was expert in this field.

The Public Works Act 1928 made provision for taking by agreement and purchase, as well as by compulsion. For non-Māori land, the trend was for acquisitions for public works to be negotiated, but for Māori land the opposite was true. The Act did not allow negotiated purchases for customary Māori land, but the provisions encouraging negotiated purchases did apply to Crown-granted Māori land. Perhaps the separate section for Māori land in the Act may have encouraged the continuing view that such land was different, and easier and cheaper to take for public works. Māori land was dealt with in a discrete part of the Act with separate provisions until 1974.72

By the time the Public Works Act 1928 was passed, there was in fact very little Māori land left in New Zealand, and this inquiry district was no exception. As a result, ‘Public works takings . . . represented a relatively significant encroachment on remaining Māori land even when they involved relatively small areas.’73 Cathy Marr and her co-authors described for us how many Māori thus increasingly resented their land being taken for public works, and resented too the lesser protections available to them compared with other landowners. Local authorities continued to view the compulsory acquisition of Māori land not only

8.3.2 The Public Works Act 1928

Although the 5 per cent provisions were removed, nothing else substantial changed. The consolidating Public Works Act 1928, which became the principal public works Act for the next 50 years, continued the patterns, principles, and views that were in place previously, including separate provisions for taking Māori land. As originally enacted, the statute treated Māori freehold land much like other land (although under a separate section). But a 1931 amendment provided that a Gazette notice was the only notice of compulsory acquisition required for Māori land not registered under the relevant land transfer Act. By contrast, owners of general land had to be notified individually. The lesser requirement for notice to owners of Māori land meant, in practice, that there was less opportunity for them to object.
as a cheap and easy way to meet their public works needs but also as a means of ‘solving’ problems with multiply owned Māori land (such as failure to pay rates, poor economic utilisation, and weed infestation).²⁴

The situation was not helped by the passage of the Public Works Act 1954, which removed offer-back provisions altogether. Compulsorily acquired land that became surplus was auctioned by public tender. Māori land gifted for public purposes was excepted from this regime by virtue of section 436 of the Māori Purposes Act 1953. But revesting happened rarely in this period, and the failure to recognise the rights of former owners was criticised by both Māori and Pākehā. The offerback principle was eventually reintroduced by the Public Works Act 1981.

### 8.3.3 Changing attitudes

As the century unfolded, Māori were more and more conscious of their exclusion from decision-making about public works projects affecting their land. Attitudes changed gradually, but finally, by the 1970s, Māori landowners were unwilling to accept authorities’ indifference to their strong desire to hold on to their still-declining landholdings, lack of consultation, lack of real opportunity for objections to be heard, and failure to offer land back.

Many will vividly recall how, in the 1970s, matters came to a head, symbolised by Dame Whina Cooper’s land march and the occupation of Bastion Point, which were part of a general consciousness-raising about Māori rights under the Treaty. Protests on related topics continued into the early 1980s, gathering momentum during the 1981 Springboks rugby tour. The compulsory acquisition of Māori land – and the failure to return it once it was no longer used for its original purpose (as in the case of the Raglan golf course) – would no longer be tolerated. The court case in 1981 about the Dannevirke Borough Council’s determination to acquire Māori land compulsorily for a rubbish dump was very much a product of this period of changing – and often conflicting – views.

### 8.3.4 The Public Works Act 1981: a legislative response?

Politicians could no longer remain indifferent to the change in public opinion or to Māori readiness to engage vigorously in political protest about actions that they considered unfair. Although attitudes to the compulsory acquisition of Māori land had been evolving in the 1960s and 1970s, the law remained the same. This left scope for local authorities, if they wished, to continue practices that, by the 1970s, were really outmoded. Central government could have – but did not – change the law to reflect the spirit of the times.

It was not until 1981 that a new Public Works Act was passed. Nearly 30 years later, it remains the legislative regime for public works in New Zealand.

Although better from the point of view of owners of Māori land, the new law did not really match the National Party’s rhetoric in their election material and policy statements of the late 1970s, which supported the retention by Māori of their ancestral land. Of particular significance for this inquiry district, it did not curtail the powers of local authorities to take Māori land compulsorily, which is surprising considering what happened in the Dannevirke rubbish dump case.

Only a few months before the passage of the 1981 Act, the National Government chose to go to court to demonstrate its opposition to Dannevirke council’s acquisition of Māori land for a rubbish dump on the basis that this was an unacceptable incursion into Māori landholdings (see sec 8.3.6(5)(f)). It lost because the law then in place allowed the council to do what it did, and then the new law (introduced by the same government) also failed to ban such acquisitions.

However, the 1981 Act did slightly ameliorate the position for owners of Māori land in other ways. The discrete section for Māori land provisions finally went, and the Act
generally emphasised agreements to purchase land rather than compulsory acquisition, and it endeavoured to make this more available for Māori land. The acquisition of Māori land was now under the supervision of the Māori Land Court.76

The new Act also introduced the idea that compulsory acquisitions were allowed only for ‘essential’ works. This was potentially helpful for owners of Māori land, which had been routinely taken for mundane works like stock paddocks, rifle ranges, and camping grounds. But the amendment was not intended as a protection of Māori land interests and was anyway short-lived. It was abolished in 1987, because in practice the definition of ‘essential’ proved incapable of limitation.77

8.3.5 Offer-back provisions

The other notable change brought in by the 1981 Act was the strengthening of the offer-back provisions. Sections 40, 41, and 42 reintroduced the general principle that land no longer required for a public work must be offered back to its original owners. A 1982 amendment strengthened the position of the original owners by opening up the possibility that, where it was reasonable to do so, land could be offered back at a price less than market value.78 However, the duty to offer land back was (and remains) subject to important exceptions, including an effective escape route for authorities if the land has changed significantly as a result of a public work or if its offer-back is considered ‘impracticable, unreasonable, or unfair’.79 In practice, a public work frequently changes the character of land substantially, and offering land back to the successors of multiple owners can easily be labelled ‘impracticable’. Utilisation of these provisions to avoid offering land back to descendants of its original Māori owners may have been very extensive, but the scale is unknown and is difficult to find out about (see sec 8.2.6(3)).

In 1996, the Government established a new department, Land Information New Zealand, to administer the Public Works Act 1981 and the Land Act 1948. The department is responsible for setting the standards and guidelines for the acquisition, administration, management, and disposal of Crown-owned land, which includes land gifted to the Crown by Māori, mainly for Māori schools (see the Ōkautete case study at section 8.3.6(4)).

The department recently completed an internal review of its standards and guidelines relating to the disposal of public works land, gifted land, and Treaty settlement land. It issued new draft standards and guidelines have been issued. Under the department’s existing standard for the disposal of gifted land, the vendor agency is instructed to offer back the land to the former owners (or their successors) at nil value. Crown improvements to the land (such as buildings) are to be offered back at current market value or any lesser value, including nil value, that the vendor agency considers appropriate. The draft standards still allow gifted land to be offered back at nil value, but they take away the discretion for the vendor agency to return any improvements for less than their current market value.

The return to Māori of land taken for public works has become a real issue, especially since major Government restructuring in the 1980s, with associated land sales. The determination of Māori to ensure that this and other Crown land is not lost to them forever resulted in court cases in the late 1980s, and a raft of policy and law changes followed (although not to the Public Works Act itself). Nowadays, Crown land – which often includes land taken for public works in the past – routinely forms part of Treaty settlements.80

Where the taking authority was a local body, there is considerably less potential for that land, when it becomes surplus, to form part of a Treaty settlement. It is characterised legally as privately owned land, and legislation forbids the Waitangi Tribunal from making recommendations about private land.81 Arrangements are sometimes made between the Crown and the local body for the purpose of settling claims.

The disposal of surplus land has been a topic of real concern to the claimants in the Wairarapa ki Tararua district. Land taken from the owners of the Mātakitaki block
reserve for lighthouse purposes in 1897 was declared surplus in 1985 when the light was automated. After considerable efforts by tangata whenua in south Wairarapa, the Crown returned 21 hectares at no cost in 1993. The Crown gave back the land in recognition of its wāhi tapu values and required that it become a Māori reserve. Some land used for schools has also been given back, such as that at Ōkautete (see the discussion at section 8.3.6(4)). As the case studies show, however, other former Māori land taken for public works has not been offered back to the descendants of its owners. As mentioned in the Seventy Mile Bush case study at section 8.2.6(3), the difficulty now of tracking disposals by the Crown or other taking authorities means that it is impossible to say how much land has been disposed of without reference to the descendants of its original owners.

8.3.6 Case studies

We now turn to case studies that illustrate how the public works environment since 1928 has operated for owners of Māori land in Wairarapa ki Tararua.

(1) Palliser Bay road takings

The Palliser Bay coastal road, extending from Te Kōpi to Mātakitiaki-ā-Kupe (Cape Palliser), has been literally carved out of the cliff face in places owing to the lack of flat land. It is subject to constant erosion from wind and sea, so land takings have been required over many decades to maintain the road.

Well before the road was legalised, a track wound its way around the Palliser Bay coast to the lighthouse, crossing Māori land. In the 1930s, as part of the Government’s wish to improve access to the coast and encourage closer settlement, moves began to formalise the route. There is no evidence that the views of local Māori were sought about the desirability of building a road. Given the number of mahinga kai (food sources), old kāinga (places of settlement), and other places significant to Māori along this part of the coast, it is unlikely that they had any need or wish for a better road that would bring more settlement and traffic to the area.

But the authorities’ desire for a formal road was strong. In 1930, the Featherston County Council proposed to take 166 acres 19 perches of coastal land for the road – including 55 acres in Māori ownership – under the Public Works Act 1928. It called for objections; none seems to have been received. Consistent with usual practice at the time (although not statutorily required), the council then sought central government approval for the takings. The Public Works Department asked the Wellington district
Kupe’s Sail

Nihe Warwick (below) told the Tribunal that Kupe’s Sail is:

the area where Māori believe Kupe landed and his waka washed up. The cliffs along that area, up to Gladstone, are known as Ngā Waka ā Kupe. There was a rock known as Kupe’s Sail. It was once marked with a wooden T to show its significance. It was considered by Māori to be a sacred site and an important landmark. Harold Parsons, under contract with the Featherston County Council, dynamited Kupe’s Sail, to make way for a new road.

I would like the Waitangi Tribunal to take into account the blowing up [of] part of our ancestor’s waka and how this affects our people . . . It was upsetting when we saw that part of the rock was no longer there. We grieved. It was tapu. It is now part of our lost ancestry.

engineer to confirm that there were no objections and that the takings would not affect any ‘buildings, yards, gardens, orchards, vineyards, or ornamental parks or pleasure grounds or burial grounds’. In fact, the proposed route passed through part of an urupā (burial ground). There is no evidence that the district engineer directly approached landowners for their views about the proposed takings, nor did he recommend any change to the road line to avoid the urupā. It is possible that, given the difficult terrain, no other route was considered feasible. On the basis of the engineer’s report, the department recommended that the work proceed. The takings were proclaimed in April 1934.

The Native Land Court determined compensation in November 1934. However, no Māori owners were represented at the hearing – perhaps because they were unaware of the takings or because they felt that it would be pointless, given that compensation was usually based on Pākehā notions of valuation, regardless of any representations, and would be split between multiple owners. Compensation of £200 was determined and paid to the Ikaroa District Māori Land Board for distribution to the owners.

This was not the end. In 1935, the council sought the Government’s advice about taking more land, this time at Mātakitaki-ā-Kupe. The Public Works Department recommended that the council proceed. The council took the land not under the Public Works Act 1928, with its relatively onerous procedural requirements, but under the Native Land Act 1931. Section 484 of this Act allowed the Native Land Court to declare Māori land to be a public road where it had been ‘used by the public as if it were a public road, or [had] been formed, improved, or maintained out of public funds . . . notwithstanding that such a road or way may not have been proclaimed a public road’. The court ordered an area of 10¼ acres to be declared a public road and set compensation of £21. Again, the landowners were not represented at the court hearing.

Over the following decades, road construction and reconstruction continued in the face of constant erosion, especially between Te Kōpi and the Whatarangi cliffs.
More Māori land was compulsorily taken on several occasions. In 1968, two areas at Te Köpi were acquired, one of which included an urupā. There is evidence of some consultation with Ngāti Hinewaka over this taking, and tapu over the area was lifted before the roadworks began. But there is no record of the council paying compensation, as required by statute.

From the late 1990s, as erosion around Palliser Bay accelerated, the local council spent millions of dollars trying to keep the road open. Although by now the importance of the Te Köpi urupā to tangata whenua was recognised – a 1994 engineers’ report called it ‘the most apparent evidence of waahi tapu’ – the council continued to carry out roadworks that Ngāti Hinewaka spokesperson Haami Te Whaiti said threatened the urupā. Māori land was still being acquired for the Palliser Bay road as recently as 2001, although by negotiated purchase rather than compulsory acquisition.

The saga of the Palliser Bay road is significant not so much for whether the required procedures for taking Māori land were followed (which, as elsewhere in Wairarapa, appears to have happened patchily), but for the initial decision to develop the road. This decision was driven by the Government’s desire to open up the area for closer settlement, and Māori landowners had no say in it. Once the decision was made, Māori land was nibbled away over many decades to maintain a road that landowners probably had no wish to see built in the first place and that impinged increasingly on places important to them. In fact, closer settlement and improved access has brought a range of problems to the area: claimants described vandalism, unauthorised camping, the culturally insensitive disposal of sewage, fires, litter, the removal of trees, and more.

The Māori owners’ lack of response and non-appearance at hearings in the early years shows how the legislation allowed compulsory acquisition to occur in a way that did not engage the owners at all. The operation of the Native Land Act 1931 was particularly invidious in this respect, enabling land simply to be declared a road if it had been used as such. But even when acquisition was under the public works Acts, the authorities did not first consult with the owners, who were just expected to live with the consequences of a law that was there to serve the interests of others. Needless to say, this did nothing to build the kind of relationship envisaged in the Treaty.

(2) Gladstone Road deviation and gravel pit takings

Of all the public works takings in Wairarapa ki Tararua, the road deviation through the middle of Hurunui-o-Rangi Pā was possibly the most flagrant assault on Māori cultural values and preferences. This stretch of road, which separated the marae from the urupā, was justified on the ground that it provided for a straighter approach to the bridge across the Ruamāhanga River than the previous road, which skirted the marae precincts. As a result, today the wharenui at Hurunui-o-Rangi is on one side of the road, while the tipuna (forebears) of the tangata whenua lie buried in an urupā on the other. The people of Hurunui-o-Rangi still grieve about what has happened to their tūrangawaewae (ancestral home).

The council’s disregard for the people of the marae did not end there. An area of land that was originally part of the marae precinct but would now be separated from it by the new road was taken for a gravel pit, fill from which was used to construct the road. In the 1980s, when the pit was exhausted, it was not offered back to the landowners. Instead, the council sold it to a third party, who erected an abattoir there, right beside the urupā.

