The Native Land Court and Maori Land Alienation Patterns in the Whanganui District 1865-1900

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Dr James S Mitchell

Table of Contents

Figures

Tables

Introduction

The Author

Ko James Stuart Mitchell toku ingoa. Ko Pakeha ahau. No Te Wai Pounamu ahau. I have a PhD in New Zealand history from the University of Otago and have been a Research Officer at the Waitangi Tribunal since 2002. During that time I have worked principally on the Wairarapa ki Tararua, Whanganui and National Park district inquiries. In 2002, I prepared a report on *Land Alienations in the Wairarapa District from 1880-1900*.

The Claims

This report will contribute to the casebook for the combined record of inquiry of the Whanganui claims, Wai 903.

The Commission

This report was commissioned on 11 December 2003. The commission for this report directed that it address patterns of land alienation including the following issues;

a.) The effect on Maori land alienation of Crown pre-emption and restrictions on private purchases.

b.) The costs associated with determining title to Maori land under the Native Land Court system and the relationship between these costs and the rules governing succession on Maori land.

c.) Crown purchase tactics in the Native Land Court period including

the extent and the effect of advances paid by Crown agents on land before it was brought to court and the extent and effect on Maori of the Crown's tactic of buying individual interests and partitioning them out.

d.) The extent of protest over survey, ownership and alienation of the land blocks within the Whanganui district and the Crown's responses.

The report is a gap filling exercise. On one level, the overview reports on Whanganui Maori and the Crown from 1865-1880 and 1880-1900 which are being prepared by Dr Robyn Anderson will provide a big-picture of land alienation in the district as well as the political context of that alienation.[1] On another level, there are several substantial histories of blocks in the Whanganui inquiry including Waimarino, Ohura South, Rangipo-Waiu, Murimotu, Taumatamahoe and Parikino which will provide detailed illustrations of the workings of the system of the Native Land Court and Maori land purchasing on a local level.[2] A third level consists of several volumes of 'block narratives' completed in separate commissions by Paula Berghan and Craig Innes.[3] These are collections and summaries of key documents relating to Land Court sittings and alienations for all of the original land blocks in the district arranged on a block-by-block basis. Finally the quantitative study of land alienation in the Whanganui and Tongariro National Park Districts, which I am currently writing with Craig Innes, will provide basic figures and maps to illustrate land alienation patterns throughout the district.[4]

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[1] Robyn Anderson, 'Whanganui Maori and the Crown 1880-1900', report commissioned by Crown Forestry Rental Trust (CFRT) 1998. Robyn Anderson 'Whanganui Maori and the Crown 1865-1880', draft, commissioned report for CFRT, 1999.

[2] Cathy Marr, 'Waimarino Block Report', Waitangi Tribunal, draft, August 2004. Steven Oliver, 'Taumatamahoe', Waitangi Tribunal, 2003. Steven Oliver, Tim Shoebridge and Lecia Schuster, 'Ohura South Block History', draft, Waitangi Tribunal, 2004, Peter Clayworth, 'Located on Precipices and Pinnacles: Waimarino Reserves and Non-Seller Blocks', Waitangi Tribunal, 2004. Nicholas Bayley, 'Murimotu and Rangipo-Waiu 1860-2000', report commissioned for the Waitangi Tribunal, June 2004. Tom Bennion, 'Research Report on the Parikino Claim', Report Commissioned for the Waitangi Tribunal, 1995. Wai 903 A22.

[3] Paula Berghan, 'Block Research Narratives of the Whanganui District: 1865-2000', report commissioned by CFRT, July 2003. Craig Innes, 'Whanganui Block Narrative Gap Filling', report commissioned by Waitangi Tribunal, 2004.

The report is, in the second instance, an interpretative and analytical exercise. The block narratives for the district by Berghan and Innes are a treasure-trove of data from which patterns and trends of land alienation can be discerned. One of the most important aims of this report is to analyse and identify these patterns across the district to examine how land alienations related to the operations of the Native Land Court. Issues examined in this way include court costs, the methods of purchase employed by the nineteenth century Native Land Purchase Department, the degree of protest over land alienations, the scope of Crown regulation of private purchasing and the degree to which court-imposed restrictions affected its alienation.

