

**BEFORE THE WAITANGI TRIBUNAL
WELLINGTON**

WAI 898

IN THE MATTER OF

The Treaty of Waitangi Act 1975

AND

IN THE MATTER OF

Te Rohe Potae Inquiry District

LAND ALIENATION – OTHER: ISSUE 19 CLOSING SUBMISSIONS
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MAY IT PLEASE THE TRIBUNAL

Introduction

1. This topic was put into the Tribunal Statement of Issues as a “catch all” topic and addresses the land alienation topics that the other eight land alienation topics do not cover. The other eight topics are:
 - (a) Pre-Treaty Transactions – Old Land Claims;
 - (b) 1840-1865: Pre-Native Land Court Alienations;
 - (c) The Native Land Court; 1865-1885: Purchasing During the Aukati;
 - (d) 1885-1909: Land Alienation During the Period of Pre-Emption;
 - (e) Native Townships;
 - (f) Vested Lands;
 - (g) Twentieth-Century Land Title Reform;
 - (h) Land Development Schemes; and
 - (i) Public Works.

2. These submissions are therefore less cohesive than the other Land Alienation submissions. Issue 19 covers the period of 1910 onwards and largely focuses on private purchasing and private alienation, and how the Crown assisted in this through Legislation and Regulation. From 1910, land alienation slowed considerably in the District, but there was continual and regular alienation through the first half of the 20th Century.

3. These closings will address both long term leases and private purchasing in four distinct periods, being 1906-1931; and 1932-1966; as set out in the

Alienation of Māori land within Te Rohe Pōtae inquiry district: 1840-2010: A quantitative study Report by Douglas et al.¹ Post 1966, very little Maori land was alienated by the Crown, and little to analysis of this period has been conducted, so it will not be covered in these submissions.

Tribunal Findings

4. The Central North Island Tribunal found that:

- (a) The Crown failed in its responsibility to heed caution of the Stout-Ngata commission about its fiduciary duty to Maori, and the importance of preservation of a tribal estate for future generations;*²
- (b) Removal of Maori elected representation from the land boards in 1905, and failure to reinstate strong Maori representation, denied Maori the opportunity for involvement in decision-making about the development of their lands, and was in breach of the Treaty principles of partnership, autonomy, and active protection;*³
- (c) The provisions of the Native Land Act 1909 were evidently designed to encourage collective decision making by Maori owners regarding alienation of their lands, but the potential for collective decision-making was undermined by the small quorum required for meetings of owners; this was in breach of the principle of active protection;*⁴
- (d) The Crown breached the principles of autonomy and active protection by reinstating polices for Crown purchase of undivided interests, and by*

¹ Douglas, Innes and Mitchell *Alienation of Maori Land within Te Rohe Potae Inquiry District, 1840-2010: A Quantitative Study*,

² Waitangi Tribunal, *The Central North Island Report*, (Wellington: Legislation Direct, 2008), volume II, p 692

³ Waitangi Tribunal, *The Central North Island Report*, p692

⁴ Waitangi Tribunal, *The Central North Island Report*, p692

*permitting itself to bypass the provisions for collective decision-making by owners on alienation;*⁵

- (e) The section of the 1909 Act relating to the blanket removal of all restrictions on the alienation of Maori land, irrespective of their purpose or function, breached the Crown duty of active protection;*⁶
- (f) The Crown breached its Treaty obligation of active protection by failing to provide adequate safeguards for individual owners and for communities, to ensure the retention of a land base for present and future generations;*⁷
- (g) The Crown's imposition of prohibitions against private alienation without consultation with, or the consent of, the owners of blocks affected was in breach of the Treaty; and its combined tactics of regular extension of prohibition orders, circumvention of meetings of owners, and purchase of individual interests, in circumstances where Maori were unable to achieve circumstances where Maori were unable to achieve a market price, was in breach of the duty of active protection, and of its duty to act fairly and honourably in its dealings with Maori. In such circumstances Maori were prejudiced by Crown purchase tactics;*⁸
- (h) The Crown failed to monitor the working of the new meetings of assembled owners system, and to take measures to remedy the situation when it became evident that many owners were not involved in decision-making about the alienation of their lands, and that in their absence their descendants were also thus dispossessed, to the prejudice of owners and their descendants;*⁹

⁵ Waitangi Tribunal, *The Central North Island Report*, p692

⁶ Waitangi Tribunal, *The Central North Island Report*, p692

⁷ Waitangi Tribunal, *The Central North Island Report*, p692

⁸ Waitangi Tribunal, *The Central North Island Report*, p719

⁹ Waitangi Tribunal, *The Central North Island Report*, p720

- (i) *The Crown failed to monitor carefully the way in which land boards were implementing such safeguards as it provided for Maori owners, and to ensure that the interests of the owners were paramount;*¹⁰
- (j) *The Crown's consultation processes on policy and Bills directly affecting Maori property rights in the 1950s and 1960s were not Treaty-compliant. The Court of Appeal has found that it is 'beyond argument' that the good faith owed [sic] to each other by the parties to the Treaty must extend to consultation on truly major issues.' Policies to address Maori title problems must count as such an issue;*¹¹
- (k) *In the mid-1960s the Crown did not engage with tribal or national leaderships on proposed changes to satisfy itself that legislation which led to sustained protest;*¹² and
- (l) *In its failure to consult Maori leaderships on major policy changes affecting Maori property rights, and secure their consent, the Crown breached the principles of partnership, autonomy and active protection.*¹³