It all began in 1948, when the Wairarapa South County Council approached the law firm representing most of the landowners to seek their consent to build the deviation. No response appears to have been received. The council then asked the Minister of Māori Affairs for approval to begin work anyway, saying it was impossible to obtain consent because there were 200 shareholders in the land. The Minister would not agree and instead helped the council to contact a limited number of owners. At a meeting in June 1953, the council gained consent from nine owners (representing 19 out of the 200 shareholders) and began work.
It is difficult to infer other than that the council had no appetite at all for consulting properly with the owners of the land wanted for the road. Right at the outset, the consulting engineers for the bridge works had reported to the council that ‘considerable negotiation will be necessary before final consent can be obtained’, indicating their entirely reasonable expectation that Māori agreement would be sought and gained before the works proceeded.\(^5\) The council, though, saw things differently.

Construction was completed in late 1954, despite several protests by landowners. Some who claimed they had not been represented at the June 1953 meeting erected a road barrier, preventing access to the deviation and forcing motorists to use the old road.

Finally, in August 1955, the council gave formal notice of its intention to take the land for a road that had now been in use for nearly a year. Ironically, owners were invited at that stage to object to the proposal within 40 days. In December, the taking was formalised and compensation of £204 determined.
The taking of Hurunui-o-Rangi land for the gravel pit proceeded in parallel with the road deviation. It is not clear exactly when the council had started taking gravel from the land without the permission of its Māori owners: certainly, the practice was well-established by 1949 when the owners first sought compensation. In 1952, the council agreed to pay retrospective royalties of £100, providing it could keep taking gravel without further payment. At the same time, the council moved to acquire the gravel pit land compulsorily under the Public Works Act 1928. Because this would involve compensation for owners, not all of whom were yet identified, it was decided that the payment of royalties would be deferred until compensation for the public works takings was determined.

The council’s intention to take the land was publicly notified in 1955. Several owners objected on the grounds that the land was tapu, close to the urupā, and reserved for a meeting house.

The owners also said that no further Māori land should be taken in view of the local people’s already diminished landholdings. In response, the council slightly reduced the area of land that it wanted to acquire, and the taking was gazetted in 1956. Debate over compensation continued for the next two years, with the council reluctant to pay for its past use of the gravel. The Māori Land Court finally set compensation at £465.

By 1982, the gravel pit was exhausted. The council offered it to a local farmer in return for taking gravel from his land. The farmer later sold the land to a buyer who wanted to build an abattoir on it. The proposal was publicly notified under the Town and Country Planning Act 1977, and as no objections were received, it was approved. There is no evidence that the council consulted with the former owners about the land transfer or the proposed abattoir. Nor was proximity to the urupā regarded as an issue in granting consent for the abattoir. What concerned the council was whether or not it would be an eyesore; the unsuitability of odour and waste run-off right next to an urupā was not discussed at all. Complaints about the abattoir’s waste-disposal practices have continued ever since.

There is no official record of any objections to the road deviation and gravel pit takings that so badly affected the marae at Gladstone, which is puzzling given the level of outrage felt by people at the time. Cyril Matiaha and Tiki McGregor expressed this indignation in their evidence (although all these years later their recollection of dates may be imperfect), and on the Tribunal’s site visit to Hurunui-o-Rangi, several other people recalled protest and complaint. There is a strong inference to be drawn that the procedure at the time for giving notice of, and receiving objections to, public works takings was not designed to reach and elicit responses from tangata whenua. The council was not interested, it appears, in involving the people of the pā in what was planned for their land. Its actions showed a complete disregard for the things that Māori hold most dear – the integrity of marae and the tapu of urupā. Such disrespect goes to the heart of relationships. It is difficult to imagine how the tangata whenua of Hurunui-o-Rangi Pā will ever forgive what the council did to their tūrangawaewae.
Protest at Hurunui-o-Rangi

Tawhao Katuhakoria (Cyril) Matiaha, who, as a teenager, took part in the protest against the road deviation, told the Tribunal:

The people at Hurunui-o-Rangi took all kinds of steps to try to prevent the council from taking their land. Like many others, Mum fenced off the area where we lived, as we didn’t want the council to take the property, but they did anyway…

In around 1958, Mum had enough, and started to protest. I remember that there was a large crowd of about forty people that my Mum, my old man and I were in. Everyone from the marae went. We marched up the road together. I remember marching up the road towards the middle part. We’d had enough of losing everything.

We had so little land left at Hurunui-o-Rangi. What we did have left was so special that it was wrong for that land to be taken from us. They should have tried to find other land, they should have listened to what we wanted and they should have tried to work out a way of doing the works which recognised that we are the tangata whenua here.

(3) Waihine Bridge deviation and Mangatarere Stream diversion takings

A major theme of the evidence presented to us in this inquiry was the desire and ability of settler farmers to control the bodies set up to manage the natural flow of water in Wairarapa. Those farmers usually made up the membership of the various river and drainage boards and were therefore well placed to ensure that the boards’ work protected their farms from damage by flooding. The saga of Wairarapa Moana and Lake Ōnoki (see ch7) is a particularly vivid illustration of the lengths the settlers were prepared to go to in order to control the flooding of rural land.

Tangata whenua, who typically were not runholders and who preferred wetlands and rivers in their natural state, were much less likely to see their interests advanced. If a farmer wanted to reduce flooding on his land, the water had to be redirected elsewhere. The evidence suggests that the lack of Māori representation on local authorities meant that, if any land was to bear the brunt of the redirected water, it was likely to be Māori land.

Those who carried out the research into public works takings in this inquiry district did not investigate the activities of river and drainage boards.9 The Waihine Mangatarere flood control scheme was the only example of flood control works they reported on. It is a case study of how various forces in the community operated in practice to bring about their desired end – a reduction in flooding – without regard to the effect on Māori land and its traditional owners.

The scheme was intended to manage flooding between Carterton and Greytown, particularly on the State highway, and involved diverting the Mangatarere Stream, constructing stopbanks and an overflow, building a new Waihine Bridge, and realigning the road at various points. Planning proceeded as an engineering exercise, with no consideration given to any ancestral connections that Māori may have had with the land required. There is no indication in the record that landowners were consulted, or even informed, about the proposal.92

Cabinet approved the scheme in May 1958, and in November 1960 the Ministry of Works sought to negotiate the purchase of two areas of Māori land that would be affected by the scheme.

Although the trend by this time was to negotiate rather than to compel the purchase of land for public works, compulsory acquisition was still used where multiple ownership was regarded as problematical. The Public Works Department intended to negotiate the purchase of the Māori land it wanted for the scheme, much of which was in multiple ownership. The department wrote to the owners’ solicitors, who, apparently acting without instructions, advised against trying to obtain consent to the purchase because the owners might decline to sell for fear of
The Wairarapa ki Tārarua Tribunal and inquiry parties at the site of the Gladstone Road deviation protest, where ngā wahine of Hurunui-o-Rangi Pā protested against the taking of their land for a road in the 1950s.

This photograph shows the proximity of the abattoir to the urupā of Hurunui-o-Rangi Marae.
Te Uru o Tāne

Tutahanga Ngatuere (right) grew up at Te Uru o Tāne, his whānau’s home near Mangatarere River and Beef Creek. The Ngatuere homestead had just been renovated when the land on which it sat was purchased for flood protection works. The authorities would not agree to move the house, and it was sold to a local farmer who later kept hay in it.

When there was flooding, the water would come up into the homestead. I remember the year it came up to just under my knee – I was 10 years old.

The River Board decided that the best way to get rid of the flooding was to divert the Mangatarere and Beef Creek rivers and to move the Swamp Road. Of course, there was no consultation with Maori about this process.

I understand that something needed to be done to stop the flooding. But why our land? Why does it always seem to be us? The diversion hasn’t been all that successful either. Before the deviation of the rivers to prevent flooding Swamp Road the Te Uru o Tane Urupa never flooded. Now, after the deviation it floods, partly submerging the tombstones.

The historic homestead was removed from the land before the works began. The rangatira Ngātuere Tāwhirimatea Tāwhao is buried at Te Uru o Tane urupā.

losing face. The department proceeded without further inquiry or engagement with the Māori landowners, save in regard to two areas that each had a house on them: Taratahi 391C1D2 (where Te Uru o Tāne was located – see the sidebar above) and part Taratahi 391C1D1. The department negotiated the purchase of these sites under part XX1 of the Māori Affairs Act 1953.

The compulsory takings were not proclaimed until 1964, well after the works were finished, and research has not established whether compensation was paid. In total, the area taken was about 30 acres. The authorities were far too ready to avoid dealing with the Māori landowners. Their needs and preferences were not known and not really cared about. Tū Ngātuere, who played a key role as kaikarakia in the Tribunal’s hearings in Wairarapa, told us on our site visit of his whānau’s real distress about losing their family home. In the eyes of the authorities, it was just a house in poor repair that needed to be got out of the way – all that mattered was getting the works through. This was an example of people being entirely sublimated to engineering imperatives.

(4) Ōkautete School taking

In the early twentieth century, the Māori community at Ōkautete, led by Piripi Waaka, Manaena Waaka, Tioi Waaka, RP Paku, Tāmaireia Paku, Whitu Piripi, Maika
Matiaha, Waipuka Kingi, and Te Paia Horomona, badly wanted a school. It was then standard practice for the Government to require Māori communities to contribute to and participate in the establishment of native schools. (There was no equivalent requirement for Pākehā communities.) Ōkautete Māori gifted just over two acres of land in 1902 but had to wait until 1906 before the school was ready to open.

Ōkautete School served the whole community, with both Māori and Pākehā attending. In 1963, it was disestablished as a Māori school and became a public school under the authority of the Wellington Education Board. At that time, the Ministry of Education noted that: ‘The site of the school was donated for the purpose of establishing a Native School and the agreement of the parents obtained . . . can be taken as implying agreement to the continued use of the site for educational purposes.’ It was acknowledged, though, that if the site were no longer required for a school, section 436 of the Māori Affairs Act 1953 provided for its return to its former owners.

The school closed in 2001 and was declared surplus to requirements by the Ministry of Education the following year. The Ministry held a hui in 2004 for descendants of the original owners where the offer-back of the land was discussed. The Ministry said that the Crown was willing to return the school land at nil value but wanted to be paid
Piripi Waaka, one of the original owners who gifted the Ōkautete land in 1902. Toi Walker, a descendant of Piripi’s, told the Tribunal that his whānau ‘find it offensive to be asked to pay for the buildings and improvements – they have been without the use of their ancestral lands – their birthright – for many years. The lands were given as a noble gesture to benefit both parties. That noble gesture should be returned.’
for the buildings. Many at the hui thought that the Crown should give back both the land and the improvements because it had had the use of the land for so long. At the time of our hearing, we were told that the Crown valued the land (which it gave back) at $25,000 and the school buildings at $115,000. Since then, the Crown has decided to take into account the practical difficulties of removing the school buildings from the site, and it now says that they are worth $22,500. That view, together with a request for compensation to be paid to the descendants of the former owners, are the concerns of the Wai 897 and Wai 429 claims.

It was in January 2009 that the Ministry of Education agreed to adopt another method of valuation for the purposes of the offer-back, basing it on the cost of removing the buildings from the school site rather than the value of the buildings as part of the site. Since the school buildings cannot be removed from the land, they were declared of ‘nil value’ to the Crown. However, the sum of $22,500 was attributed to the school house building. This is the amount that it would cost the Crown to remove this building from its site, consistent with Land Information New Zealand’s policy on the disposal of gifted land, under which beneficially entitled persons must pay current market value. Given the many years over which the community at Ōkautete used the land for a school, we think this approach is mean-spirited and out of keeping with the principles of the Treaty (see our recommendation at sec 8.6.3).

(5) Tahoraiti block council takings
Throughout the twentieth century, the Dannevirke Borough Council compulsorily acquired many parcels of land in the Tahoraiti block area south of Dannevirke for various public works, adding to the roughly 117 acres from the same block that the Crown took for the railway in the nineteenth century (see the table on page 754). We have no direct evidence that the council deliberately targeted Māori land, but it is very unlikely that a council would document an intention of that kind. The accompanying photograph shows clearly the propinquity of the dump, the sewage plant, the rifle range, and the aerodrome to each other and to Mākirikiri Marae: all are on land taken from Māori blocks. It would be surprising if there were equivalent takings from the significant areas of Pākehā-owned farmland in the vicinity; certainly, we were not pointed to any such evidence.

Another significant issue for the claimants is compensation. In the case of land taken for the gravel pit in 1900, the council delayed applying for a determination of compensation for more than 10 years, despite the Public Works Act 1894 requiring that this be done within six months. Elsewhere, the level of compensation was adversely affected by the nature of the public works already established in the vicinity (especially the sewage plant and rubbish dump). The claimants also took issue with the local authority’s unwillingness to offer back land to its original owners once it was no longer needed for public works, even when the legislation made provision for this.

We develop these themes and others in discussing the following takings in the Tahoraiti block.

(a) The Dannevirke gravel pit: In 1899, the Dannevirke Borough Council took three acres of section 18 Tahoraiti 2 for gravel extraction. As required by the Public Works Act 1894, the council heard objections from local Māori, but it was not deterred. The owners’ subsequent application to the Native Land Court for compensation was dismissed, as under the Act only the council could apply for compensation to be determined. The council did not make its application until 1911, when compensation was set at £70.

By 1937, the gravel pit was no longer needed and the council sold it to a local farmer in 1955. There is no evidence that the former owners were ever approached about the return of the land. Crown counsel said that, at the time, there was no statutory requirement to offer the land back to the original owners, although there was provision to do so under the Land Act 1948 and the Māori Affairs Amendment Act 1953. In other words, the Crown had
For much of the twentieth century, Ōkautete School was at the centre of local community life. Now, in the twenty-first century, the school site remains a focal point for local Māori. At the time of the hearings, the buildings on the site were being used as a de facto marae for tangata whenua, and we sat there for a week of hearings. Since then, a marae has been built behind the school. Owen Akuira (shown below at left in the building site) told the Tribunal in 2004 that it was his wish to ‘see the establishment of the marae out there, a marae that will be a place for future generations of Ngai Tumapuhia to return to’. Ryshell Griggs (below right) told us that she hoped that Tūmapuhia Marae would ‘bring their children back to their roots’ and allow them to ‘take more care of our people’s needs’.
the option to offer the land back to its original owners, but it chose not to.

(b) The Dannevirke rifle range: In 1904, 10 acres of Māori land (then under lease) were taken by the Public Works Department for a rifle range. Though for some time the lessees had allowed the land to be used for this purpose for free, the taking appears to have been prompted by fears that the arrangement might cease once the lease expired. There is no evidence that the department notified the landowners of its intention to take the land. After a long hearing, compensation of £170 was set in 1906.107

The land was used for defence purposes until 1958, when it was no longer required. Because the Public Works Amendment Act 1954 did not require the land to be offered back to the descendants of the original owners, it was transferred to the Lands and Survey Department then disposed of under the Lands Act 1948.