One question that frequently occurs in Tribunal hearings is how representative the examples given in case studies are of the overall workings of the Court and the processes of land purchase in a district. My report attempts to place the Whanganui district case studies in a broader context and to identify patterns and trends of alienation.

Structure

Chapter 1 provides the background of quantitative patterns of Maori land alienation in Whanganui addressing the questions of how much land was alienated, when and to whom. It also presents a general introduction to the issues relating to the workings of the Native Land Court and the Native Land Purchase Department from 1865-1900 and outlines the major changes in Maori land legislation and purchasing policy as a platform to examining their specific impact on the alienation of land in the Whanganui district.

Chapter 2 examines the role of the Court in the alienation of Whanganui land from 1865-1900. It focuses on questions of how the Court's method of determining and awarding title to lands contributed to their alienation, issues relating to survey of lands and alienation, and the costs to Maori of attending the Court.

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[4] Craig Innes and James Mitchell, 'Whanganui Land Alienation Quantitative Study', draft, Waitangi Tribunal, 2004.

Chapter 3 explores the actions of Crown purchasing agents in alienating Maori land in the Whanganui district. It will scrutinise some of the tactics employed by purchasing officers, including advances, negotiation of prices, payment of influential Maori to encourage other owners to sell, and the laws and regulations governing these activities.

Chapter 4 examines the interactions between the Crown and private land purchasers in nineteenth century Whanganui and comments on how Crown regulation of these purchasers affected land alienation patterns. A key question here is the issue of the effect of competition between Crown and private purchasers, and how the Crown managed its dual roles as regulator of private purchasing and as a land purchaser.

Chapter 5 looks at the protection mechanisms which existed under the Native Land Court system, including the placing of restrictions on alienation of land and the Native Land Fraud Prevention Acts. It also examines the various avenues open to Maori to appeal decisions of the Court, Maori protests relating to land loss and how the Crown responded to these.

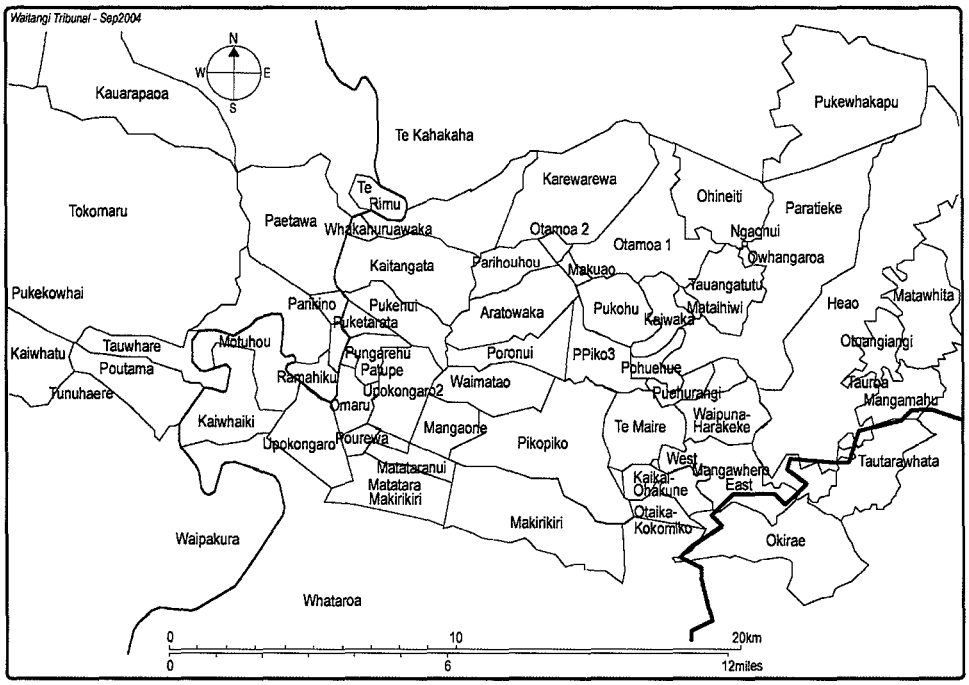
Parameters of the Study and Definitions of Terms

Since the commissioning of this report, the area around Tongariro National Park which was originally an overlap district between Whanganui and Taupo inquiries has been constituted as a separate inquiry district. The report focuses on the Whanganui district, including blocks which overlap with the National Park district. The area included in the Whanganui inquiry, with the boundaries of the land blocks brought to the Native Land Court in the district is shown in Figure 1. In one or two instances where issues relating to land alienation involving Whanganui Maori involve lands which intersect or border on the inquiry boundary and cannot easily be separated from related Whanganui issues, these have been discussed in the report.