5. The Hauraki Tribunal has made the following findings in relation to land alienation in the Twentieth Century:

- (a) *It is manifestly clear that the primary objective of governments is to secure Maori land for white settlement persisted well into the twentieth century, and that Maori preferences and priorities did not prevail until (to a considerable extent) in the Act of 1974, and in the Te Ture Whenua Maori Act 1993;*¹⁴

¹⁰ Waitangi Tribunal, *The Central North Island Report*, p720

¹¹ Waitangi Tribunal, *The Central North Island Report*, p755

¹² Waitangi Tribunal, *The Central North Island Report*, p755

¹³ Waitangi Tribunal, *The Central North Island Report*, p755

¹⁴ Waitangi Tribunal, *The Hauraki Report*, (Wellington: Legislation Direct, 2006), volume II, p 755

- (b) *The key point in the claimants' analysis, is that customary, community decision-making over land alienation was undermined by the land law, and no adequate legal authority at community level subsisted...the claimants' have established to our satisfaction that this system was imposed upon Maori by the settler-dominated Legislature...our review of evidence...leads to the disturbing conclusion that the Crown persisted with a legal system oriented to the acquisition of Maori land, even after considerable consultation with Maori and its own commissioned report, which had recommended a virtual cessation of this policy,*¹⁵
- (c) *There is no doubt whatever that the immediate needs of Maori for cash were pressing, but the Crown had an obligation to look to the interests of future generations. The distribution of land ownership in Hauraki would look significantly different if the...formula of the 1900 Act, had been applied – 25 acres of first-class land per head, or larger areas of land of lesser quality...;*¹⁶
- (d) *We note that the Maori Affairs Act 1953 and the Maori Affairs Amendment Act 1967 continued to reflect the purposes of official planners and legislators rather than the weight of Maori opinion. They were geared towards the economic goals of more efficient land use and urbanisation...*¹⁷

6. We request that this Tribunal adopt these findings of the Central North Island and Hauraki Tribunals.

¹⁵ Waitangi Tribunal, *The Hauraki Report*, p 755

¹⁶ Waitangi Tribunal, *The Hauraki Report*, p896

¹⁷ Waitangi Tribunal, *The Hauraki Report*, p896

Crown Concessions

7. In the Crowns Statement of Position and Concessions, this particular Issue is not dealt with, and therefore we are unable to comment on their position or concessions made, except for in relation to the other Issues dealing with Land Alienation and the Crown's position and concession in those areas.

Issues arising from land loss: 1906-1931

8. From 1906 the Waikato-Maniapoto Maori Land Board ("WMMLB") played a key role in the administration of lands owned by Maori.¹⁸ Areas where the conduct of the WMMLB fell below a Treaty compliant standard include the administration of vested lands, its performance as trustee for land owners, the distribution of purchase monies and rents to beneficiaries, and the management of money belonging to Maori.
9. Hearn states that:

In July 1908 Wi Pere proposed that the government borrow £500,000 for advances to Maori through the Advances to Settlers scheme.¹⁵⁰⁴ Towards the end of that month, a deputation representing iwi from throughout New Zealand asked the Prime Minister to form an Advances to Maori Settlers Branch to support Maori farming and other commercial endeavour. Ward insisted that the Act had already been altered to enable advances to be made to Maori and that while the

¹⁸ Terry Hearn, *Maori, Land and the Crown in Te Rohe Potae c1900 to c1935*, (Wai 898, #A073) p 615

*government could not provide an additional £500,000 he would see that Maori 'received fair treatment from the Department.'*¹⁹

We return to this issue below.

10. Douglas et al. in their A021 report state:

*After 1910, the pace of alienation slowed. The private acquisition of Maori Land was the most important feature of alienations between 1910 and 1931... From 1910, although Inland alienations overall decreased, private purchasing became proportionally more significant than government purchasing. This notwithstanding, Government purchasing remained a significant factor. Maori Land holdings had fallen to just under 50 percent of pre 1840 levels by 1910. By 1931, the total area of Maori-owned land remaining had fallen to 466,622 acres or 24 percent of the inquiry district.*²⁰

Crown Purchasing Methodology

11. During this period the Crown used mechanisms to acquire lands from Maori such as:

If a block had more than 10 owners, the Crown generally preferred to start negotiations by calling a meeting of owners. If those at the meeting voted in favour of the sale, the Crown avoided the necessity of gaining the consent of all the owners. If the meeting rejected the

¹⁹ Wai 898, #A073, p660

²⁰ Wai 898, #A021, p46

*Crown's offer, negotiations could proceed by seeking the signatures of the individual owners, and seeking a partition order when it was judged that no more shares could be acquired.*²¹

12. The Crown tended to treat its purchasing of vested and non-vested lands in a similar way, as outlined in the quote above. Because vested lands are dealt with in another report it is not discussed in great detail here, these submissions will focus on the mechanisms used and general Crown purchases over this period.