Along with some adjoining land that had been taken in 1904, the original 10 acres were sold to Hami Tamihana in

The Dannevirke rubbish dump and sewage ponds in relation to Mākirikiri Marae

![Image of Dannevirke rubbish dump and sewage ponds in relation to Mākirikiri Marae]
1960; he was the son of a former owner and had offered to buy it back 10 years earlier. Even though the department was under no statutory obligation to do so, it appears that it may have been administrative practice to give special consideration to the claims of former owners’ descendants when dealing with surplus land.\(^8\)

(c) The Dannevirke sewage reserve: The Dannevirke sewage treatment reserve is located on 56 acres of land taken by the Dannevirke Borough Council in 1907 under the Public Works Act 1905. It is close to both Mākirikiri Marae and a kura kaupapa (primary school where education is delivered in te reo Māori).

The taking followed several years of discussions between the council and the landowners over matters including valuation and compensation. In the course of those discussions, the council modified its original proposal to take 100 acres, probably in response to objections.
The Mākirikiri scenic reserve
by owners or the intervention of Sir James Carroll (or both). The Native Land Court determined compensation of £1325 in 1909.

(d) The Mākirikiri scenic reserve: In 1911, the Public Works Department took the 38-acre section 13 Tahoraiti 2 block to create a scenic reserve. Both the borough council and Government agencies had been trying to establish a reserve for more than 10 years and the Tahoraiti land was not the first option, various other areas of native bush having been considered. In fact, by the time of the taking, most of the large trees on the site had been felled and only smaller vegetation remained.

Records of the taking are patchy, but the land was acquired under several Acts: the Public Works Act 1908, the Scenery Preservation Act 1908, and the Scenery Preservation Amendment Act 1910. Compensation was set at £770. The land's value may have been negatively affected by the nearby sewage facility: during the 1912 compensation hearing, Crown witnesses claimed that the value was diminished by the smell.\(^\text{99}\)

The compulsory acquisition was undertaken by the central government for scenery preservation purposes. This was a happy outcome for the Dannevirke Borough Council, which had initially contemplated buying the land itself, but only if the purchase were easy and cheap. As it turned out, it was very easy and cheap because the Government vested the reserve in the council in 1913. However, the council immediately sought its reclassification as a recreation reserve, saying that its scenic value had been compromised by past logging, fire, and stock damage. The reclassification did not go ahead. The council continued to administer the reserve, but it received little attention for some years. Some of the land was subdivided and leased by the council and some became a rubbish dump in 1951. Since reclassification in 1983, the land has been treated as a mix of scenic and recreational reserve under the management of the Tararua District Council.\(^\text{100}\)

(e) The Dannevirke Aerodrome: Between 1933 and 1956, the Dannevirke Airport Association leased 100 acres from a Māori landowner, Eriata Nopera, for an aerodrome. In 1935, the Native Land Court ruled that the existing annual rent was too low, being less than 5 per cent of the land's valuation. The association said that it could not afford to pay the proposed new rent and asked the Public Works Department to help it secure a cheaper lease. The Native Trustee requested Mr Nopera to renew the lease for a further 21 years at the lower rent. He refused.

Finally, in 1937, the association agreed to pay the higher rent determined by the court. A new lease, extending until 1955, was signed. Over the next few years, central government agencies helped develop the aerodrome, contributing more than £13,000. When the lease was due to expire, the Dannevirke County Council tried to acquire the land permanently, initially by purchase. When this attempt did not succeed (the council’s offer was around £4000 lower

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The Mākirikiri Scenic Reserve

In 1928, the Dannevirke town clerk wrote of the Mākirikiri scenic reserve that:

Apart from the fences being renewed when necessary, the council has carried out no work upon this reserve for some considerable time. The area is quite unsuitable for grazing, it is far too distant from the Borough, and too inaccessible, steep and swampy to offer any attraction to the townsfolk and in the council's opinion is best left in its present natural state.

The Council has no intention of planting additional native trees at present, there being insufficient young stuff coming on, besides which we have to scour the countryside as it is to find native trees etc wherewith to plant the Dannevirke Domain, an area much more in need of beautification than the above Reserve.
than the owner’s valuation), it moved to acquire the land compulsorily.

The owner at the time, Wirihana Paewai (who had been willed the land by Eriata Nopera) objected to the taking on several grounds. In a letter to the Minister of Māori Affairs, she said that she wished to run stock on her land and argued that there were other suitable sites for an aerodrome. She said that the council wanted her land for a commercial purpose, not for the public benefit. The council heard her objections but took the land anyway in 1956. Compensation of £10,000 was determined.

During the 1970s and 1980s, when the aerodrome needed to be extended, more land was purchased or exchanged with neighbouring farmers. As a result, some of the land that had been compulsorily acquired in 1956 was now owned by neighbouring farmers. According to the Paewai family, who remain in Dannevirke, at no time was the land offered back to them. At our request,
Crown counsel investigated this claim and identified two instances where aerodrome land originally acquired from the Paewais was transferred to private ownership rather than offered back to them.\textsuperscript{111}

\textbf{(f) The Dannevirke rubbish dump:} The taking of the Dannevirke rubbish dump occurred in 1981, and was the most recent compulsory acquisition that we looked at in this inquiry. It led to a high-profile court case and became something of a cause célèbre. The events related below very much reflect the changed circumstances of the 1970s and 1980s as regards the compulsory acquisition of Māori land.

In the mid-1970s, the existing rubbish dump (located on former Māori land taken for the sewage reserve, as described above) was almost full. The Dannevirke Borough Council decided that it needed a new one, for which it required a total of 40 acres (later reduced to 5.59 hectares) from two adjacent blocks, Tahoraiti 2A13B and Tahoraiti 2A14A2. Tahoraiti 2A13B was owned and occupied by farmer Arani Te Peeti. The council wrote a letter to him saying that it wanted to negotiate about the land for the new dump. Mr Te Peeti’s solicitor replied that his client ‘was not anxious to sell any part of his property’, which was ‘small enough as it is’.\textsuperscript{112} Nevertheless, a price per acre was mentioned at which Mr Te Peeti was prepared to sell. The council thought the price was too high and made no further contact.

Before the council could take the land for the dump, the county’s district scheme had to be changed to publicly designate the area a rubbish dump.\textsuperscript{113} A number of Māori owners objected to the proposed planning designation, including Arani Te Peeti, Ina Maniapoto, and Morehu Halidone. Mrs Maniapoto had built a home not far from the proposed rubbish dump site, and her sister, Morehu Halidone, supported her opposition to the council’s plan. But the rubbish dump designation was subsequently confirmed, after which there was no legal obstacle to prevent the council compulsorily acquiring the land it wanted. In November 1978, the council’s solicitor commenced the process under the Public Works Act 1928.

It was a sign of the times, however, that this taking did not proceed down the same trouble-free path as its predecessors. Although the Dannevirke Borough Council remained unconcerned about compulsorily acquiring Māori land in the face of owners’ opposition, the mood in Wellington had changed. In the wake of Whina Cooper’s 1975 land march, the National Party endorsed the significance of Māori land in its 1978 election manifesto and outlined its intention to change the Public Works Act so that land could be purchased only by negotiation.\textsuperscript{114}

As a consequence, when the documents necessary to enable the proclamation to be issued under the 1928 Act were forwarded to the Commissioner of Works in Wellington, the process ground to a halt. Interchanges

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\textbf{Developments in Statutory Offer-back Provisions}\\
Under section 35 of the Public Works Act 1928, land no longer needed for the public works purpose for which it was taken had to be offered back ‘first, to the person then entitled to the land from which such land was originally taken’. However, the Crown could also transfer such land to the Education Board or declare it to be Crown land by proclamation. Subsequent amendments to the Act allowed surplus land to be sold to adjacent landowners or publicly auctioned (s15) and gave local authorities the power to change the purpose for which any land was acquired, after it had been taken (s20).

The effect of such provisions was that it was possible for taking authorities to avoid the requirement to offer land back. According to Cathy Marr, authorities were often more averse to returning Māori land than to returning general land. This was for many reasons, including perceived difficulties with multiple ownership.

The Public Works Act 1954 dropped the offer-back principle altogether, and it was not reinstated until 1981.\\
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between the commissioner and the council’s solicitor began, later involving the Minister of Works, Bill Young; the Minister of Māori Affairs, Ben Couch; the member of Parliament for Pāiatua, John Falloon; Māori Affairs personnel in Palmerston North; and the Māori community in Dannevirke. The Ministers were unwilling to approve the compulsory taking of the land: they wanted it done by negotiation, with agents appointed for the owners under the Māori Affairs Act then in force. The council thought that this would all take far too long, and it did not believe that negotiation would succeed anyway. It needed the new dump in operation soon and maintained that compulsory acquisition was the only way.\(^{115}\)

The political temperature rose and a stand-off ensued.

The opposition of the Māori community in Dannevirke became more entrenched, and Māori Affairs staff in Palmerston North reported the locals’ stance to their Minister in November 1979. A council officer had told the Māori owners that there was nothing that they could do about the taking, and many were not aware of their right to object to the proposal. Both Māori Affairs staff and their Minister advised against the taking going ahead.\(^{116}\)

Cabinet was advised by its lawyers that the Minister of Works had no power to hold up the purchase any longer and would lose a court battle. Despite this, however, and despite the fact that the Dannevirke Borough Council was threatening a judicial review, it insisted that the proclamation not be sent to the Governor-General for signing. It seems that Cabinet was trying, through its own opposition to the council’s actions, to position the Government so that it was seen as being in support of the Māori protest that was expected to ensue when the taking proceeded.\(^{117}\)

The council would not be thwarted any longer and issued proceedings. The case was heard in February 1981, after the failure of last-minute efforts to secure the owners’ agreement to lease their land. As the Government’s legal advice had predicted, the High Court found in favour of the council, saying that it had complied with the procedures set out in the Public Works Act and that the Minister of Works had exceeded his powers in stalling the acquisition. The taking was proclaimed soon after, and compensation was agreed in 1984.

\(8.3.6(3)(g)\) Conclusion: Looked at together, the takings in the Tahoraiti block show both a determination by the local authority in Dannevirke to compulsorily acquire this Māori land for community purposes and an indifference to the impact both on Māori living on the block and on their marae. Offensive works like sewage ponds and rubbish dumps could only negatively affect the dwellings and marae of tangata whenua. The council must be taken to have understood the loss in amenity and property values: these are Pākehā concepts. But the cultural effect on the marae in particular was arguably worse, and Pākehā domination of the council membership may have meant that the council had little sense of this. In any event, it was

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**Dannevirke Borough Council v Governor-General**

Chief Justice Davison delivered his judgment in the high-profile case *Dannevirke Borough Council v Governor-General* in May 1981. He framed the issue in the case like this:

Is the Minister in the circumstances of this case acting within the powers lawfully conferred upon him by the Public Works Act 1928 in declining to recommend to the Governor-General that he should issue the Proclamation sought by the Council to take the lands for the purposes of a public work under the provisions of that Act?

The chief justice ruled that the Minister had exceeded his powers by acting in accordance with Government policy rather than with the current legislation:

If the Government wishes to implement the stated policy in relation to Māori land then it must be given legislative effect by an appropriate statutory enactment. It cannot apply a policy which is contrary to the statute.
apparently unconcerned, because the takings continued over a long period, and right up to the 1980s.

The central government needed to set out in law the proper way for councils to deal with owners of Māori land when acquiring their land for public works. Unfortunately, the legislation under which the council proceeded did not require it to take into account any Māori concerns, and there was similarly no requirement for it to consider whether ongoing takings in the same area and affecting the same Māori landowners were fair. These omissions were highly prejudicial to the Māori owners of the Tahoraiti block.

8.4 TIBRANAL ANALYSIS
8.4.1 Was the compulsory acquisition of Māori land for public works in Wairarapa ki Tararua consistent with Treaty principles?

(1) The Tribunal’s public works jurisprudence to date

The Tribunal has made consistent findings on the compulsory acquisition of Māori land for public works in several previous inquiries.

The first was the Te Maunga Railways Land Report of 1994. There, the Tribunal captured the issue, stating that "The principles underlying the issue of compulsory acquisition, whether kawanatanga overrides the guarantee of tino rangatiratanga, lie at the heart of the Treaty relationship between Maori and the Crown." 118

The Te Maunga Tribunal conceded that the compulsory taking of Māori land for a public purpose might sometimes be warranted because of the level of public interest that could be involved. However, "The fiduciary obligation of the Crown, the active protection of Māori rangatiratanga, and duty of reasonableness on both sides, suggest a more consultative approach to negotiation is appropriate." 119

The Ngāi Tahu and Tūrangi township Tribunals developed the Tribunal’s thinking on compulsory acquisition and Treaty principles, finding that the compulsory taking of Māori land would be justified only in very limited circumstances. The Ngāi Tahu Tribunal considered that:

the only justification for taking land over the objections of the owners would be if the national interest were of such magnitude that the Crown would be justified in overriding its Treaty guarantees to Maori. 120

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 Māori in article 2, it should be only in exceptional circumstances and as a last resort in the national interest." 121

Having confirmed that the compulsory acquisition of Māori land runs counter to Treaty principle in all but the rarest cases, earlier Tribunals criticised the same aspects of the exercise of compulsory acquisition powers that concern us here. They criticised the provisions for authorities’ access to Māori land and for notice, consultation, compensation, and offer-back. They also criticised the Crown’s failures to take account of diminished land reserves and the special value of land to Māori, to consider forms of tenure less than freehold, and to incorporate Treaty rights in the legislation. They found not only that the acquisition regime was itself fundamentally flawed in Treaty terms but also that the Crown too often failed to comply with its own procedural requirements, however inadequate they were to protect Māori Treaty rights. 122 When the Crown fails to implement the protections of its own rules, its fault is of course more grievous.

(2) No compulsory acquisition without representation

In the recent report of the central North Island Tribunal, there is an important new theme in the analysis of the Treaty, public works, and Māori rights. The Tribunal quoted a passage from New Zealand’s first chief justice, Sir William Martin, on the transplanting of British law to settler New Zealand, and said:
The settler community, as represented in the New Zealand Parliament, enacted legislation that provided for the compulsory taking of land for public works. It also legislated for the taking of up to 5% of new land titles for roading and railways purposes, without compensation. This provision was applied extensively in the central North Island, with almost one-third of all Māori land taken for public works being acquired without compensation. It was perfectly legitimate for British subjects to qualify their own rights by legislation, in the new circumstances of a colony. What was not legitimate, however, was for a settler Parliament to qualify Maori Treaty rights, and Maori rights as British subjects, without the proper representation and consent of Maori. Qualifying the rights of British subjects, and violating the absolute guarantee of voluntary cession, both of which were promised in the Treaty, was a very serious action. [Emphasis added.]^{123}

This observation identifies how, in the interests of fairness and good government, rights should not be taken from people who lack the political representation to protect those rights. Philosophically, this resembles the abhorrence for taxation without representation. It characterises Government conduct that is manifestly unfair as constitutionally wrong.

We agree. Although the Treaty protected Māori land ownership, Māori lacked – and still lack – a constitutional means of ensuring that the Treaty guarantees were (and are) not eroded legislatively. It was all right for settlers to decide that their own land could be taken compulsorily for purposes that served the wider community, because they were represented in the Legislature that made that decision. Māori were not. It was not for settlers to decide unilaterally to curtail the Treaty rights of Māori by making statutes that authorised the taking of their land. That was a decision that could only, legitimately, be made jointly. Even now, Māori have little political representation at the local level, where most decisions affecting their land are made, and only a little more nationally.^{124} For this reason, it remains wrong for legislative decisions to be taken that effectively repeal Māori Treaty rights. The tyranny of the majority means that Māori cannot defend their rights under the Treaty in a democratic process, and they should not have to.