Figure 1: Whanganui Inquiry District with Block Boundaries

Source: Innes and Mitchell, Whanganui Land Alienation Quantitative Study.

Figure 1a: Block Boundaries for Lower River Blocks



Source: Innes and Mitchell, Whanganui Land Alienation Quantitative Study.

The report does not address the taking of land through takings for public works or scenic purposes. These are addressed in other reports in the inquiry.[5] The time period focused upon is from 1865 when the Native Land Court began operations, until 1900. In 1900, Government policy on Maori land changed. Crown purchasing began to slow and a new form of administration of Maori land under the Maori Land Administration Act 1900 was introduced. Twentieth Century issues in Whanganui are addressed in a number of works including Tony Walzl's, 'Whanganui 1900-1970', as well as block histories. In some cases where the consequences of policies and practices relating to the alienation of Maori land in the nineteenth century extended beyond 1900, I have discussed twentieth century events.

[5] Philip Cleaver, 'The Taking of Maori Land For Public Works in the Whanganui District', commissioned report for Waitangi Tribunal, draft September, 2004. Robin Hodge, 'The Scenic Reserves of the Whanganui River 1891-1986, report commissioned for Waitangi Tribunal, Wai 903 A34, 2002.

This is not an exhaustive study of the Native Land Court or Native Land purchasing. The report's scope has been limited both by its heavy reliance on secondary sources and by the short time frame for its completion. For this reason, it is focused on the key issues and patterns of purchasing of Maori land identified above. For the most part, these are the types of land alienation which can be illuminated through study of overall patterns and trends. Finally, it is principally focused on the Native Land Court, Native Land Purchasing policy as a system as they relate to land alienation and does not attempt to comprehensively describe the political context to land alienations in nineteenth century Whanganui. This is a complex job which will be undertaken by those writers preparing overview research for the Whanganui casebook and are also addressed in some of the block narrative studies for the district.

The term 'alienation' in the report is used in a narrow sense to mean the purchase or other transfer of title to lands. By this definition, leasing and mortgaging of land are not considered other than as they relate to the ultimate loss of title to land by Maori.

Chapter 1: Background to Maori Land Alienation in Whanganui 1865-1900

This Chapter outlines the legislation affecting Maori land alienation and some of the most important statistics relating to land loss and in nineteenth-century Whanganui. Its purpose is to provide the context necessary to address the key questions in relation to Maori land alienation in the district. The first section will address how much land was alienated in the district from 1865-1900, to whom it was alienated and when. This data comes from the Whanganui land alienation quantitative project, currently being undertaken by Craig Innes and myself. The second section will traverse well trampled ground of published works about the operations of the Native Land Court and nineteenth century Maori land laws and policies to provide an overview of the evolution of the laws and government policies affecting alienation throughout the colony in the period and some of the issues and debate around the effects of this legislation. These laws and policies usually applied across the colony and having thus provided an overview, subsequent chapters will explore the effect of these laws and policies as they apply specifically to the Whanganui district.