*The Crown devised a purchasing strategy [through the Native Land Amendment Act 1913] intended to enable it to secure lands as quickly and cheaply as possible. That strategy had three key elements: first, the imposition of orders prohibiting private alienation so as to exclude potential competitors and thus offering the chance of controlling prices; second, calling meetings of assembled owners and thus offering the prospect of limiting the time involved in and the cost of acquisition; and third, where owners collectively opposed alienation, the purchasing of individual interests.*²²

13. It is clear from this statement that the Crown had complete disregard to any Maori views on how they wanted to deal with their lands. The requirement that if land was held by 10 or more owners, a meeting had to be called and five owners constituted a quorum is a breach of the principle of good faith. Five owners constitutes at most, 50% of the ownership, and as long as those “who vote in favour own a larger aggregate share of the land affected thereby

²¹ Bassett and Kay, *Crown Administration and the Alienation of Maori Lands in Te Rohe Potae Inquiry District c. 1931-2010*, (Wai 898, #A075), p39

²² Wai 898, #A073, p330

than the owners who vote against the resolution”²³, the resolution will pass. This clearly demonstrates that the majority of owners could oppose selling the land, and the Crown could still acquire their land.

14. If the Crown suspected that they were unlikely to reach the vote in favour of alienation, they would often apply for succession orders for owners “in the hope of overcoming opposition to alienation, increasing the area it might acquire, and/or allowing it to present successors with offers of purchase.”²⁴
15. If a meeting of owners rejected the offer to purchase the Crown would then set about approaching individual owners and purchasing their individual interest in a block until they considered that any remaining owners would not sell. The Crown would then partition off the Block, and then set about the process again.²⁵
16. The Crown’s method of selecting blocks for purchase had little to do with Maori interests in those blocks the main concerns were:
 - (a) the suitability for settlement;
 - (b) the use which the lands were currently being put to;
 - (c) the extent to which lands were encumbered with leases or mortgages;
 - (d) the likely cost of acquisition;
 - (e) proximity to other lands owned by the Crown; and
 - (f) the costs of preparing the land for settlement or subdivision.²⁶

²³ Wai 898, #A073, p536

²⁴ Wai 898, #A073, p537

²⁵ Wai 898, #A073, p541

²⁶ Wai 898, #A073, p530

17. None of these factors looked at what the Maori owners views were on selling, or whether in fact they wanted to sell their lands. The Crown:

*was not averse, even when the owners were in actual occupation and endeavouring to turn the land in question to productive account, to employ all means at its disposal to acquire the land in question and replace one owner or small set of owners with another [pakeha owner].*²⁷

“Pre-Emption”

18. Despite the Crown suspending its pre-emptive rights in 1909, the Native Land Act 1909, had the effect that under section 363 the Crown could still prevent Maori from selling land to private purchasers “when any contract has been made for the purchase by the Crown of any Native land or of any interests therein, or when any negotiations are contemplated or in progress with the view to making such a purchase.”²⁸ This had the effect that the Crown could just inform their Ministers that they contemplated negotiating to buy a block of land and this would prevent any private purchase from going ahead. This provision was extended under the Native Land Amendment Act 1913 to include “land which the Crown sought not only to purchase but also to lease or otherwise acquire.”²⁹ This had the effect of extending pre-emption to almost all land and breaches Article Three of the Treaty of Waitangi by restricting Maori’s rights when no such restriction applied to European’s land dealings.

²⁷ Wai 898, #A073, p531

²⁸ Wai 898, #A073, p531

²⁹ Wai 898, #A073, p532

19. While lands were held under these orders made by the Crown, the owners were unable to do anything with their lands. Despite this “survey liens continued to attract interest, any rates still had to be met and any mortgage commitments fulfilled.”³⁰ This had the effect of Maori incurring more debt on their lands, without any way to pay it, which meant they were forced to sell their lands to the Crown in order to pay the debt incurred. If Maori decided to use their land in a way contrary to the orders imposed on their lands, they faced criminal conviction. In reality this made it a crime for Maori to use their land as they saw fit, which was a right guaranteed to them under the Treaty of Waitangi. This is a clear breach of the Treaty and the guarantee of full exclusive and undisturbed possession of their lands, so long as they wish to retain them.

Valuation of Lands

20. The Crown consistently undervalued Maori Land, despite Section 372 of the Native Land Act 1909 requiring that the Crown pay at least the amount the land was valued at under the Valuation of Land Act 1908. The valuations done under this act were likely to value equivalent European land at a higher value than Maori land, often between 20 and 25% higher, citing the requirement to hold meetings of owners and other costs associated with acquiring lands as the reason it was valued lower. This is despite the fact that it was the Crown that imposed these requirements.³¹

21. Also, at this time, timber was not included in the valuation price. The Crown would state that land with indigenous timbers was unimproved land, and

³⁰ Wai 898, #A073, p532

³¹ Wai 898, #A073, p 547

therefore paid a lower price, while seeking high royalties from the timber extracted from the land.³²

22. As Mr Hearn summarises in his A073 report:

*the Native Land Act 1909 and the Native Land Amendment Act 1913, empowered the Crown as purchaser and disempowered in significant ways, Maori as owners and vendors. The policy which those two measures embodied, the assumptions which they contained, and the modes of alienation which they prescribed were intended to facilitate and expedite the purchase of Maori freehold land created a marked imbalance in the relationship between Maori as owner and the Crown as purchaser, imposed significant opportunity costs on owners, and in part transferred the benefits of land purchase from the owners to the Crown and ultimately to settlers.*³³

23. By 1912, as the pace of land sales under the Native Land Act 1909 accelerated, the WMMLB accumulated money for distribution to vendors. In April 1912, the President acknowledged that many Maori would have been unaware that their lands had been sold and that the Board held the proceeds in their names.³⁴

24. The WMMLB was understaffed and under resourced.³⁵ It was not able to distribute this money to Maori efficiently, or in some instances at all.