(3) Public works and the land fund model

Another reason why Māori land should not have been compulsorily acquired – especially when it was taken without compensation (as it always was under the 5 per cent rule) – is that to do so ran contrary to the colonisation model for New Zealand, in which obligations to Māori were very much to the fore.^{125}

In the present inquiry, the Crown invited the Tribunal to weigh the benefit of public works for former owners of compulsorily acquired land against the detriment to them of giving up their land. The benefit might be particular, Crown counsel said, ‘in the sense of enhancement to the value and utility of surrounding land remaining with the people from whom the subject land was acquired. Or the benefit might be general, ‘at the level that any citizen can be said to benefit from the public work and the development of infrastructure.’^{126}

It is true that Māori derive general benefit from infrastructure like other citizens, but it is fair to say that the evidence before us does not include evidence of particular benefit of the kind the Crown described. The claimants’ evidence was overwhelmingly of detriment arising from compulsory purchase. Rather than enhancing the value of surrounding land, we had evidence mainly of takings for council facilities that people do not want on neighbouring properties – rubbish dumps, aerodromes, rifle ranges, and the like. We note that the Crown did not call evidence that showed instances of particular benefit accruing to owners of compulsorily acquired land, even in a hypothetical way.

But even if we accept the premise of general benefit, should Māori have been expected to give up the ownership of land they wished to retain in exchange for the benefits of public works like roads and railways? We say they should not, because the model for colonisation of New Zealand
did not envisage their being required to contribute in this way.

In this inquiry, we had the benefit of the extremely valuable evidence of Dr Donald Loveridge, a historian who appeared as an expert witness for the Crown and who explored the Crown's colonisation policies in New Zealand. Dr Loveridge sought to explain 'why the Crown persisted with [the 'land fund' system], and with the exclusive right of pre-emption which went along with it, up to and beyond the end of the Crown Colony period.'

Dr Loveridge's report recounts the gathering of views in England and the exchange of opinion with those on the ground in New Zealand about how the country should be colonised. The view in London prevailed: the best approach was to implement the land fund model along the same lines as in New South Wales. The Treaty itself was partly an expression of this intention.

(a) The essentials of the land fund model: At the risk of oversimplifying, in its essentials the land fund model that was to operate in New Zealand involved the Crown in:

- acknowledging that Māori had property rights over the whole of the country;
- securing the exclusive right to purchase and on-sell Māori land (known as the right of pre-emption);
- purchasing cheaply 'unused' Māori land (ie, land that was not occupied or cultivated) and on-selling it at a profit, with the difference comprising the land fund;
- setting aside land as reserves for Māori, either by designating part of the land purchased as reserves or simply by omitting areas from purchase; and
- using revenue in the land fund to promote immigration from England and to pay for 'Māori purposes' (education and moral improvement) and public works (including surveys).

For Māori, the model meant:

- having their property rights acknowledged;
- accepting Crown pre-emption;
- keeping land as reserves;
- accepting that the land they sold to the Crown would be on-sold at a significantly higher price than they had been paid; and

- receiving the benefits of settlement, including the construction of roads, bridges, and other public works that would enhance their lives and facilitate their participation in the new economy, in turn increasing the value of their remaining landholdings.

(b) The land fund model in practice: Dr Loveridge's report traces how the implementation of the land fund model did not go according to plan.

In the first couple of years after the Treaty was signed, disgruntled settlers thought the system inappropriate and doomed to failure, and Māori were not pleased either. But, despite the difficulties, the British Government held fast to the basic land fund plan adopted in 1839.

Then Governor Robert FitzRoy took office in 1843. The first thing to confront him upon his arrival in Sydney en route to New Zealand was the news that several settlers and Māori had been killed at the Wairau in June 1843 in a clash over disputed land titles. This may have influenced his view, soon expressed, that the Crown's right of pre-emption (generally considered indispensable to the land fund concept) should be waived and that direct purchasing of some kind would eventually be permitted in the colony. Would-be land buyers eagerly picked up FitzRoy's comments about direct purchasing, and trading in land apparently began straight away, although that was not what the Governor had intended. Debate commenced (at sailing-boat speed) between FitzRoy in New Zealand and the commissioners of colonial land and emigration in London. The trick was to work out how to modify pre-emption so as to permit some direct purchasing (and thereby increase the flow of land available for sale to meet the growing demand) but also to provide a fund from which the requirements of the new colony could be paid for. Regulations for a new regime were promulgated on 26 March 1844, but according to Loveridge they did not sufficiently spell out the new arrangements, which turned out to be complex and ill thought out. A total of
57 waiver certificates were issued in the six months following the proclamation, affecting 2337 acres of land around Auckland. Originally, a fee of 10 shillings per acre was charged, but in October 1844 another proclamation was rushed through, ostensibly in response to 'the importunate demands of powerful tribes', which reduced the fee to one penny per acre. This effectively put paid to the land fund system and instead introduced 'free colonisation', but without authorisation from London. By March 1846, the Governor approved 192 pre-emption waivers, affecting at least 100,000 acres.

No sooner did the report of the pre-emption waiver reach London than the Governor was dismissed (waiving pre-emption without authorisation was not his only misdemeanour). FitzRoy’s successor was to be dispatched forthwith, and Lieutenant-Governor George Grey of South Australia was the man for the job. Grey’s instructions were to proceed in accordance with the policy and practice relating to land that had been in force in the colony since 1840. He was discouraged from continuing to waive pre-emption, although Lord Stanley (issuing instructions from London) recognised the need for the Governor to respond to local circumstances and to exercise discretion. The challenge for Grey, according to Loveridge, was to reinstate 'the flow of revenue from land sales, be they made by Māori or the Crown, into the government's coffers – revenue which could be used to promote colonial development'.

Grey approved no new waivers and considered his options. In October 1846, he issued a notice ‘resuming the Crown's right of pre-emption over the whole of the lands of this Colony’. Somewhat to local surprise, Māori acquiesced. The passage of the ‘Ordinance to Provide for the Prevention, by Summary Proceeding, of Unauthorized Purchases and Leases of Land’ and the Native Land Purchase Ordinance in November 1846 put an end to direct purchasing. These moves were approved in London, despite protests from petitioners in Auckland. The effect was once more to install the land fund model as the approved mode of colonisation for New Zealand.

In a dispatch to Secretary of State Earl Grey in London, Grey advocated for a 'uniform system of purchasing' that was then novel but is now entirely familiar to any student of Crown land purchase in nineteenth-century New Zealand. The Crown would negotiate with Māori for the purchase of large blocks of land, extinguishing native title and conferring on Māori a Crown title in certain portions intended for their present and future use. Māori were, Grey told Earl Grey:

“every day becoming more and more aware of the fact, that the real payment which they receive for their waste lands is not the sum given to them by the Government, but the security which is afforded, that themselves and
their children shall for ever occupy the reserves assured to them, to which a great value is given by the vicinity of a dense European population.

The term ‘waste lands’ referred to land not actually occupied by Māori. And, said Grey:

They are also gradually becoming aware that the Government spend all the money realized by the sale of lands in introducing Europeans into the country, or in the execution of public works, which give employment to the natives, and a value to their property, whilst the payment they receive for their land enables them to purchase stock and agricultural implements.\(^{151}\)

Over the next few months, Grey’s commitment to the new land purchasing system, and to ‘the revived Land Fund system of colonization which the lands so acquired would support’, grew steadily.\(^{152}\) As economic conditions improved, the previous clamour for free trading in land died away.\(^{153}\) The Crown’s right of pre-emption ceased to be an issue (for the time being at least), and the land fund model became entrenched.

(c) The land fund model and public works: This brief history has been recounted to explain how the system of colonisation chosen for New Zealand was introduced. We have described how it weathered the storm of its first few years of relative dysfunction at the beginning of the 1840s and became rooted once its viability was restored by Grey’s ‘uniform system of purchasing’.\(^{154}\) It is important to establish that the land fund model did survive those early, difficult years – an outcome that was by no means assured until Grey took office – because our argument proceeds from that point.\(^{155}\) This is where we draw out the link between the land fund model and public works:

Maori land, Grey decided, was to be made available for the purposes of colonization solely by way of Crown purchase, with the difference between the cost of purchase and the rate of re-sale being used to finance the process of colonial development. This system – constantly criticised and debated – would remain in effect in New Zealand for another fifteen years, until the Native Land Court . . . finally began operations.\(^{156}\)

(d) The bargain: The land fund model, as it operated in New Zealand, involved persuading Māori to accept that the Crown had an exclusive right of purchase and that they should sell their unused lands to it at relatively low prices.\(^{157}\) In return, Loveridge says, the Crown had to ‘promise and deliver to Māori benefits above and beyond
the immediate payments for particular blocks.\textsuperscript{158} Those other benefits included the roads, bridges, schools, hospitals, and mills that needed to be constructed to make the new society.

In the model, even though the Crown would pay the lowest possible prices for Māori land, the apparent unfairness would be offset by the benefits, both indirect and direct, that Māori would receive from systematic colonisation. The land fund would pay for measures designed to assist Māori to cope with the stresses and strains caused by large-scale British settlement, the negative consequences of which had been observed in other colonial situations. It would also pay for the colony’s infrastructure to be built, and Māori would benefit from this like everybody else.\textsuperscript{159}

By 1852, the Crown had bought large tracts of Māori land and was trying to persuade Wairarapa Māori to sell. The Castlepoint deed was imminent. In all these purchases, Crown officers held out a vision of the future in which Māori would share the fruits of the new society. In 1852, a decision of Grey’s to expend land fund money for Māori purposes was called into question. Grey justified his expenditure from the land fund like this:

> the natives have been given to understand, on many occasions, in disposing of their land, that the proportion of the land fund above alluded to [15 per cent], would if necessary be expended in promoting their welfare; and as it has also been frequently explained to them that such expenditure of part of the land fund, rather forms the real payment for their lands, than the sums in the first instance given to them by the Government, it will be proper, so long as such a course is necessary, to continue to expend one fifteenth of the gross proceeds of the land fund in promoting the benefit and civilization of the native race, regarding this expenditure as one of the several items of expenditure which are necessarily incurred in extinguishing the native title to lands, which are purchased for the Crown.\textsuperscript{160}

All along, part of the profits from the land sales were, as Grey said himself, to be ‘devoted to Roads and Public Works’.\textsuperscript{161} By forgoing a market price for their lands in the knowledge that the Crown would sell at a much higher price, Māori were in a sense building the fund that would pay for the works.

We think that this analysis strengthens the argument that the legal norms for public works that were developed in England and brought to New Zealand should not have applied to Māori. By accepting the low prices that allowed the moneys in the fund to accumulate, Māori had made their contribution to the services that would support the needs of the wider community already; there should have been no question of their being required to give up more land for infrastructure. Indeed, under the model, Māori needed to keep the land reserved from Crown purchases in order to participate in the agricultural economy and to profit later from land price inflation.

The compulsory acquisition of Māori land – especially without compensation, as under the 5 per cent rule – should not have been contemplated. It meant that Māori were paying for infrastructure twice: first, by accepting low prices for their land and, secondly, by giving up more land without their consent, and sometimes also without payment. Another exacerbating factor is that, although Māori forwent the opportunity both to keep their land and to maximise the purchase price on the basis of the promises alluded to in the quotation from Grey above, many of the promised benefits were not delivered. This puts the public works takings into the wider context of the colonisation bargain. Seen in that light, the added burden of compulsory acquisition for public works – especially when compensation was low or non-existent – was really an unconscionable breach of the Treaty.

\textbf{(4) The Crown’s argument}

The Crown rejects the view of successive Waitangi Tribunals that, except in exceptional circumstances, compulsory takings are in and of themselves repugnant to Treaty principle. The ‘last resort in the national interest’ test sets
the bar too high, the Crown says, and would result in the Treaty being an unreasonable fetter on its ability to implement reasonable policy.\(^{162}\) Crown counsel referred us to the words of the judgment of Court of Appeal president Robin Cooke:

The principles of the Treaty do not authorise unreasonable restrictions on the right of a duly elected Government to follow its chosen policy. Indeed to try to shackle the Government unreasonably would itself be inconsistent with those principles. The test of reasonableness is necessarily a broad one and necessarily has to be applied by the Court in the end in a realistic way.\(^{163}\)

Accordingly, the Crown argues that the 5 per cent rule (discussed in section 8.2.1) was ‘a reasonable means of providing future legal access to and across the land.’\(^{164}\) It says that roads were and are an essential part of the infrastructure of the modern economy and that the provision of roads enabled Māori to participate in that economy. Because the rule applied to ordinary Crown-granted land as well as Māori land, its only discriminatory feature was that the time limit within which land could be taken was extended for Māori land but not for general land.\(^{164}\) Overall, the Crown said, such acquisitions are part of the legitimate exercise of the Crown’s Treaty right of kawanatanga.

The Crown’s analysis takes no account of the land fund model, although it is to the work of Crown witness Dr Loveridge that we are indebted for our understanding of this topic. Nowhere does the Crown address the point that, given the low prices paid for their land, expecting Māori to surrender more for roads without compensation was not reasonable.

In our opinion, none of the public works takings in this district inquiry area met the test for being required as a last resort in the national interest. The Crown seems to argue that certain railways and road works did meet the test because the difficult terrain meant that there were no alternative routes. The arguments were not well developed and did not analyse the real requirements of the test. We are satisfied that, although better arguments can be mustered in support of some of the takings of Māori land than for others, none was truly a taking ‘in the last resort in the national interest’. Circumstances of exigency (such as war or other emergency) were not evident, and we consider that the test requires them.

Instead, the Crown’s submissions move quickly past the difficult matters of principle, upon which the Crown takes issue with Tribunal jurisprudence, and on to the procedural requirements of the legislation and compliance with them.\(^{166}\) It is probably true that in most cases the letter of the law was broadly followed, although evidence is sparse for the earlier period, and it is not clear in a number of cases whether compensation was paid. However, this is not the real point at issue. If the compulsory taking of land from Māori was wrong in principle – as we believe the arguments discussed above establish – then compliance with statutory requirements does not retrieve the position for the Crown. It only prevents it from getting worse.

The Crown accepted the need to balance its rights and responsibilities under the Treaty with those guaranteed to Māori in article 2. Counsel acknowledged that the Crown must be ‘measured’ in its use of its powers of compulsory acquisition, pay ‘fair market compensation’ for the land, consult ‘adequately’ with Māori over the taking; and, ‘where possible’, ensure that Māori rights and interests in areas of land which would result in major adverse social, cultural, and economic impacts for Māori if taken, are protected.\(^{167}\)

While the Crown recognises that a degree of restraint must be exercised when contemplating the compulsory acquisition of Māori land, we do not know at what point it considers such restraints become ‘unreasonable shackles’ (to borrow the language of President Cooke’s judgment) on its ability to govern. Crown counsel conceded that certain takings of Māori land in Wairarapa ki Tararua ‘lacked the necessary public interest element.’\(^{168}\) Two examples were cited: the Dannevirke rifle range (discussed in section 8.3.6(5)(b)) and the Tautāne Road reserve takings. It
is not clear to us why the Crown conceded fault in these instances but not in others.