1.1 Patterns of Maori Land Alienation in Whanganui 1865-1900

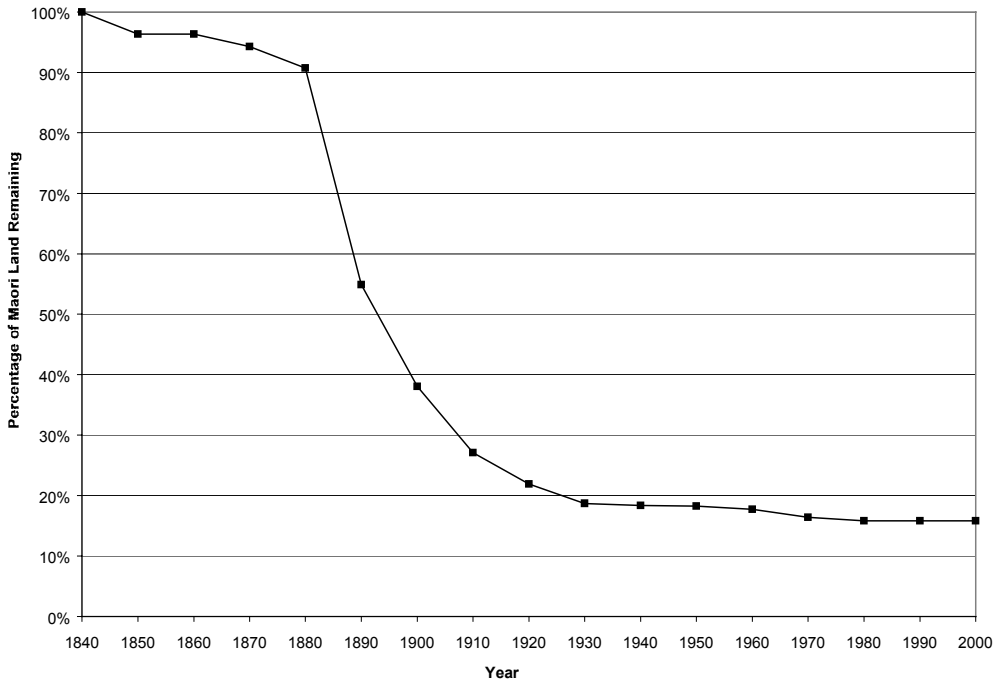
The Native Land Court began operations in Whanganui in 1866. Figures 2 and 3 show that the first three and a half decades of the Court's operation comprised the period of most rapid alienation of Maori land in the district. From 1840-65, before the Land Court became operational, the only significant alienation of Maori land in the district completed had been the 80,000 acre Whanganui 'purchase'.[6] However, by 1900 at least 1.40 million acres or 62 percent of Maori land in the Whanganui district had been alienated through purchase including much of the most accessible and most fertile lands of the lower

[6] The Kai Iwi sale was not given effect until much later. Craig Innes and James Mitchell, 'Whanganui Land Alienation Quantitative Study', draft, Waitangi Tribunal, 2004.

Whanganui and Murimotu districts.[7] Whanganui Maori retained a little over 850,000 acres or 38.1 percent of their original land base.[8]

The area of land alienated accelerated through the 1860s and 70s but these alienations were far surpassed by those of the 1880s when over 820,000 acres alienated including 417,500 acres of the Waimarino block. In the 1890s, 372,000 acres of land was purchased and alienation rates began to fall.

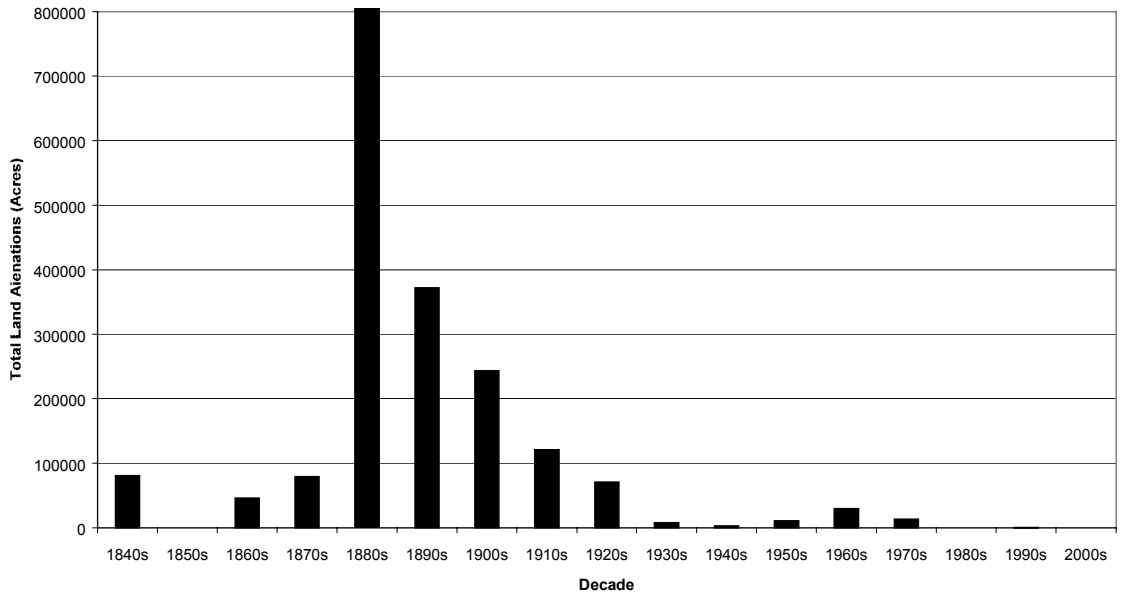
Figure 2: Maori Land Remaining in Whanganui District 1840-2000