³² Wai 898, #A073, p 548

³³ Wai 898, #A073, p557

³⁴ Wai 898, #A073, p619

³⁵ Wai 898, #A073, p620

25. As Hearn notes “In June 1915 the Board’s accounts were subject to some searching criticism: it was recorded that rents arrears amounted to almost £1,000, and that there were between 270 and 280 applications or enquiries from Maori for money due, some going back to January 1915.”³⁶
26. The WMMLB was similarly unable to effectively collect all the rental money due not just in respect of vested lands but also in respect of those lands for which the Board had been designated agent.³⁷ This did not constitute a major problem until 1918 when, with the collapse of commodity process, the amounts sharply increased, reaching £9600 by 1928.³⁸
27. The question then is: what action did the Waikato-Maniapoto Maori Land Board take to recover rent arrears or to re-enter and re-lease the lands concerned?³⁹ Hearn located no evidence, which would indicate that the WMMLB engaged in any systematic and sustained attempt to recover arrears of rent or to police covenants. Rather, the evidence indicates that arrears of rent were allowed to accumulate to a stage at which some individuals owed many hundreds of pounds.⁴⁰
28. An example of where the Waikato-Maniapoto Maori Land Board used money owed to Maori to facilitate the alienation of Maori land was Pukenui 2T3.⁴¹ After a series of farcical actions by the WMMLB from 1918 to 1930 the original owners of Pukenui 2T3 thus finally received the money, less apparently some part of the interest, which they should have received in

³⁶ Wai 898, #A073, p620

³⁷ Wai 898, #A073, p621

³⁸ Wai 898, #A073, p622

³⁹ Wai 898, #A073, p628

⁴⁰ Wai 898, #A073, p631

⁴¹ Wai 898, #A073, p632

1918. The opportunity costs are now immeasurable but can be presumed to have been of significance to the owners.⁴²

Factors That Affected Land Values

29. The 1902s were a troubled time for all of New Zealand. “High primary commodity prices, and soaring land prices all collapsed in a sharp recession: wool prices collapsed towards the end of 1920, meat prices contracted in February 1921, and dairy prices fell a few weeks later. Dairy farmers in particular faced very difficult times, confronted as they were by falling prices on the one hand and high mortgage costs on over-valued land on the other. Throughout the rest of the decade the British market for New Zealand’s exports remained uncertain and primary commodity prices fluctuated accordingly before the unstable economic conditions finally merged into the Depression of the 1930s”.⁴³

30. “The sharp contraction in land values but fixed rents, high rates demands as local authorities struggled to meet interest and amortisation costs associated with their public works borrowing, rising farm input costs, and low and fluctuating primary commodity prices saw the number of holdings fall, especially in Waitomo County, and the small-farm frontier pause and recede”.⁴⁴

31. As Hearn states:

⁴² Wai 898, #A073, p646

⁴³ Wai 898, #A073, p677

⁴⁴ Wai 898, #A073, p719

Te Rohe Potae's local authorities were anxious to widen their rating bases by having 'idle' (Maori) lands brought into occupation and production and to redistribute the rating burden by enforcing payment by Maori, all the while overlooking the fact that Maori had had substantial areas of land taken for roads and that they had had roading costs deducted from rents and purchase monies. It perhaps not too surprising that many Maori remained adamantly opposed to any variation in lease terms which would, in effect, leave them shouldering the burden of the speculative excesses of the pre -1921 period.⁴⁵

Private Alienation – Methodology

32. The process required to alienate Maori land to private buyers was similar to that of alienating to the Crown in the sense that if the land had more than 10 owners a meeting of owners had to be held, 5 owners being quorum, and the majority of owners (based on aggregate shares) had to vote in favour of alienating the land. If non-sellers were unable to attend the meeting, they were given very little time to voice their objections. The Native Land Amendment Act 1913, allowed them three days (after the meeting was held) to lodge their objections, this was extended to seven days under the Native Land Amendment Act 1913. In reality though, if the meeting voted in favour of selling the block could be processed through the Maori land board in less than 30 minutes, rendering the objections useless.⁴⁶

33. If the land had less than 10 owners the private purchaser/lessee could approach individual owners to get their permission to buy or lease their lands.

⁴⁵ Wai 898, #A073, p720

⁴⁶ Wai 898, #A073, p589

34. This methodology is discussed earlier in closings. One issue that warrants comment is the problems arising from proxy voting. Section 342(2) of the Native Land Act 1909 allowed proxy voting. Maori owners who did not wish to sell their land would go around and collect proxy votes from other people who had interests in the land, in order to prevent the sales. European purchasers also employed the tactic of obtaining proxy votes from owners and would often do so by employing agents to travel around and offer owners sums of money in order to secure their proxy vote to sell their interest.
35. This raises concerns, as the purchase price that Europeans were offering to pay was often the Government Valuation. The cost of employing agents and paying Maori for their proxy vote, the value of the cost to the buyer is assumed to be vastly higher than the price the Crown was willing to pay. The issue that this highlights is that the Crown was clearly under valuing Maori land, by not allowing a market driven purchase regime.
36. Another issue in the methodology in private purchasing and leasing was succession orders. Successors were not able to participate in the decisions of owners regarding alienation if their succession order had not been registered.⁴⁷ Because succession orders could take up to five years to be processed in the Native Land Court, a number of people who should have been entitled to participate were barred from doing so because of the failings in the Native Land Court system.