(5) A degree of restraint?

We saw little evidence of restraint in the exercising of the power to take Māori land compulsorily. On the contrary, it was our strong impression that, over the years, the Crown and local authorities were cavalier in their approach to acquiring Māori land for public works in Wairarapa ki Tararuā. There was apparently no appreciation that, for Māori, land was special and significant in ways that did not relate to money. There is no data on the 5 per cent takings of Māori and general land, so we cannot say how much Māori land was pressed into the service of the community under it. But at least Māori land was relatively plentiful in the period when it was routinely subject to the rule. It was not plentiful in the twentieth century, yet takings continued. Land probably became more significant to tangata whenua over time, as they had less and less of it by which to identify themselves and to reflect their special place in the region. But the authorities seem to have had no sense of that.

Perhaps because the 5 per cent rule allowed the authorities to take land for public works very easily, they became used to subordinating private land interests to community interests:

The impact of the application of [the 5 per cent rule] to Maori land in the more than sixty years of its operation was not only the effective confiscation of a substantial amount of Maori land (although very difficult to calculate) for road and rail purposes without compensation. The provisions also helped create an environment that encouraged central and local government taking authorities to adopt the view that Maori land was generally easier and cheaper to take than other land.169

As the general land owned by settlers was increasingly developed into valuable farm land, and Māori land typically was not, it may have seemed better to locate public works on Māori land because it was less productive (see chapter 6, for a discussion of the obstacles to the development of Māori land). Certainly, its less developed state made it cheaper to buy.

We can really only speculate about why taking authorities targeted Māori land, if indeed they did target it. There has been no sustained comparative analysis of takings of Māori and general land.170 Nevertheless, we believe that our inferences from the material facts presented are fair. Certainly, the map of council takings around Mākirikiri Marae in Dannevirke speaks for itself (see the map on page 775). We note that our impression was shared by the Hauraki Tribunal, which found that ‘the Crown at times in the past had adopted a cavalier attitude to the taking of Maori land, and took advantage of the inherent problems associated with the administration of multiply owned Maori land, a system devised over time by the Crown itself’.171

The Crown conceded that there was no evidence that the authorities considered whether the takings would leave Māori with sufficient land for their present and reasonably foreseeable future needs.172 In failing to take this into account, submitted counsel for Nga Hapū Karanga, ‘the public works regime contributed to the virtual landlessness of Wairarapa Māori’. Although we do not know precisely the extent to which public works takings contributed to current landlessness,173 we agree with claimant counsel, Grant Powell, when he said that, in the context of diminished land holdings, compulsory land takings cannot have had:

anything other than negative consequences for Wairarapa ki Tararuā Maori. As Marr et al note, this was particularly so where the little remaining land was almost certainly of importance so as to have escaped alienation for so long; containing waahi tapu and other places of significance for Wairarapa Maori. . . . Public works therefore were a significant encroachment on remaining Maori land even when the takings were of small land areas.174

The Crown’s submissions do not directly address the kawanatanga–rangatiratanga conflict that underpins the
Crown’s assertion (and Māori’s denial) of the right to take Māori land for public works. Nor is there any attempt to explain why successive governments have ignored the explicit recommendations of the Waitangi Tribunal about the changes that should be made to public works legislation, and the detailed reasons for them.173 A review of public works legislation has been underway since the early 1990s, but that review, and its failure to give rise to conclusions and actions, cannot continue to be proffered as a Crown response.179 We are aware that, nowadays, neither governments nor local authorities typically resort to the compulsory acquisition of Māori land without exploring other options. Nevertheless, the power to do so remains – without limitation as to the purpose for which land is taken, and without regard for whether the Māori owners have other land. Nor is there any requirement for other possibilities to be exhausted first. This is a totally unsatisfactory situation, which is an ongoing and substantial breach of the principles of the Treaty.

8.4.2 When local authorities exercise statutory powers to acquire land compulsorily for public works, what is the Crown’s responsibility?

In the nineteenth century, the majority of public works takings in Wairarapa ki Tararua were for roads and railways, and central government was the key taking authority. But local authorities slowly assumed that role once they gained the power to take land compulsorily for public works in 1876. By the early 1960s, when central government took land for the Waiohine Mangataraere flood control scheme, direct takings by the Crown were a relatively rare event.

The Tribunal’s jurisprudence on public works takings focuses on the compulsory acquisition of Māori land by the Crown. Where, as here, the claimants’ case substantially concerns takings by local authorities, the question of course arises as to whether the same principles apply. On the face of it, the Crown’s Treaty duties are the Crown’s. On what basis can it be argued that the compulsory takings of land by local authorities are similarly subject to Treaty duties?

(1) The Crown cannot evade Treaty duties by passing inconsistent legislation

The Treaty of Waitangi was the document that founded our nation. In it, the Crown made guarantees to protect Māori in the ownership of their land and, in return, Māori agreed that the Crown could govern. The power to take land compulsorily, as successive Tribunals have stated, derogates from Māori Treaty rights in article 2.

As an exercise of raw power, governments can depart from the express terms of the Treaty without first obtaining the consent of the other party whose rights they guarantee. Parliamentary sovereignty provides the might but does not make it right. The Treaty is a nonsense when governments avoid complying with it simply by passing inconsistent legislation.

By delegating to local authorities the power to take Māori land without the consent of its owners, the Crown has done precisely that: beginning in 1876, it has legislated its way out of its Treaty obligation to protect Māori in the ownership of their land until they wish to sell it.

We agree with the Ngāwhā geothermal Tribunal’s statement that:

the Treaty was between Maori and the Crown. The Crown obligation under article 2 to protect Maori rangatiratanga is a continuing one. It cannot be avoided or modified by the Crown delegating its powers or Treaty obligations to the discretion of local or regional authorities. If the Crown chooses to so delegate, it must do so in terms which ensure that its Treaty duty of protection is fulfilled.177

In this inquiry, Crown counsel said that ‘local authorities are not part of the Crown and any acts or omissions on the part of local authorities cannot be ‘Treaty breaches’.178 However, the Crown accepted that it was responsible both for designing public works legislation and for monitoring local authorities’ use of compulsory acquisition powers
under that legislation. This followed from earlier concessions in the Tūranga district inquiry, where the Tribunal noted that:

While the Crown has conceded that it has responsibility for designing and monitoring the legislative system for public works takings, it has also stated that ‘it is not responsible for the acts or omissions of local authorities or statutory bodies’. We do not accept that the Crown could devolve responsibility in this manner, given that it has itself empowered local authorities to take land for public works in the first place.\(^79\)

(2) **The Crown remains responsible for prejudice to Māori**

What does it mean when the Crown says that it accepts responsibility for designing and monitoring the legislative system for public works takings? The proposition seems to be that, although it accepts responsibility for the system itself, the Crown is not implicated in the actions of those who implement the system.\(^80\) We see no basis for limiting the Crown’s liability in this way. If the Crown enacts legislation enabling local authorities to undertake activities that are in breach of the Treaty – and most public works takings are just that – then the Crown must accept the consequences. This means that the Crown is responsible for the prejudice to Māori that arises whenever takings by local authorities do not meet the test that the Tribunal has devised as a correct statement of Treaty principle – that is, ‘as a last resort in the national interest’.\(^81\) In this district inquiry, no public works takings have been shown to meet the test. The Crown is therefore responsible for the negative consequences for Māori of all the public works takings that were the subject of claims.

(3) **Local and central government acted together**

It was not always the case that public works takings were undertaken exclusively by the Crown on the one hand or by a local authority on the other; sometimes they engaged in them together, particularly in the early years of local government. For example, because expertise in public works takings reposed in civil servants in Wellington, they would provide oversight and guidance. This was the case in road takings in Palliser Bay, where the Featherston County Council sought assistance from the Public Works Department. At Tahoraiti, the Dannevirke Borough Council could not have met the cost of compensation for the taking of land for the Mākirikiri scenic reserve without Crown assistance. And the Public Works Department and the Native Trustee intervened on behalf of the Dannevirke Airport Association in the taking of land for the aerodrome.

(4) **The Crown’s monitoring**

As noted, the Crown accepts responsibility for monitoring local authorities, and it pointed to evidence that it said showed that it was carrying out such monitoring to protect Māori interests. Looking at the instances given, though, we doubt that it was to much effect.

This is apparent in many of the Tahoraiti block takings in Dannevirke. There, we saw procedural failings around notification, objections, and offer-back, as well as evidence of bullying and misinformation by council officers. Where was the monitoring of this conduct? The Crown contended that the case of the Dannevirke rubbish dump demonstrated central government’s ‘increasingly responsive and sympathetic’ attitude to Māori concerns over public works takings.\(^82\) We do not agree. What happened there cannot really be called monitoring, which involves a system of assessing conduct and changing it where it falls short. As regards the Dannevirke rubbish dump, the Government was unable to insist that the local authority comply with its preferences because the local authority was acting in accordance with the law.

As we discussed at section 8.3.6(5), Ministers urged the Dannevirke Borough Council either to negotiate the purchase of the Māori land it wanted or to find another site.
When it did neither, the Government refused to allow the Governor-General to sign the proclamation of compulsory acquisition and defended that position in judicial review proceedings in the High Court. Cathy Marr said in evidence that, though the Government knew it would lose the court case because the council had clearly complied with the procedures set out in the legislation, it was prepared to go to court anyway because it wanted to be seen to be upholding its 1978 election pledges on Māori land rights.\(^{18}\) What the Government could have done to demonstrate opposition to local authorities taking Māori land for public works was to change the legislation to take this power away from them. Even though it was passed in the very year that the Government lost the Dannevirke rubbish dump case, the Public Works Act of 1981 improved things for Māori only in small ways (see sec 8.3.4). It did not ban local authorities from taking Māori land for public works, and the law has not been changed since.

**5) Whether local authority or the Crown a technical detail**

The cases we have examined illustrate how the compulsory acquisition of land for public works was simply an abrogation of private rights for the benefit of the whole community. From the point of view of those whose rights were abrogated – Māori people in the cases we are examining – the characterisation of the taking authority as the Crown or a local authority is merely a technical detail. The triviality of the distinction is reinforced in the cases where, effectively, the Crown and local authorities collaborated to effect the compulsory acquisition and to build the public work. In principle, there was no material difference: the guarantee of Māori property rights in article 2 of the Treaty was simply ignored, whether the taking was in the name of a local council or of the Crown. In either case, the Treaty was breached (except in the rare exigency where the national interest was at stake) because the Crown had passed legislation that authorised it.

**8.4.3 Even if the public works taking regime implemented by the Crown was in breach of the Treaty, was the public works regime procedurally fair and were takings carried out in accordance with that regime?**

We have looked at whether the compulsory acquisition of Māori land complies with the Treaty and have found that, for all the reasons already discussed, very few such takings are ever Treaty-compliant. We have said that, in this inquiry, the ‘as a last resort in the national interest’ test has not been satisfied in any of the instances of compulsory acquisition put to us in evidence. This is the first stage of the analysis, and of course we could stop right there, simply saying that we have disposed of the primary question.

But, for the Tribunal, that cannot be the end of it. There were many takings for public works in this district, and they were purportedly in accordance with the law of the day. Even though we have found that law wanting in Treaty terms, it is still important to inquire into whether it was actually complied with. For, if the Crown, having imposed a regime in breach of the Treaty, then failed even to implement the procedural safeguards inherent within it, then its fault is that much the greater.

Procedural safeguards were always an integral part of the public works legislation enacted over the last century and a half. Compelling a citizen to give up title to land is an extreme exercise of legal authority, so it is unsurprising that the Legislature has imposed procedural requirements that are a precondition to its legitimate use. Māori were at the very least entitled to whatever protection of their interests flowed from compliance with those requirements.

We turn now to examine whether the public works legislation was procedurally fair and how well its procedural requirements were met in Wairarapa ki Tararua. The fulfilment of the procedural requirements was the area that the Crown focused on in its submission. Unfortunately, this seems to reflect a greater interest on the Crown’s part in addressing whether authorities complied with statute than whether their actions were consistent with the Treaty.
The topics for our inquiry are procedural fairness, consultation, consideration of alternative sites and forms of tenure (other than freehold), compensation, and offer-back.

(1) Procedural fairness

When the legal norms for public works takings were developed in England in the nineteenth century, the landowning classes insisted that, if the State were to be authorised to usurp their right to sell their land only when they wanted to, there must be procedural protection. Adequate notice and consultation were vital, and owners affected had the right to be individually notified and to object where good grounds existed. Compensation, offer-back, and the right to repurchase completed the suite of requirements.\(^{184}\)

Given the guarantees in the Treaty, given that Māori were not represented in Parliament, given that Māori had already made their contribution to infrastructure through the land fund, one might hope that procedural protections for Māori whose land was compulsorily acquired would if anything have been greater. But instead, the public works regime progressively distinguished between takings of Māori and general land, and the protections for owners of Māori land were fewer. Māori were less likely to be consulted, less likely to be given adequate notice, and less likely to be compensated adequately, or at all. This was even recognised at the time. Cathy Marr said in her report:

It seems that in the Wairarapa district, as elsewhere, the discriminatory nature of the five percent rule was resented by Maori and the imposition of public works land taking provisions became a major issue in relationships between Maori of the district and the Government. Stirling notes that as early as 1899, when visiting the Wairarapa to explain proposed new Maori land administration laws to Maori communities, Premier Seddon and Native Minister Carroll acknowledged past inequalities in the treatment of Maori and Pakeha over road takings. They assured Wairarapa Maori that, ‘we think that the time has come when there shall be one law for both races in this respect’. However, the five percent rule applying to Maori land was not abolished until 1927. Then Native Minister Coates informed Parliament that the time had come when Maori should have the same right as Pakeha in claiming compensation for land taken for public works. His acknowledgement of what had become an essentially discriminatory right was not challenged in debates of the time.\(^{185}\)

It is significant, we think, that the unfairness to Māori inherent in the public works regime was apparent so long ago, in an era when instances of unequal treatment for Māori were sufficiently common as to go frequently unnoticed by those in authority.