Source: Innes and Mitchell, Whanganui and National Park Land Alienation Quantitative Study, draft.

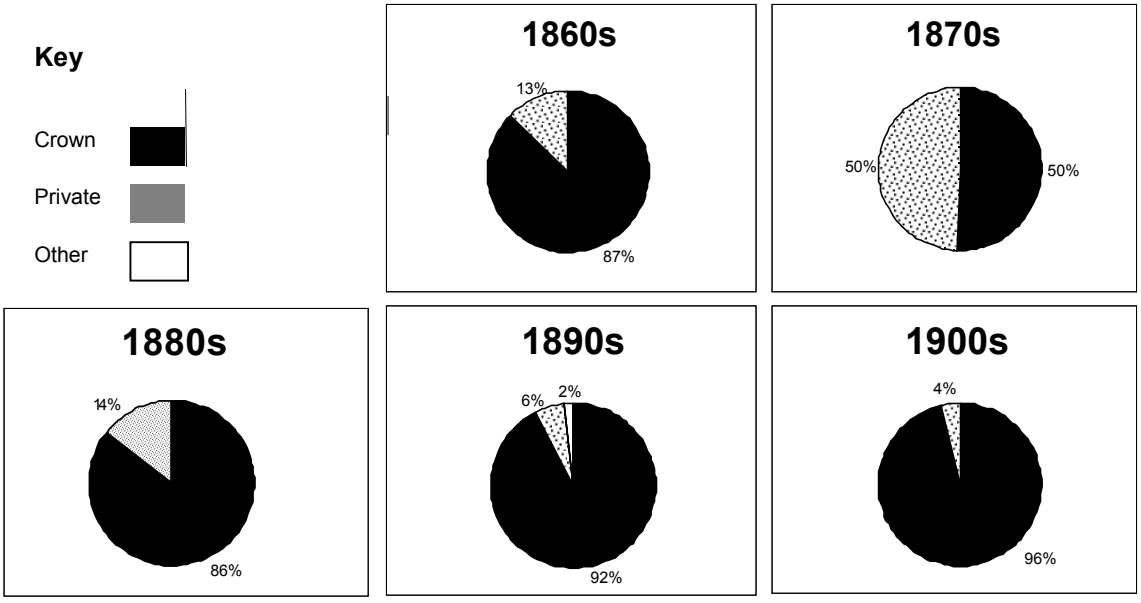
[7] Innes and Mitchell, draft.
[8] Innes and Mitchell, draft.

Figure 3: Alienation of Maori Land by Decade 1840s-2000s



Source: Innes and Mitchell, Whanganui and National Park Land Alienation Quantitative Study, draft.

Figure 4: Proportions of Land Alienated to Different Parties in Whanganui by Decade 1860s-1900s



Source: Innes and Mitchell, Whanganui and National Park Land Alienation Quantitative Study, draft.

Of the total land alienated 1,300,433 acres or 86 percent was alienated to the Crown, while 18424 acres or 14 percent was alienated to private purchasers.[9] Figure 4 shows the proportions of Maori land alienated to the Crown and to private purchasers throughout the decade. The significant variations in the relative proportion of land alienate to the Crown and private purchasers will be discussed in relation to the Crown's evolving land purchasing policy in Chapter 4.

1.2 The Native Land Court Process 1865-1900

The workings of the Native Land Court from its origins in the 1860s through to 1900 have already been the subject of much scholarly investigation. This has been done on an overview level by authors such as Alan Ward and David Williams.[10] Waitangi Tribunal inquiries have also produced a large body of work on how the Courts operated on a regional level and how their operations affected specific communities of Maori. Therefore, this is no more than a brief overview of the issues raised in relation to the Court in other works which are relevant to the alienation of Maori land in the nineteenth century Native Land Court period in Whanganui.