⁴⁷ Wai 898, #A073, p587

Private Alienation – Leasing

37. This section discusses private leases between Maori land owners and private lessors. It only involves lands that have not been vested, although the WMMLB was involved in aspects of leasing arrangements.
38. Maori preferred to lease their lands instead of selling. Leasing allowed Maori to accumulate money that could be used to develop their land, as well as enabling the payment of rates on their land.⁴⁸ Leasing did not come without difficulties for Maori though, and many Maori in the District had trouble with defaults of lessors rental, being able to enforce terms and conditions as well as being able to re-enter their properties.⁴⁹ It was not until the 1920s that the Maori Land Boards had any powers to try to rectify the difficulties that Maori encountered in dealing with their leased lands.

Landlessness

39. The Crown, and Maori Land Boards were required under the Native Land Act 1909 to ensure that no Maori would be rendered landless if they sold their interests in a Block of land. This was interpreted to mean “the rent which [they are] to receive under the lease is of itself or together with rents [they] receive from any other Native Freehold Land”⁵⁰ is sufficient to maintain themselves.
40. The Maori Land Board largely ignored this requirement, with no explanation as to why. A possible explanation is that they viewed it as too onerous to look through all the land a person may have interests in and assess whether or not

⁴⁸ Wai 898, #A073, p576

⁴⁹ Wai 898, #A073, p578

⁵⁰ Wai 898, #A073, p 596

they would have sufficient lands, or rents, remaining should the current interest be alienated.

Private Alienation – Sales

41. During the period of 1910-1921 a large portion of private purchasing took place in Te Rohe Potae. The course that private sales took over this period was not dissimilar to that of private leases, and the two may be linked as leaseholds were transferred into freehold properties. Over the period from April 1910 until March 1930, private land sales totalled 189, 352 acres of land.

Sufficient lands

42. “Sufficient lands” was also an issue of great concern amongst commentators in the early 1910’s. Section 22(1) of the Maori Land Settlement Act 1909 required that every Maori have a minimum of “twenty-five acres of first-class land, or fifty acres of second-class land, or one hundred acres of third-class land.” There was some debate about whether or not this was a fair way of providing land. The *New Zealand Herald* suggested that 12.5 acres per person was sufficient, but Carroll suggested that 100 acres per person was fair.⁵¹ This was dismissed as it would mean that New Zealand could not have more than 700,000 Pakeha and that was “a preposterous supposition.”⁵² The WMMLB adopted the position that 30 acres was required for adequate maintenance of each Maori person.

⁵¹ Wai 898, #A073, p599

⁵² Wai 898, #A073, p599

43. The Land Board, when looking at what other lands Maori owned, only looked into the aggregate of lands owned by a person.⁵³ They did not look into whether or not any one of the blocks of land was sufficient to maintain a person, or whether or not they were appropriate pieces of land to maintain a person upon. This is a failure on the part of the Maori Land Board. A further failure was that the Maori Land Board allowed sales of land to proceed, with knowledge that the owners did not have sufficient other land to maintain themselves, if the owners had not occupied or used that particular block of land.⁵⁴ This imposed a European land use model on Maori in breach of their rights to use the land as they see fit.

44. Once purchasing of a block began, it often moved at a rapid pace, and Section 91 of the Native Land Amendment Act 1913, allowed exceptions to when it was not required that Maori vendors retain sufficient lands. Those two exceptions were, that the land remaining in the block is unlikely to be able to support the vendor in any material way, or the vendor was qualified to pursue a vocation that would provide livelihood.

45. Section 220(1)(b) of the Native Land Act required Maori Land Boards to look into whether or not alienation would be “contrary to equity or good faith, or to the interests of the Natives alienating.” This section was largely ignored and as long as the Maori Land Boards had the information they required, they continued on selling off blocks of land with complete disregard to the consequences this may have for the owners.

⁵³ Wai 898, #A073, p601

⁵⁴ Wai 898, #A073, p601

46. The minimum area that Maori had to retain was reduced to 20 acres, after the chairman of the National Efficiency Board, wrote the then Acting Prime Minister saying that Maori wished to sell their unoccupied blocks, despite not having sufficient lands to maintain themselves. The Chairman informed the Prime Minister that Maori felt hamstrung by the requirement to have sufficient lands, in order to sell or lease their lands. It is unclear how accurate this record is, and therefore it is hard to draw conclusions. It may be that the Chairman wanted to speed up settlement in the area, and a few Maori may have felt hamstrung by the requirement, and therefore he wrote on that basis, or it could be that it was an accurate portrayal of how Maori felt during this period.

47. The Maori Land Board was designed to protect Maori land ownership. In reality as John Hutton stated "it was the work of the...Board that the remaining Maori land in the region was alienated."⁵⁵ Maori Land Boards did not make a habit of refusing to confirm an alienation, and did not complete their duties to look thoroughly into Maori interests in Blocks, or what the consequences would be for Maori.

48. It is clear from this commentary that the attitudes at the time largely focussed on what the benefits to European would be over those of Maori. Maori views on being able to retain their lands and use them in a manner they saw fit were largely ignored in breach of the principles of the Treaty of Waitangi.