(2) Consultation

Counsel for the Crown conceded that ‘there would have been little or no specific consultation with Māori leadership in respect of the development of public works legislation throughout the nineteenth century and the first part of the twentieth century’.\(^{186}\)

More specifically, counsel admitted that, while the public works legislation provided for the notification of owners and the hearing of objections, there were probably instances where public works takings went ahead without direct consultation with the owners. The Crown acknowledged the inadequacy of consultation in regard to two of the Castlepoint takings: the first taking from the Whakataki reserve and the Tautane reserve road taking.\(^{187}\)

Other takings, counsel submitted, involved ‘some form of discussion’ between the Crown and the Māori owners (for example, during attempts to negotiate a purchase by agreement or the hearing of objections to a proposal). Such discussions, counsel implied, constituted a kind of consultation. The Crown conceded, however, that ‘in some cases work had begun prior to the notice of intention being provided or the subsequent proclamation being obtained.’\(^{188}\)
Nonetheless, the Crown maintained that:

the evidence suggests that Maori were *generally aware* of proposals affecting their land and were able to make their views known with changes to the taking being achieved in some cases. [Emphasis added.]\(^{189}\)

We consider that general awareness is an unacceptably low threshold for meaningful consultation. Notifying an intention to take land for a road after it is constructed and in use cannot be described as ‘consultation’. Even within the context of the time, this reveals a very low level of respect for the property rights in question. Yet this happened repeatedly, for example at Castlepoint and Gladstone. Takings for the Palliser Bay road were also formalised retrospectively, but they show a more mixed approach to consultation. When the council notified proposed takings and called for objections in 1934, it is unclear whether the Māori owners were in fact aware of the proposal: the evidence shows that lessees were certainly contacted but owners may not have been.\(^{190}\) On the other hand, there is evidence of better process at Te Kōpi in the late 1960s, where Ngāti Hinewaka were consulted and there was a tapu-lifting ceremony before work began. In that case, the process followed may in fact have exceeded the statutory requirement.\(^{191}\)

The story of the Waiohine Mangatarere flood control scheme showed the Crown's disinclination to purchase land for public works by agreement – an approach specifically encouraged in the legislation – where it involved negotiation with Māori. The Crown initially intended to acquire all the land it wanted through negotiated purchase, but it abandoned this course on the basis of advice from solicitors, acting without instructions from the landowners. The lawyers’ advice to take the land rather than pursue negotiations with the owners, on the basis that multiple ownership presented insurmountable barriers, was accepted without further inquiry. We consider that the Crown could, and should, have found ways of overcoming this perceived barrier to negotiation.

The claimants argued that statutory notification requirements were less strict for Māori land than for general land. Specifically, sections 22 (notices) and 23 (objections) of the Public Works Act 1928 did not apply to Māori land.\(^{192}\) There was no requirement to give notice to each landowner where land was not registered under the relevant Land Transfer Act.\(^{193}\) Moreover, local authorities clearly found it onerous to have to consult with or notify multiple landowners; in several cases, we heard that the difficulty of doing so was used to justify the lack of consultation.

Dealing with multiple owners certainly is difficult, but the land tenure system for Māori land was not of Māori design. The system causes problems for Māori that are constant and unavoidable – and of course they are in a double bind when the intractability of the tenure system is used as an excuse for excluding them from procedural protections.

It is instructive to see that, in the early years, Wairarapa ki Tāmaki nui ā Rua Māori supported road building and other projects when they were adequately consulted, when they saw a benefit for their own communities, and when they had the opportunity to participate in the works. The case of the Ōkurupatu block also illustrates that a mutually satisfactory outcome could be achieved when the Government made genuine efforts to secure Māori agreement to land acquisitions (Wardell estimated that it took a year to reach an agreement with local Māori landowners) and when compensation was agreed and paid.

Had these practices been routine, there might have been far less friction between Māori and local and central government agencies over public works in the region.

(3) *Alternative sites and forms of tenure*

The Crown submitted that taking authorities did generally consider alternative sites before taking Māori land but that they would do so before involving landowners. Counsel argued that the fact that there is little or no documentary record of this being done is not evidence that it was not done.\(^{194}\)
We accept the principle that absence of evidence is not evidence of absence. But we cannot ignore the common practice of formally acquiring land well after roads had already been established. Clearly, it is impossible to consider alternative sites for a road that is already formed and in use. Yet, we heard many examples of this practice, such as roads across the Ōkurupatu block that had been in use for more than 20 years before the Government moved to legalise them. The practice continued until relatively recent times: Marr notes that in 1977 the Masterton County Council notified its intention to take land for the realignment of an intersection on the Castlepoint road that had already been carried out.\(^{195}\)

We consider that such instances show that the taking of Māori land for public works in Wairarapa ki Tararua was often treated as a ‘given’ that could be attended to after the event. It is most unlikely, we think, that this approach would have been taken to general land.

On other occasions, the desire to find a quick, convenient, or economical solution to public works needs seems to have militated against the consideration of alternatives. The clear sense of urgency driving the Waiohine Mangatarare flood control scheme, for example, may have closed off any consideration of alternative strategies (such as a road deviation).\(^{196}\) In the case of the Tahoraiti takings, the council also stressed that the rubbish dump was needed urgently and that no other alternative sites were available. However, we agree with the claimants’ view that the urgency was really the result of the council’s own poor planning.\(^{197}\)

Wāhi tapu are obvious examples of sites that the Crown should certainly not have taken. The Crown argued that successive legislative regimes provided for the protection of sites of significance to Māori, and it cited the taking of land at Te Kōpi (where there was a tapu-lifting ceremony prior to the taking of urupā land for a road realignment) as an example. The Crown also pointed to the fact that the proposed taking for the Gladstone Road deviation had been reduced because of its proximity to urupā.\(^{198}\)

Although legislative protections for significant sites did exist, they were inadequate. The case of the Gladstone Road deviation is particularly revealing. There, a local council used its powers of compulsory acquisition to build a road that separated wharenui and urupā – a decision that was described to us by counsel for Ngā Hapū Karanga as ‘an unspeakable disrespect’ and by another witness as effectively ‘breaking the spirit of the place.’\(^{199}\) The council later allowed an abattoir to be sited next to the urupā, which continued this pattern of conduct. The decision to locate the Dannevirke sewage plant and rubbish dump in close proximity to the marae is yet another example, as is the repeated flooding of the urupā following the Waiohine Mangatarere flood control scheme. Takings that had these kinds of effects on sites of cultural significance should simply not have been contemplated – and, if they were, should not have been allowed.

Assessing the Crown’s submission that taking authorities usually did consider alternatives to taking Māori land, we are confronted with the example of the Tahoraiti block, where several council works were congregated, creating a kind of public works ghetto on former Māori land close to Mākirikiri Marae. We have noted the unlikelihood that taking authorities would ever record an intention to target Māori land (see sec 8.3.6(5)), but in the Tahoraiti case the facts do speak for themselves. Marr and her co-authors cover all the salient points when they say:

Taken together the [case] studies also raise wider issues such as the apparent targeting of Maori land in particular blocks such as Tahoraiti. No evidence has been found of a deliberate policy in this regard. However, the studies do appear to support claimant concerns that a combination of lesser legislative protections, confusing and separate provisions for Maori land and the failure of provisions to adequately address the nature of Maori land title encouraged a common view among taking authorities that Maori land was generally cheaper and easier to take than other land. The general marginalisation of Maori from Pakeha dominated local authorities and the failure of Government to require taking
other than freehold. The Crown acknowledges as much. However, it says that the failure to consider options such as long-term leasehold was 'unsurprising in the context of the times when it was generally considered that land had to be in State ownership before public funds could be expended to improve that property'.

We accept that freehold was, and is, the preferred form of title for public works. But, in New Zealand, we seem to have a prejudice against leasehold tenure that is not really explained by its inherent nature. Public works will not, in fact, last forever – the offer-back regime recognises this. Why could the form of tenure not also recognise it? How many rubbish dumps and sewage ponds will still be operating on their present sites in 100 years? Why could land not simply be used, with that use and any long-term adverse changes to the land paid for, so that the reversion remains with its Māori (or other) owners?

We heard that over the period when the Dannevirke Airport Association was leasing the aerodrome land from its Māori owners (1933–56), central government agencies contributed more than £13,000 to develop the facility – a significant expenditure of public funds on land leased from Māori. Yet, when the option of signing a new lease arose in 1955, it was not explored, even though it does not appear that leasehold tenure had caused problems. The preference for freehold over leasehold was fundamentally a policy choice, and the compulsory acquisition powers in the Public Works Act allowed the Government of the day to impose that preference on Māori.

(4) Compensation

In most cases, compensation was paid for land compulsorily acquired. The Crown said that, where there was a legislative requirement to pay compensation, it was usually paid. Claimant counsel did not take issue with this, although our assessment of the evidence is that there were a significant number of acquisitions where evidence of compensation having been paid is not available.

We proceed now to consider two issues: whether the principles by which compensation was calculated were
fair and Treaty-compliant and whether Māori landowners were disadvantaged because the Native Land Court (rather than the Compensation Court) assessed their compensation. We then discuss the issue of compensation as it relates to Ōkautete School.

(a) Were compensation principles fair and Treaty-compliant? As to the first issue, we have not attempted a purchase-by-purchase analysis of whether the prices paid were fair even in their own terms, which focused on market valuations. We do not have before us the necessary evidence about land values over time to assess the fairness of particular prices paid to Māori for compulsory purchases. This is why, in the case studies, we discuss the amounts paid in compensation only when adequacy was raised as an issue at the time.

We can, however, look at the fairness and Treaty compliance of the valuation methodology that was developed over time. This methodology had regard only to the current market value of the land in question. As most of the land in Wairarapa ki Tararua was farmland or bush, its value for compensation purposes turned on its potential for agriculture. No regard was paid to the spiritual or emotional value of the land to its owners; nor to the role that the land played in cultural practices such as hunting and gathering; nor to whether the whānau had other land of comparable or any value; nor to whether the land to be acquired was the only land suitable and should therefore attract a premium; nor to whether the land had inherent and unique potential for other purposes (such as the hydroelectric potential of land at Mangakino – see chapter 7); nor to whether the right to develop any such unique potential properly belonged to Maori. We think all these factors should have been taken into account in assessing fair compensation for Māori land.

In addition, claimant counsel submitted, ‘the Crown was obliged to assess the amount of remaining lands held by Māori and to consider their circumstances when assessing compensation.’ We agree. Counsel argued that the payment of fair compensation was intrinsically connected to Treaty principles:

To be consistent with Treaty principles, any proposal to alienate lands owned by Māori therefore requires the Crown to assess relevant Māori interests in order to establish a fair level of compensation for such rights, including taking into account the development rights possessed by Māori, and to reach an agreement on the proposed alienation. Unless this process is carried out, and all those Māori with an interest agree to accept that compensation, any alienation or extinguishment of such interest would be a breach of the principles of the Treaty of Waitangi, in particular the principles of partnership, good faith and active protection.

We agree with this, too.

Thus, the compensation methodology was far too narrow. It entirely failed to meet the Crown’s Treaty duties to Māori. The criteria for fair payment were monocultural and even in Pākehā terms were unfair because attributes like inherent potential (as for hydroelectric schemes) or unique suitability (as for a stopbank) were not recognised as raising an obligation to pay a premium. Nor did the compensation methodology take into account whether the whānau concerned had sufficient other landholdings. In our view, if Māori land had to be taken, higher prices should have been paid to those who could least afford to lose that land.

(b) Were Māori landowners disadvantaged because the Native Land Court assessed their compensation? The Crown denied that Māori were disadvantaged by the fact that compensation for Māori land takings was determined by the Native Land Court rather than the Compensation Court, which set the price for general land. Counsel submitted that, in many cases, the issue of compensation was thoroughly argued before the Native Land Court and that, on almost every occasion, the court awarded compensation at a higher level than the Government valuation.
For example, the Crown said that in 11 out of 13 Palliser Bay road takings, the compensation paid was above the Government valuation.\textsuperscript{206}

The central North Island Tribunal certainly considered that the compensation determined by the Native Land Court was problematic. In \textit{He Maunga Rongo: Report on Central North Island Claims, Stage 1}, the Tribunal quotes Gilbert Mair, who, in 1918, characterised as ‘helpless’ those Māori who were involved in the Native Land Court process for determining compensation. He contrasted them with ‘the lucky European, who when his lands are taken under the same legislation, has better opportunities for getting justice’. The central North Island Tribunal thought Mair’s anecdotal observations were substantiated by other evidence, and it concluded in relation to the Ngongotaha scenic reserve that ‘the process by which [compensation] was decided was not a safe one’.\textsuperscript{207} Ultimately, the Tribunal could not definitively answer the question as to whether there was a pattern of paying lower compensation for Māori land. There was insufficient evidence to show whether the better opportunities and fairer processes available to owners of general land resulted in higher compensation, but the Tribunal thought that a prima facie case had been established.\textsuperscript{208}

\textbf{(c) Ōkautete School:} Ōkautete School is a rather curious case. The land for the school was gifted, but nevertheless the Government went through the process of a compulsory acquisition to put the land into Crown title.

Under the Native Schools Act 1867, Māori (unlike rural Pākehā) were required to provide land for native schools, contribute to maintenance expenses, and provide half the cost of the buildings and a quarter the salary of the teachers.\textsuperscript{209} This was patently unfair in Treaty terms. In fact, the argument against this approach is similar to that discussed in relation to the compulsory taking of Māori land for roads. Under the land fund model, Māori had already made their contribution to the costs of establishing infrastructure by selling their land to the Crown cheaply. For the Crown to make Māori communities, and not Pākehā communities, give land for schools adds insult to injury: again, Māori were effectively paying twice.

The Crown has already given back the land that Ōkautete Māori gifted for the school and has agreed to return the main school buildings at no cost to the original descendants. At issue still is the school house, located beside the main school buildings. The Ministry of Education is seeking $22,500, the amount it would cost the Crown to remove the school house from its present site. Its approach has been that this is the extent of its obligations, because although the land was gifted, the school buildings and school house were not. The Government paid for their construction and so, the thinking goes, the landowners should pay for these. Presumably this thinking arises from the notion that the owners would otherwise be receiving a windfall gain, since when they gifted the land it had no buildings on it.

Looked at in context, though, we regard this thinking as erroneous. Instead, the Crown should take into account that:

- Both Pākehā and Māori children of the district benefited for years from the landowners’ generosity.
- No rent was paid for the use of the land.
- The requirement for Māori to donate land for schools when there was no equivalent requirement for Pākehā communities wanting rural schools was discriminatory and inconsistent with article 3 of the Treaty.
- The ‘benefits of settlement’ offered to Māori as an inducement to sell their land at a low price did not include education on at least the same terms as it was available to Pākehā.
- The school site remains a focal point for tangata whenua of this district. Land loss and urban drift took a heavy toll, and the school site is now effectively a marae. Together with the church next door, it comprises the communal heart of Ōkautete.

In the light of these considerations, the Crown would be acting properly and honourably if it now also gave back the
school buildings and school house. It would be a fair deal: the Crown had the use of the land for 80 years at nil cost. For the Ōkautete community, they are a tremendous asset; by contrast, they are of negligible value to the Crown.

Tikanga Māori values reciprocity. To give back the school buildings and school house would be, in Māori terms, utu (a reciprocal gesture or pay-back).

(5) Offer-back

Because the compulsory acquisition of land is an interference with private property rights, it has been recognised since the nineteenth century that, once the public purpose for which the land was acquired has changed or been exhausted, the owner of the land should have the opportunity to purchase it back at a market price. This is called offer-back.

Successive public works Acts (including those of 1876, 1928, and 1981) have included offer-back provisions. However, they were often subject to other provisions that allowed for the land to be exchanged or retained for other public works. As the Crown told us, taking authorities have therefore been able 'to apply land acquired for one purpose to another purpose should the first purpose not work out or should it be fulfilled but another purpose become important'.