The Native Lands Act 1862 and its successor the Native Lands Act 1865, were monumental pieces of legislation which provided the basic legal framework for non-military alienations of Maori land for the remainder of the century. The Native Land Court established by the Acts was not in itself a forum for the sale of land. However, the requirement that land pass through the Court for title determination, and later for partition, before it could be alienated, made the workings of the Court an integral part of the alienation process.

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[9] Innes and Mitchell, draft.
[10] Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand,* Auckland University Press, Auckland, 1973. Alan Ward, *An Unsettled History,* BW Books, Wellington, 1999. David Williams, *Te Kooti Tango Whenua: The Native Land Court 1864-1909,* Huia, Wellington, 1999.

Maori land legislation changed frequently between 1865 and 1900. There were, according to the Crown Forestry Rental Trust's database of Maori land legislation, 469 acts of Parliament affecting Maori land including 56 Acts with 'Native Land' or 'Native Land Court' in the title.[11] Not only did this mean a constantly changing landscape of regulations governing Maori land, but a bewildering array of laws for those Maori appearing in Court, often without formal legal representation, to negotiate.

The establishment of the Native Land Court ended the Crown's monopoly over dealings in Maori land and this led to the introduction of a new form of alienation of Maori land, private purchases. In the Whanganui district, private purchasers were sometimes Pakeha farmers establishing or extending farms, but also included large speculators from outside the district.[12]

1.2.1 Native Land Court Titles

It was the Pakeha dominated Government which set the rules under which the Court operated. The Native Land Act 1865 provided for a Court presided over by a Pakeha Judge assisted by one or two Maori assessors which was empowered to determine ownership and grant freehold title to Maori lands. The Court, thus, faced the formidable task of translating traditional Maori modes of ownership of the land into European style land titles.[13]

Under the Court system, collective tribal dealings in land, which had been practised in most previous land transactions with Europeans were not a requirement.[14] For most of the Native Land Court era, any individual or small group of individuals claiming an interest in a block of land could begin proceedings in Court to have title to it determined, and

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[11] CFRT, *Maori Land Legislation Database.* electronic resource
[12] One example of this was in the Rangipo-Waiu and Murimotu blocks. See Nicholas Bayley, 'Murimotu and Rangipo-Waiu 1860-2000', Waitangi Tribunal, June 2004.
[13] The number of assessors was later reduced to one in 1867. Williams, p. 325.
[14] While title to some land could be granted to a tribe by name under the 1865 Act, this was almost never done, this will be further explored in Chapter 2. Williams, p. 161.

other parties with interests were then forced to present themselves or risk losing their legal rights to the land.[15]

As a number of writers have observed, this undermined the ability of groups to deal collectively with their land, and weakened the ability of Chiefs to control land-sales within tribal structures. In so doing, the new land management system threatened to weaken the very fabric of traditional political systems.[16] Indeed, this appears to have been the intention of the legislation. As Former Prime Minister and Minister of Justice Henry Sewell explained in Parliament in 1870:

> The object of the Native Lands Act was twofold: to bring the great bulk of the lands of the Northern Island which belonged to the Natives, and which, before the passing of the Act, were *extra commercium*- except through the means of the old land purchase system, which had entirely broken down – within the reach of colonisation. The other great object was the detribalization of the Natives, - to destroy, if it were possible, the principles of communism which ran through the whole of their institutions, upon which their social system was based, and which stood as a barrier in the way of all attempts to amalgamate the Native race into our own social and political system. It was hoped that by the individualisation of titles to land, giving the same individual ownership which we ourselves possessed, they would lose their communistic character, and that their social status would become assimilated to our own.[17]

The Court's emphasis on take raupatu, history of land use and occupation and the Court's granting of land title to individuals or groups and their descendants in perpetuity has been described as distorting and misrepresenting traditional patterns of land ownership.[18] As a consequence, the Court frequently became an adversarial forum where rival claimants for blocks of land competed in a litigious winner-take-all grab for land. This led to a myriad