⁵⁵ John Hutton, *The operations of the Waikato-Maniapoto District Maori Land Board*. Wellington, 1996, p12

Re Settling Soldiers and the Great Depression

49. Most of the purchasing prior to 1923 resulted from a desire to re-settle soldiers returning from World War One. Because Maori land was cheaper, the Crown desired to purchase these lands over that of neighbouring European lands.⁵⁶ During the period of 1915 to 1917 the Crown acquired 11,313 acres of Maori Freehold Land in the Waikato-Maniapoto Maori Land District for the sole purpose of re-settling soldiers.⁵⁷

50. After 1922, Crown purchasing of Maori land dropped significantly. This is due to a number of factors including the reversal of policy to Native Minister Coates. This reversal was partially due to the Minister being more sympathetic towards Maori, as well as the Crown's efforts to reduce expenditure.⁵⁸ Another factor affecting this was the issue that there was no longer a vast amount of land left:

*...in 1920 the Native Departments' Under Secretary calculated that (nationally) the area of land remaining in Maori ownership amounted to just 19 acres per person. 'Instead therefore,' he concluded, 'of there being a large area of Native land available for general settlement, it would seem that there is barely sufficient for the requirements of the Natives themselves.'*⁵⁹

51. During the 1920's many people that held leases over Maori land lobbied to be able to acquire the title to the land as freehold. The Crown assisted with this

⁵⁶ Wai 898, #A073, p318

⁵⁷ Wai 898, #A073, p318 – Table 8.1

⁵⁸ Wai 898, #A073, p342

⁵⁹ Wai 898, #A073, p584

through the Native Land Purchase Board. The lessee would pay a deposit, and the Crown would purchase the block and sell it on to the lessee. On occasion lessees were unable to pay the remainder of what was required as this occurred during the Depression, so the Crown ended up with title to a number of these blocks.⁶⁰ This led to the Crown being reluctant to act as an intermediary and by the 1930's a number of lessees were negotiating directly with the owners to purchase their blocks. During this leasing period the Crown was criticised as they had acquired "an accumulated loss of £1,167,000, reflecting an 'insufficiency of rental returns on lease lands'."⁶¹

52. By 1928 the WMMLB had taken over several properties from defaulting mortgagors.⁶² In February 1928 the President of the Waikato-Maniapoto Maori Land Board asked for directions under section 3 of the Native Land Claims and Native Land Claims Adjustment Act 1925 in respect of six mortgagors.⁶³

53. In August 1928 the Native Minister issued 12 directions under section 3 of the Native Land Amendment and Native Land Claims Adjustment Act 1925. They required the Board to pay out 90 percent of the money owed to those beneficially entitled, the balance to be retained in each case to meet rates and survey charges due on other lands owned by the beneficiaries and involved in the King Country Consolidation Scheme.⁶⁴

54. By this time the WMMLB was in dire financial straits.⁶⁵ It did not have enough money to meet the needs of its beneficiaries, and could not account for the money it did spend. Unsurprisingly the WMMLB came under heavy and

⁶⁰ Wai 898, #A075, p40

⁶¹ Wai 898, #A073, p342

⁶² Wai 898, #A073, p649

⁶³ Wai 898, #A073, p650

⁶⁴ Wai 898, #A073, p650

⁶⁵ Wai 898, #A073, p650

sustained attack.⁶⁶ The evidence is clear that the WMMLB's performance was singularly lacking.⁶⁷ As Hearn sets out:

The Board's failures had a range of serious implications for Maori. For those whose lands had been vested, rents represented a major if not sole source of income; for those who had sold some land in order to raise developmental capital not otherwise available to them, the decision of the Board, without consultation, to retain purchase monies acted as a major impediment; for those who looked to interest payments on mortgage advances as a source of income, disappointment was their common lot; for those who looked to the Board for financial assistance to develop their lands, they found that the Board had made advances to Pakeha settlers. It was not too surprising that the Waikato-Maniapoto Maori Land Board was among the least active of the several boards in assisting Maori farmers. To this catalogue of failures can be added another with major implications for eventual fate of those vested lands which had been leased, namely, the complete failure to establish sinking funds to provide compensation for improvements effected by lessees⁶⁸

55. Between 1920 and 1930, government policy with respect to lands owned by Maori underwent a steady shift from acquisition to development.⁶⁹ In order to develop their land Maori needed access to finance; however Maori land owners confronted serious difficulties when endeavouring to secure mortgage advances from state lending agencies.⁷⁰

⁶⁶ Wai 898, #A073, p652

⁶⁷ Wai 898, #A073, p675

⁶⁸ Wai 898, #A073, p676

⁶⁹ Wai 898, #A073, p657

⁷⁰ Wai 898, #A073, p659

56. As Hearn sets out:

While Maori were not expressly excluded from the provisions of the Advances to Settlers' Act 1894, Native freehold land was: section 25 made it clear that the only Maori lands on which monies would be advanced were those held under the West Coast Settlement Reserves Act of 1881 and 1892 and under the Westland and Nelson Native Reserves Act 1892, and land held under the Thermal Springs Districts Act 1881. That essentially remained the position, although in 1911 the State Advances Corporation added lands leased from a Maori land board under the Maori Land Settlement Act 1905 and those which had been transferred in trust (vested) for leasing and which were held under lease from a Maori land board. Most of those lands were leased to Pakeha tenants. Native freehold land did not qualify.⁷¹