Although these practices may have been legal, they were not right. They led to practices that were patently unfair:

It often seems that in the period up to 1928 in particular almost any alternative public purpose was considered preferable to returning land to Maori ownership. This can be seen, for example, in the apparent lengthy lack of interest in the Makirikiri scenic reserve. In many cases it was perfectly legal for a taking authority to use land acquired under compulsory provisions for other purposes. However, there appears to have been a failure by government to require that taking authorities consider whether such alternative uses were more pressing than returning land when compulsory provisions had been used. It also seems that in cases where compulsory provisions were used and little or no compensation was paid, such as under the five percent rule, more serious consideration of offerback should not have been required before land was used for other purposes. Otherwise, taking authorities could simply take up to the five percent limit without compensation knowing it could easily be transferred for use for some other public purpose anyway. An early example of such a change in use has been found in the district as early as 1890 when land originally taken for the Napier–Woodville railway was transferred to the Dannevirke Road Board for use as a road.

Even today, the offer-back requirement in the Public Works Act 1981 is in effect discretionary. If offering the land back is considered 'impracticable, unreasonable, or unfair' or there has been 'a significant change in the character of the land', it need not be offered back to its original owners (s 40(2)(a), (b)).

In the Wairarapa ki Tararua district, we saw several instances where compulsorily acquired Māori land could have been offered back but was not. In the case of both the Gladstone gravel pit and the Dannevirke aerodrome, there was an exchange to acquire other land required for another public work. In the case of the gravel pit and the rifle range at Dannevirke, once the land was regarded as surplus, it was sold to people other than the descendants of the former owners. Yet, in all these cases, the Crown submitted, the land was disposed of in accordance with the governing legislation of the time.

It follows from our Treaty analysis that taking Māori land for public works is an extreme act of Government authority. Not only does it override the property rights of Māori as citizens, but it also tramples on their whakapapa connection to ancestral land. If the land is not restored to them, the whakapapa connection to that land is effectively lost. Therefore, we rank very highly the obligation on the Crown to restore Māori owners to land taken from them. The 'purchase back at a market price' model is not appropriate for them. Very often, the land has appreciated
between compulsory purchase and offer-back, because of both the effect of price inflation and the ‘improvements’ undertaken in relation to the public work. Requiring the original owners to give the Crown the benefit of price inflation and recompense for improvements that were effected through no initiative of theirs is neither fair nor in accordance with Treaty principle. It leaves unanswered the question of the value to repurchasing owners of the so-called ‘improvements’ to the land, and it also fails to reflect in money terms the detriment to those owners of having to put up with dealings with their land over which they had no control.

We think that a separate regime should be designed that recognises the special protections of Māori landowners in article 2. Two obvious mechanisms that should be explored are a reduction of the market price and the provision of loans to enable the purchase of land offered back. Sometimes, where the valuation methodology for public works took no account of the value of the potential use of land – for instance, for hydroelectric purposes – the offer-back arrangements should take account of the original under-value. The practice of valuing bare land by reference only to its agricultural value and without considering its unique suitability for other purposes was (and remains) unfair. Where the original price did not reflect the inherent value of the land, and the benefit of the special use has been taken over many years, it will often be appropriate for the land simply to be gifted back to its owners.

We discount the excuse that is sometimes tendered for not offering land back to Māori owners: namely, that it is difficult to identify the descendants of the original owners. As we have said previously, it is true that Māori land tenure is cumbersome and expensive, but it is a system designed by governments and imposed upon Māori. In a legal sense, the equitable rule of estoppel applies: the Crown cannot rely on the difficulties created by the problems of multiple ownership and succession in a tenure system it designed in order to disadvantage Māori further. Anyway, finding descendants is in most cases a matter only of applying enough resources to the task.

### 8.4.4 Tribunal findings

The compulsory acquisition of Māori land for public works in Wairarapa ki Tararaua breached article 2 of the Treaty of Waitangi. No acquisitions in the district met the test of being required in circumstances where the national interest was at stake and there were no other options.

There are three factors that exacerbate the Crown’s Treaty breach in respect of public works:

- Māori were not represented in Parliament at the time when their Treaty rights were abrogated by the adoption of English public works norms through legislation.
- The land fund model of colonisation implemented in New Zealand involved Māori accepting a low price for their land in return for other benefits, including infrastructure like roads and bridges. Requiring them then to give up ownership of further land for public works, sometimes without compensation, was an extra and unfair burden.
- There was a quality of exploitation about how this burden was imposed: Māori land was made subject to the 5 per cent rule and local authorities were allowed to compulsorily acquire Māori land, just as Māori political power was declining because of greater settler numbers and the land wars.

The whole public works regime was, and remains, monocultural. The Crown failed to apprehend, and take account of, the special significance of land to Māori. In particular, it 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. Continuing to facilitate the land’s easy compulsory purchase by (mainly) local authorities was a woeful failure to protect Māori from unnecessary cultural, spiritual, and financial loss.

The legislation was not procedurally fair as it related to Māori land. Most public works Acts contained different regimes for Māori and other land, and owners of Māori land had fewer procedural protections. The requirements for procedural protection of landowners’ rights developed
in England – especially good notice to every individual with interests in the land, fair compensation, the right to object, and offer-back for repurchase when the original purpose expired – were inconsistently and poorly applied to Māori land.

The Crown’s delegation of compulsory acquisition powers to local authorities breached the Treaty. Compulsory acquisition is a significant erosion of Māori property rights that should only be contemplated in rare and tightly controlled circumstances. Legislation that allowed the State’s power to be deployed by many different local authorities for ever more trivial purposes flagrantly cut across the guarantees to Māori in article 2. The Crown also failed to supervise offer-back provisions, allowing local authorities to redeploy land for other purposes, or offer the land back to others because offering it back to the descendants of multiple Māori owners was characterised as impracticable.

The small scale and humdrum nature of the many local authority takings in the district meant that it was not necessary to acquire Māori land compulsorily, as many other sites would have been suitable. A possible exception to this may have been certain coastal roads, and possibly also particular stopbanks and gravel pits. However, the Crown offered neither evidence nor submission to this effect. Moreover, there is no evidence of attempts to acquire land for these kinds of purposes by negotiation rather than compulsion. In every instance, negotiated purchases could have been – and should have been – tried before any compulsory measures were taken. The legislation provided no threshold for resorting to compulsory measures for trivial works; nor was there any requirement to consider alternative sites before taking Māori land; nor was there any requirement to consider whether owners of land sought for works had other Māori landholdings. All these omissions breached the Crown’s Treaty duties, particularly its duty of active protection.

Where Māori land was taken in preference to general land – which we find occurred at least in the case of the Dannevirke Borough Council’s takings in the Tahoraiti blocks – the Crown failed to monitor the situation. It failed also to provide a legislative regime that curtailed authorities’ power to act in this way. These failures breached article 3 of the Treaty, and also the Crown’s duty of active protection.

The failure of the Crown to ensure that all compulsorily acquired Māori land was offered back once no longer required for the original purpose was a lamentable breach of its duty to actively protect Māori interests. Had a proper offer-back regime been in place, some of the negative effects of compulsory acquisition might have been averted.

8.5 Conclusion

It is not uncommon, in the Tribunal’s district inquiries, for claimants’ evidence about compulsory public works takings to be more moving than any other. When takings happened within the living memory of witnesses, when they happened against the owners’ will, when witnesses still live every day with visible reminders of what occurred, their pain and resentment is palpable. 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.

The Waitangi Tribunal’s process seeks to bring peace and reconciliation to communities whose claims tell a story of grievance. For this outcome to be attained – and for the claims settlement process in which we have all engaged for many years now to succeed in those terms – claimants need to see that the Crown is willing to move on areas of policy that have affected them negatively. It is critical that the Crown recognises, and responds to, this need. The constant delay in making changes to the public works regime, which clearly conflicts with Māori rights under the Treaty,
reflects badly on the Crown’s bona fides in the Treaty area. It is not even as though public bodies are in the business, nowadays, of compulsorily acquiring land to any extent. Even if, sometimes, it is deemed necessary to compulsorily acquire land, Māori land now comprises only 5 per cent of land in New Zealand. Surely the time has come to compel authorities to look elsewhere for any land that simply must be purchased.

8.6 Recommendations

Below, we set out our recommendations for specific changes to the public works legislation. These are effectively a compendium of the public works recommendations made by previous Tribunals – none of which have yet been implemented – with additions of our own.

8.6.1 Recommendations on legislation

We recommend that the Crown acts to change the current public works regime without further delay.

1. In particular, we recommend that the Public Works Act 1981 be amended to provide that it should be so interpreted and administered as to give effect to the principles of the Treaty of Waitangi. 214

2. As a consequence of recommendation 1, we recommend that part 11 of the Public Works Act 1981 be amended so that:

(a) The Crown and local authorities are expressly authorised to:

(i) acquire a lease, licence, or easement over;

(ii) enter into a joint-venture arrangement in respect of; or

(iii) arrange for an exchange of land in respect of Māori land required for public purposes, instead of acquiring the freehold title of such land. 215

(b) The Crown or local authority should not seek to acquire Māori land without first ensuring that no other suitable land is available as an alternative.

(c) If the Crown or a local authority wishes to acquire Māori land for a public work or purpose, it should first give the owners adequate notice and, by full consultation, seek to obtain their informed consent at an agreed price.

(d) If the owners are unwilling to agree, the power of compulsory acquisition for a public work or purpose should be exercised only in exceptional circumstances and as a last resort in the national interest.

(e) If the Crown or a local authority does seek to acquire the use of Māori land for a public work, it should do so by acquiring a lease, licence, or easement, as appropriate, on terms agreed upon with the Māori owners or, failing agreement, by appropriate arbitration. Should there be exceptional circumstances where the acquisition of the freehold by the Crown or a local authority is considered to be essential, Māori should have the right to have that question determined by an appropriate person or body, independent of the Crown or local authority. 216

3. As a consequence of recommendation 1, we also recommend that part 11 of the Public Works Act 1981 be amended to require the Crown or local authority, as the case may be, to:

(a) Consult with former Māori owners or their successors before deciding not to offer surplus land back to such owners, and before putting any land taken for a public work to any other purpose.

(b) Offer to return surplus land to Māori ownership at the earliest possible opportunity with the least cost and inconvenience to the former Māori owners. 217

4. In determining the price at which the land is offered back to the former Māori owners, we recommend that the Crown or local authority:

(a) Share with such owners the increased value in the land arising from the use and development of their land.
(b) Have regard to the means of such former Māori owners.
(c) Have regard to the circumstances surrounding the compulsory acquisition of such land.
(d) Have regard to the special circumstances of multiple Māori owners and to seek to accommodate such circumstances. 218
(e) Have regard to the adequacy of the compensation paid when the land was compulsorily acquired, in the light of Treaty principle. 219
(f) Have regard to whether the Crown should pay compensation to Māori when the land is returned. The quantum of any such compensation is to be assessed on the basis of a fair return to Māori for the use of the land by the Crown, and the length of time the land has been used for any public purpose. 220
5. If for any reason the former Māori owners are unable or unwilling to take up the offer back, we recommend that the Crown or local authority is to offer the land to the wider hapū or tribal group to which the former Māori owners belong. 221
6. In order to facilitate the process of offer-back, we recommend the amendment of section 134 of the Te Ture Whenua Māori Act 1993. This section enables the Māori Land Court to vest any Māori land acquired by the Crown or a local authority for public works purposes, for which it is no longer required, in those Māori found by the court to be entitled to receive it. However, under section 134, only the Crown or a local body may make such an application to the court. We recommend that the Act be amended to enable the owners from whom the land was originally taken or their descendants to apply to the court for the return of such land. 222
7. We recommend that section 342 of, and schedule 10 to, the Local Government Act 1974 should be amended or repealed to prevent local bodies from avoiding the requirements of the Public Works Act 1981 to offer back lands to their former owners once they are no longer required for public works. 223

8.6.2 Recommendation on offer-back standards
We recommend that Land Information New Zealand retains its existing standards relating to the offer back of gifted land and continues to give vendor agencies the discretion to return improvements on gifted land for less than current market value.

8.6.3 Recommendation on Ōkautete School
Having already acted properly in giving the Ōkautete School site back to the tangata whenua, we recommend that the Crown now also gives to those people the school buildings and school house located on the site.

8.6.4 Recommendation on research assistance
We have found that the land compulsorily acquired for public works in Wairarapa ki Tararua should not have been so acquired, for its acquisition in that way breached the principles of the Treaty of Waitangi. We recommend that the Crown now assists the claimants to find out about land that was compulsorily acquired in this inquiry area and that might be declared surplus and offered back to the descendants of the original owners or that has been disposed of by taking authorities without offering it back to its former owners. Investigation of the former will help avert further Treaty breach and investigation of the latter will provide better information about the extent of the prejudice flowing from compulsory acquisitions.

These recommendations should be brought to the notice of the Minister of Lands, the Minister of Justice, the Minister in Charge of Treaty of Waitangi Negotiations, and the Minister of Māori Affairs.

Notes
1. The takings from the Pouākani land owned by Wairarapa Māori fall into a different category, because they were associated with hydro-electrical works. Pouakani does not lie within this inquiry district, but events there nevertheless affected claimants in this inquiry (see ch 7).
5. Document A32 (Marr, Cleaver, and Schuster)

7. Cathy Marr, evidence presented at the second generic issues hearing, Dannevirke Town Hall, 10–14 May 2004 (transcript 4.2, tape 9, p1)

8. These principles were summarised most recently in Waitangi Tribunal, He Maunga Rongo: Report on Central North Island Claims, Stage 1, revised ed, 4 vols (Wellington: Legislation Direct, 2008), vol 2, p 447.


11. For example, in 1847 surveyor TH Fitzgerald reported that local Māori were helping to build the road from Wellington to Pai-tu-Mokai:

FH Fitzgerald, report, 1 July 1847 (as quoted in doc A32 (Marr, Cleaver, and Schuster), p17).