57. Coming back to Wi Pere's request that the Government borrow £500,000 for advances to Maori in 1908. Hearn states that:

Some thirty years later after Maori had proposed the formation of an Advances to Maori Settlers Branch, that is, by 1929, only 53 Maori throughout New Zealand had secured loans through the State Advances Office. It is worthwhile noting that at the end of March 1928 the State Advances Office held 25,268 current loans and that the total amount advanced stood at £16.742 million. How influential was the widely-shared belief that Maori did not require assistance, that they had more land than they required for their supposed needs and by

⁷¹ Wai 898, #A073, p659-660

selling their 'surplus' lands could provide sufficient to meet their needs for finance, is difficult to measure.⁷²

1932 to 1966

58. During this period the Crown acquired minimal land.

A number of purchases resulted from plans being made to subdivide areas of Crown land for settlement. Roding and fencing requirements, or difficult terrain and land quality issues led Lands and Survey to recommend the inclusions of adjoining Maori owned blocks to improve farming and/or financial viability for settlement.⁷³

59. Bassett and Kay provide analysis of how the Crown went about acquiring some of the neighbouring blocks many of which were negotiated through Maori Affairs. The Crown wished to acquire Maori Land that neighboured on European owned land in order to make that European land more attractive to settlers and farmers. If the Crown could not gain consent of the owners to sell, it would approach individual owners and attempt to purchase their interests in the block. This method of purchasing was not new to the Crown, and they had acquired a number of Blocks in Te Rohe Potae in this way.

60. During this period of purchasing the main motivator was not Maori's wish to sell but instead the Crown's wish to increase their farming and forestry schemes.

⁷² Wai 898, #A073, p661

⁷³ Wai 898, #A075 p57

61. After the Second World War, the Crown's main motivation in purchasing was trying "to 'tidy up' areas of Crown or Maori-owned farm development and settlement land, or add to the expanding forestry industry."⁷⁴

62. Over this period there was concern that Te Rohe Potae Maori were not utilising their lands to the utmost degree, and councils complained that large areas did not contribute to rate revenue. "Local and national politicians argued that bringing unoccupied Maori land into production was for the greater good because it would increase regional and national wealth"⁷⁵. This led to Section 540 of the Maori Land Act 1931, which allowed lands that were not being used productively to be forfeited.

*The Maori Trustee could be appointed to alienate Maori land which was unoccupied, not maintained, and had noxious weeds. Applications under this Section were made by local councils who considered such blocks a nuisance to neighbouring farmers, and wanted rates payments to be made.*⁷⁶

63. These provisions were then incorporated into Part XXV of the Maori Affairs Act 1953, and was heavily utilised in Te Rohe Potae during the 1950s.⁷⁷ Orders made under these Acts had to be approved by the Minister of Maori Affairs, once approved the Maori Trustee was required to first offer the land to Maori to lease the land. In practice though the Maori Trustee had absolute discretion to decide whether or not Maori applicants were suitable lessees. Often, even if there was a Maori Applicant the Maori Trustee would award the

⁷⁴ Wai 898, #A075 p57

⁷⁵ Wai 898, #A075(b), p7

⁷⁶ Wai 898, #A075(b), p7

⁷⁷ Wai 898, #A075(b), p7

Block to a local farmer who owned the adjoining block, further alienating land from Maori.⁷⁸ There were no provisions in the legislation for owners to gain back control of their blocks once the Orders had been made, along with this:

*under the Act lessees were entitled to be paid 75% of the value of improvements when the lease expired. This meant a well farmed and developed property was prohibitively expensive for the owners to resume...Owners were not given input into compensation settlements unless they were very strident.*⁷⁹

64. If Maori owners complained about the way the lessee was using their land they were labelled as 'agitators', and in any event their views did not have to be taken into account because the Act did not provide for this.⁸⁰

65. Because the Sections in the Acts were widely used over this period in Te Rohe Potae, the Maori Trustee was not able to provide proper oversight. This led to unpaid rents, breaches in covenants and an unwillingness to terminate leases where the land was not adequately maintained.⁸¹

66. If owners informed the Maori Trustee that they were using their land, they had to apply for a lease from the Maori Trustee in order to pay rates to remain on the land.⁸² By this time Maori in Te Rohe Potae were left with minimal land holdings, and any land they did have was important to them being able to maintain their whanau and hapu.

⁷⁸ Wai 898, #A075(b), p8-9

⁷⁹ Wai 898, #A075(b), p9-10

⁸⁰ Wai 898, #A075(b), p10

⁸¹ Wai 898, #A075(b), p12

⁸² Wai 898, #A075(b), p8

Treaty Breaches

67. The meaning and effect of the Treaty of Waitangi is often subject to debate.

However, there can be no doubt that those Rangatira on the lawn at Waitangi in 1840 were clear that their land rights were fully protected and their ability to manage and sell their lands was in their hands. It is often overlooked that Article Two of the Treaty guaranteed that Maori land owners were free to alienate their land at such prices as may be agreed upon between the respective proprietors and the Crown.

68. In addition to the words of the Treaty, the Courts and the Waitangi Tribunal have developed principles applying to the relationship between the Crown and Maori created by the Treaty of Waitangi. Of particular application here are the principles of acting reasonably and in good faith; partnership; and active protection of Maori interests.

Pre-emption: the Treaty Standard

69. The right of pre-emption must be read in the context of the whole of the Treaty and considered in light of the fiduciary relationship created by the Treaty.

70. In Treaty terms, pre-emption can not be the setting up by the Crown of a process that undervalues in land, and imposes a rigid scheme that does not allow for full negotiation over the terms, not just price, upon which land is sold by Maori to the Crown. It is important to note that transactions other than sale

are not subject to pre-emption and thus Maori should have been free to lease their land to European without interference from the Crown.

71. A Treaty compliant pre-emption process would ensure that:

- (a) a fair and full price, taking into account the market for land sales, and the value of all the resources on the land, would be paid;
- (b) the Crown would not seek to purchase more land than it required to discharge its governance rights and obligations;
- (c) Maori would be left with adequate good quality land that enabled full Maori participation in the new economic opportunities that settlement by European brought with it; and
- (d) The overall position of each hapu was properly asserted to ensure that the physical and cultural wellbeing of that hapu would be preserved.

72. So what did the pre-emption process developed and implemented in Te Rohe Potae stack up in Treaty terms? The process delivered a system that meant:

- (a) Maori could only sell their land to the Crown;
- (b) Maori were unable to control how their land was used and alienated;
- (c) Maori were unable in any real way to object to alienation of their land;
- (d) The Crown set the price it was willing to purchase land for;
- (e) The Crown set the terms on which land was purchased;
- (f) The Crown could purchase land without the consent of a majority of land owners; and
- (g) The Crown could set the terms of any leases over Maori land.

Reasonableness and Good Faith

73. The Crown breached the Treaty by failing to act in good faith when dealing with Maori over the alienation of their lands. The Crown purposefully tried to secure lands from Maori, against their wishes, and at unreasonably low prices. The Crown did not allow Maori to sell their lands in a value regulated market and instead set the price that they would pay, without any input from vendors.

74. The Crown breached the Treaty by failing to act in good faith by enacting legislation that meant that Maori were encouraged, and sometimes forced to sell their land against their wishes, in order to pay off debts and rates incurred to the Crown.

75. The Crown created Maori Land Boards with the impression that they would be assisting Maori to secure the best price for their land if they wished to sell, or assist them in protecting their land, if they wished to retain it. The Crown failed in doing either of these objectives, and the Maori Land Boards, as agents of the Crown, became the biggest alienator of Maori land.

Partnership

76. The Crown breached the Treaty by failing to act in a manner of partnership when dealing with the alienation of Maori land. Maori land owners had no input into the price of their land, Maori had minimal ways to object to the selling of their land if they objected to the selling, Maori had no input into what their opinion of 'sufficient land' should be. These failings along with numerous

others indicate that the Crown failed to act as a Treaty partner when dealing with Maori in the alienation of their land.

77. The Crown breached the Treaty by providing Maori with less rights as a vendor than their European counterparts.

Active Protection of Maori Interests

78. Possibly the biggest Treaty breach by the Crown was their failure to protect Maori interest in land. The Crown actively sought to ignore or over ride Maori interest in their land, to the benefit of the Crown and settlers.

79. The Crown breached the Treaty by not actively ensuring that Maori received a fair price for their land if they wished to sell it. The Crown breached the Treaty by not ensuring Maori had sufficient avenues to pursue if they wished to object to the sale of their land. The Crown breached the Treaty by not ensuring that there were appropriate avenues for Maori to pursue if they did not wish to sell their land, or objected to the sale of their land. The Crown breached the Treaty by not ensuring that Maori were left with sufficient land to sustain themselves and their whanau, hapu and Iwi. The Crown breached the Treaty by continuing to actively pursue the purchase of Maori land with the knowledge that Maori had minimal land left in their ownership.

Landlessness

80. The fact that Crown purchasing resulted in some Te Rohe Potae Maori becoming landless was the most marked sign of egregious Treaty breach. It was never contemplated that landlessness would result, the Treaty was a blueprint for a new nation where the ups and downs of life and the economy would be shared by both parties. However the result for Te Rohe Potae Maori was landlessness, poverty and deprivation. It is time for the Treaty to speak, and speak loudly in Te Rohe Potae.

Findings

81. We request that this Tribunal find that the Crown has breached the Treaty of Waitangi by failing to uphold the principles of the Treaty which are:

- (a) act reasonably and in good faith;
- (b) Partnership; and
- (c) Active Protection of Maori Interests.

82. We request that this Tribunal find that as a result of these breaches Te Rohe Potae Maori have:

- (a) been dispossessed of their lands and resources;
- (b) been left with fragmented land holdings which are insufficient for their present and future needs;
- (c) been displaced from their traditional lands;

- (d) been prevented from or hampered in the proper economic utilisation and development of their remaining land; and
- (e) been prevented from or hampered in the exercise of tino rangatiratanga.

Recommendations

83. We request that this Tribunal make the following recommendations:

- (a) An acknowledgement and apology from the Crown for the breaches of the Treaty outlined above;
- (b) the return of such land and estates, forests and other properties including all Crown reserves in the Te Rohe Potae Inquiry District as are now in Crown ownership or are otherwise available;
- (c) financial compensation to Te Rohe Potae for the use of their lands; and
- (d) the restoration of tino rangatiratanga for all Te Rohe Potae Maori.

Dated at Wellington this 19th day of September 2014

Kathy Ertel,

Kathy Ertel