12. Document A32 (Marr, Cleaver, and Schuster), p14

13. Ibid, p18


15. Ibid, pp 16–19

16. Ibid, p20

17. Ibid, p21

18. Ibid

19. Ibid, p34

20. Ibid, p23


22. Ibid, pp 38, 44

23. Ibid, pp 37–38

24. Ibid, p40

25. Ibid, p41

26. Ibid, pp 40–41

27. Ibid, pp 38–39

28. Ibid, pp 39–40

29. Ibid, p46

30. Ibid, p47

31. Ibid, p48

32. Ibid, pp 48–49

33. Ibid, p49

34. Ibid

35. Ibid, pp 50–51

36. Ibid, pp 51–53

37. Document A32 (Marr, Cleaver, and Schuster), pp 53–54

38. Ibid, p51

39. Ibid, p57

40. Ibid, pp 54–55

41. Ibid, pp 56, 61

42. Ibid, p61

43. Ibid

44. Ibid, p63

45. Ibid

46. The material in this case study is taken from document A50 (Stirling), pp 124–137.

47. Document A51(f) (Bruce Stirling, comp, supporting papers to ‘Wairarapa Maori and the Crown’, 7 vols, various dates, vol 61), p 2747

48. Ibid, pp 2638–2639

49. Document A50 (Stirling), p130

50. Ibid, pp 132–133


52. Document A32 (Marr, Cleaver, and Schuster), p 87

53. Public Works Act 1882, s 26

54. Document A50 (Stirling), pp 121–122


56. Document A32 (Marr, Cleaver, and Schuster), p 196

57. Ibid, p197

58. Ibid, pp 84–94

59. Ibid, p89

60. Ibid, p88

61. Henry Hanson Turton, An Epitome of Official Documents Relative to Native Affairs and Land Purchases in the North Island of New Zealand (Wellington: Government Printer, 1883), pp 261, 265: ‘Ko nga ara ruri nui o te Kuini e waka e ana e maou kia tukua kia mahia ki roto ki nga wahi tapu mo maou i nga wa i rite ai i a te Kawana o Nui Tiren e kia mahia au a ara. He ara ano ia mo maou tahi ko nga Pakeha’. (We consent to allow the Queen’s high roads to be made over our reserves whenever the Governor of New Zealand shall think fit to make such roads, which are to be used by us and the Europeans.)
76. Document A32 (Marr, Cleaver, and Schuster), p 73
77. Ibid
78. Ibid, p 74
79. Public Works Amendment Act 1982, s 40(2)(a), (b)
80. Document A32 (Marr, Cleaver, and Schuster), p 74
81. Treaty of Waitangi Act 1975, s 64(A)
82. Document A32 (Marr, Cleaver, and Schuster), p 75
83. Ibid, pp 198–207
84. Ibid, p 114
85. Document A32 (Marr, Cleaver, and Schuster), pp 117–118
86. Ibid, pp 128–129
87. Ibid, p 130
88. Ibid, pp 131, 132
89. Ibid, pp 144–146
90. Ibid, p 166
91. Ibid, p 9
92. Ibid, pp 174–175
93. Ibid, pp 179, 185
94. Ibid, p 185
95. Ibid, pp 183–184
96. Crown counsel to acting senior historian, Tribunal reports, 17 March 2009
97. Although the Government of the day acknowledged that the land was a gift, for some reason it was treated as a taking under the Public Works Act 1894.
98. Director of Education to Ministry of Education, 13 July 1962 (doc A32 (Marr, Cleaver, and Schuster), p 204)
99. Document A32 (Marr, Cleaver, and Schuster), p 198
100. Document C44 (counsel for Toi Walker (aka Waaka) and Rehu Hawea), p 2; paper 2.437 (Crown counsel), p 2
101. Crown counsel to acting senior historian, Tribunal reports, 17 March 2009
102. Document C44 (counsel for Toi Walker (aka Waaka) and Rehu Hawea), p 3; SOC1B (Ngā Hapū Karanga), p 45
103. Paper 2.448 (Crown counsel)
104. The Dannevirke Borough Council was not the taking authority for the Mākirikiri scenic reserve, but the evidence shows that it was instrumental in the taking, and soon after the land was acquired, it was transferred to the council from the Crown.
105. Document A32 (Marr, Cleaver, and Schuster), pp 100–101
106. Document 117(a) (Crown counsel), p 49. In his statement of evidence, Ivan Hape referred to a three-acre gravel pit on Tahoraiti 2A18B. The pit had been unused since the mid-1930s, and local Māori applied unsuccessfully to have the land reserved for use as part of any future settlement package. However, they found that the land had been sold by the council in 2002. The Crown commissioned historian Joanne Galvin to investigate Mr Hape’s comments, and she concluded that he had confused two different gravel pit takings from the Tahoraiti block that are very close to one another: section 18 Tahoraiti 2 (near Rawhiti Street and the railway line) and Tahoraiti 2A18B (adjacent to Aerodrome Road). The background to the first of these is set out above. Galvin set out the background to the second taking: the part block on which the gravel pit was sited was sold by the owner Nikora Peeti in 1921 to the Dannevirke Borough Council. Subsequently, in 2003, the council sold the block to one Peter Eagle. The remainder of the block, approximately 67 acres, had been sold in 1964: doc E31 (Hape), p 6; doc E49 (Galvin).
108. Ibid, pp 218–220
109. Ibid, pp 239–243
110. Ibid, pp 244–251
111. In 1975, 6.8 hectares of aerodrome land were transferred to the New Zealand Insurance Company, possibly as part of a land exchange arrangement, since the following year 5.1 hectares of the company’s land were taken for the aerodrome under the Public Works Act. According to historian Joanne Galvin, the 6.8 hectares transferred to the company were part of the land originally acquired from Ms Paewai in 1956, as were another six hectares transferred to John and Donna Clarke by the council in 1980. At the same time as the Clarkes received the six hectares, three hectares were taken from them for aerodrome purposes: doc E51 (Galvin).
112. Town clerk to Dorrington, Poole, and Barclay, 9 September 1977 (doc A32 (Marr, Cleaver, and Schuster), p 278)
113. This was required under the provisions of part vi of the Town and Country Planning Act 1977.
114. Document A32 (Marr, Cleaver, and Schuster), pp 304, 310
115. Ibid, pp 285–292
116. Ibid, pp 288–291, 303
117. Ibid, pp 303–304
118. Waitangi Tribunal, Te Maunga Railways Land Report, p 69
119. Ibid, p 71
121. Waitangi Tribunal, Turangi Township Report 1995, p 299
123. Waitangi Tribunal, He Maunga Rongo, p 837
124. This theme is explored in volume III of this report, and particularly in chapter 12B, which concerns Māori representation in local government.
125. The Waitangi Tribunal has frequently emphasised in this regard the importance of Lord Normanby’s instructions: see Waitangi Tribunal, Report of the Waitangi Tribunal on the Muriwhenua Fishing Claim, 2nd ed (Wellington: Government Printing Office, 1989), p 216;
There is good reason to think that if Captain George Grey had not been able or willing to become New Zealand’s third Governor in 1845, the outcome in terms of the Colony’s land and colonization policies might easily have been quite different’.

Counsel also argued that various procedural requirements must be met in order for takings to be consistent with Treaty principles. We discuss such procedural matters in section 4.3.
214. This recommendation is an amended version of a recommendation contained in the Ngai Tahu Ancillary Claims Report 1995, p 366.


216. Recommendations 2(b) to (e) are the same as recommendations contained in the Turangi Township Report 1995, pp 384–385.

217. Recommendation 3 is taken from the Turangi Township Report 1995, p 385, paragraph (a) has been amended to take account of the situation where compulsorily acquired land might be put to another purpose. This is taken from Waitangi Tribunal, Te Tau Ihu o Te Ika a Maui: Report on Northern South Island Claims, 3 vols (Wellington: Legislation Direct, 2008), vol 3, p 1443.

218. Recommendations 4(a) to (d) are taken from the Turangi Township Report 1995, p 385.

219. This is a recommendation of this Tribunal, not a previous one.

220. This recommendation is an amended version of recommendation 5(b) contained in the Te Maunga Railways Land Report, p 94.

221. This recommendation is an amended version of a recommendation contained in the Turangi Township Report 1995, p 386.

222. This recommendation repeats the first Public Works Act recommendation of the Te Tau Ihu Tribunal: see Te Tau Ihu o Te Ika a Maui, vol 3, pp 1442–1443.

223. This recommendation repeats the fifth Public Works Act recommendation of the Te Tau Ihu Tribunal, see Te Tau Ihu o Te Ika a Maui, vol 3, pp 1443–1444.
TABLE

INVENTORY OF PUBLIC WORKS TAKINGS OF MĀORI LAND IN WAIRARAPA KI TARARUA

The purpose of the following table is simply to give some indication of the scope of public works takings of Māori land in Wairarapa ki Tararua, in terms of purpose, size, and period. The table presents only takings listed in the casebook of evidence. This table does not indicate whether or not the takings listed followed correct statutory procedure or were consistent with Treaty principles and the like. In fact, as we explain in section 8.4.1, in most cases there is insufficient evidence on which to base a finding.
<table>
<thead>
<tr>
<th>Taking</th>
<th>Area taken (acres)</th>
<th>Date of taking</th>
</tr>
</thead>
<tbody>
<tr>
<td>Ahitainga (roading)</td>
<td>3</td>
<td>Prior to 1900</td>
</tr>
<tr>
<td>Ahuaturanga (Seventy Mile Bush railway taking)</td>
<td>22</td>
<td>1895</td>
</tr>
<tr>
<td>Akitio Bridge road approach</td>
<td>2</td>
<td>1930</td>
</tr>
<tr>
<td>Castle Point Road</td>
<td>46</td>
<td>1908, 1926, 1929</td>
</tr>
<tr>
<td>Castle Point Road Intersection</td>
<td>1</td>
<td>1977</td>
</tr>
<tr>
<td>Coast Road and Owahanga Road</td>
<td>60</td>
<td>c1898</td>
</tr>
<tr>
<td>Coast Road realignment</td>
<td>1</td>
<td>c1935</td>
</tr>
<tr>
<td>Dannevirke aerodrome</td>
<td>134</td>
<td>1956</td>
</tr>
<tr>
<td>Dannevirke gravel pit</td>
<td>3</td>
<td>1899</td>
</tr>
<tr>
<td>Dannevirke rifle range</td>
<td>10</td>
<td>1904</td>
</tr>
<tr>
<td>Dannevirke rubbish dump</td>
<td>14</td>
<td>1981</td>
</tr>
<tr>
<td>Dannevirke sewage reserve</td>
<td>56</td>
<td>1907</td>
</tr>
<tr>
<td>Eketahuna (Seventy Mile Bush railway taking)</td>
<td>16</td>
<td>1888</td>
</tr>
<tr>
<td>Gladstone gravel pit</td>
<td>10</td>
<td>1956</td>
</tr>
<tr>
<td>Gladstone Road deviation</td>
<td>6</td>
<td>1955</td>
</tr>
<tr>
<td>Kaitoke block</td>
<td>13</td>
<td>1890</td>
</tr>
<tr>
<td>Kopuaranga (roading and railway)</td>
<td>16</td>
<td>c1892</td>
</tr>
<tr>
<td>Makirikiri scenic reserve</td>
<td>32</td>
<td>1911</td>
</tr>
<tr>
<td>Mangatainoka 1B (Seventy Mile Bush railway taking)</td>
<td>10</td>
<td>1883</td>
</tr>
<tr>
<td>Mangatainoka 1BC2 (Seventy Mile Bush railway taking)</td>
<td>13</td>
<td>1889</td>
</tr>
<tr>
<td>Mangatainoka 1BC3 (Seventy Mile Bush railway taking)</td>
<td>64</td>
<td>1890</td>
</tr>
<tr>
<td>Mangatainoka 1BC4 (Seventy Mile Bush railway taking)</td>
<td>12</td>
<td>1889</td>
</tr>
<tr>
<td>Mangatainoka 1BC2 (Seventy Mile Bush railway taking)</td>
<td>12</td>
<td>1896</td>
</tr>
<tr>
<td>Mangatainoka 28H (Seventy Mile Bush railway taking)</td>
<td>12</td>
<td>c1896</td>
</tr>
<tr>
<td>Mangatainoka k2 (Seventy Mile Bush railway taking)</td>
<td>32</td>
<td>1893</td>
</tr>
<tr>
<td>Matakonas Roads</td>
<td>60</td>
<td>1897</td>
</tr>
<tr>
<td>Matakitaki (lighthouse)</td>
<td>54</td>
<td>c1897</td>
</tr>
<tr>
<td>Location</td>
<td>Acres</td>
<td>Year(s)</td>
</tr>
<tr>
<td>-----------------------------------------------</td>
<td>-------</td>
<td>-----------------</td>
</tr>
<tr>
<td>Ngatarahanga (roading)</td>
<td>14</td>
<td>1899</td>
</tr>
<tr>
<td>Ngawakaakupe (roading)</td>
<td>85</td>
<td>c 1898; 1907; 1936, 1950</td>
</tr>
<tr>
<td>Ōkautete School (gifted)</td>
<td>2</td>
<td>1903</td>
</tr>
<tr>
<td>Okurupatu (roading)</td>
<td>271</td>
<td>c 1870s</td>
</tr>
<tr>
<td>Opuakaio</td>
<td>12</td>
<td>Prior to 1900</td>
</tr>
<tr>
<td>Oringi Waiaruhe (Seventy Mile Bush railway taking)</td>
<td>85</td>
<td>1888</td>
</tr>
<tr>
<td>Otanga (Seventy Mile Bush railway taking)</td>
<td>43</td>
<td>1885</td>
</tr>
<tr>
<td>Aohanga School (gifted)</td>
<td>2</td>
<td>1940</td>
</tr>
<tr>
<td>Paerau (roading)</td>
<td>5</td>
<td>Prior to 1900</td>
</tr>
<tr>
<td>Palliser Bay Road (including Te Kōpi urupā, Mātakitaki and Kawakawa blocks, blasting of Ngā Rā a Kupe, and taking for stock paddock)</td>
<td>75</td>
<td>1934; 1935; 1937; 1968</td>
</tr>
<tr>
<td>Piripiri (Seventy Mile Bush railway taking)</td>
<td>44</td>
<td>1888</td>
</tr>
<tr>
<td>Tahoraiti 2 (Seventy Mile Bush railway taking)</td>
<td>28</td>
<td>1888</td>
</tr>
<tr>
<td>Tahoraiti 2 (Seventy Mile Bush railway taking)</td>
<td>48</td>
<td>1897</td>
</tr>
<tr>
<td>Tahoraiti 2 (Seventy Mile Bush railway taking)</td>
<td>23</td>
<td>c 1902</td>
</tr>
<tr>
<td>Tahoraiti 2 block 3 (Seventy Mile Bush railway taking)</td>
<td>17</td>
<td>1884</td>
</tr>
<tr>
<td>Tahuroa</td>
<td>5</td>
<td>Prior to 1900</td>
</tr>
<tr>
<td>Takamaitu</td>
<td>92</td>
<td>c 1888</td>
</tr>
<tr>
<td>Tautane Reserve Roads</td>
<td>2</td>
<td>1904</td>
</tr>
<tr>
<td>Te Ohu (Seventy Mile Bush railway taking)</td>
<td>81</td>
<td>1885</td>
</tr>
<tr>
<td>Te Pohue (roading)</td>
<td>31</td>
<td>c 1899</td>
</tr>
<tr>
<td>Umutaoroa (Seventy Mile Bush railway taking)</td>
<td>1</td>
<td>1884</td>
</tr>
<tr>
<td>Waiohine Bridge deviation and Mangatarere Stream diversion (Black Bridge urupā) (does not include about 10 acres of land purchased by negotiation)</td>
<td>31</td>
<td>1964</td>
</tr>
<tr>
<td>Waipuna (roading)</td>
<td>4</td>
<td>c 1895</td>
</tr>
<tr>
<td>Woodville section 200 (Seventy Mile Bush railway taking)</td>
<td>11</td>
<td>1889</td>
</tr>
</tbody>
</table>

Public works takings of Māori land in Wairarapa ki Tararua