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[15] From 1873-83, three claimants were required to bring a claim to Court for most of the rest of the period, a single claimant could do so. Williams, p. 265.
[16] Williams discusses the views of Richard Boast and Judith Binney as well as Tribunal reports on this question as well as giving his own view, pp. 81-9.
[17] Sewell in NZPD vol. 9, p. 361. Op cit. Williams, p. 88.
[18] Angela Ballara, *Iwi: The Dynamics of Maori Tribal Organizations From c. 1769 to c.1945,* Victoria University Press, Wellington, 1998, p. 269.

of disputes over land ownership, counter-claims, appeals, controversy over succession and appeals for rehearings.[19]

One of the most common criticisms of the Native Land Court system is that it failed to recognize the complexity of Maori patterns of land ownership or mana whenua. Collective ownership was particularly neglected by the Court which favoured granting land titles to either individuals or to groups of individuals. It was the express intention of the 1865 Act to make titles to Maori land more closely resemble those of English tenure. The preamble to the Act declared that its purpose was to:

> Amend and consolidate the laws relating to lands in the colony which are still subject to Maori proprietary customs and to provide for the ascertainment of the persons who according to such customs are the owners thereof and to encourage the extinction of such proprietary customs and to provide for the conversion of such modes of ownership into titles derived from the Crown.[20]

While this in itself did not engender an intention to divest any Maori of their rightful title to land ownership, the Court system frequently had this effect.

The 'ten owner rule' introduced in the 1865 legislation, stipulated that title for any piece of land of less than 5000 acres could be granted to no more than 10 individuals and this undermined the collective basis of land ownership by whanau or hapu. Although modified in 1867 and later repealed, the Court continued to favour granting titles to no more than 10 individuals until 1873. Titles which had been granted under the original rule were not subject to review until the Native Equitable Owners Act 1886. In a small proportion of cases, a retrospective re-examination of title was possible after this time. In many others, it did not occur because the land had already been alienated or partially alienated, or because dispossessed groups were unaware of their new rights, or unwilling to further engage with the Court. An 1891 inquiry found that the collective result of these

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[19] A number of writers make comment to this effect. Two of the best critiques are those of Ward and Williams. Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand,* Auckland University Press, Auckland, 1973. Williams.

[20] Williams, p. 142.

laws and regulations was that many Maori found themselves excluded from Crown-granted freehold titles where they would otherwise have had rights to land use under traditional systems of tenure.[21]

The 1873 Native Land Act was the next important change in the law affecting modes of Maori land tenure. This allowed all parties recognised as having traditional interests in a block of land to have their names recorded on a 'memorial of ownership,' giving them say over how land was disposed of. The Act also deemed that shares in a block of land could be apportioned unequally to reflect unequal interests of various parties, and allowed restriction on alienation of some land to a 21 year lease.[22]

The inclusion of more owners of a block of land, however, created a whole new raft of problems for Maori authority over and management of lands. The structure it created differed from the traditional pattern of corporate land ownership and created a system of tenure which, in many instances, also made the collective management and use of the land in the new economy almost impossible. It introduced a form of collective ownership without an equivalent degree of corporate decision making about land alienation. If the owners of a majority of the shares agreed, and after 1873 if any Maori owners desired it, a block could be subdivided and individual interests sold. This opened the way for Crown and private land agents to acquire blocks of land by picking off individual owners one-by-one over time.[23]

This 'jigsaw' alienation was made even easier in 1877 when the Crown gave itself the right to apply directly to the Court to have its interests partitioned out of a block irrespective of the views of the other shareholders, a right that was extended to all private parties in 1882.[24] Not only did individualisation of title fail to reflect Maori customary ways of owning land, but it also created a model of collective ownership which seldom

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[21] William Lee Rees and James Carroll, 'Report of the Commission on Native Land Laws', *Appendices to the Journal of the House of Representatives* (AJHR), G1, 1891, p. vii.
[22] Ward, *A Show of Justice,* p. 254.
[23] Williams, p. 167.
[24] Williams, p. 289.

allowed Maori to manage their land effectively in the modern economy. According to Alan Ward:

> The conversion of collective title to a form of title by which each individual named as an owner could sell his or her individual interest. Ministers called this 'individualisation', but it was not a true individualisation in the sense of an individual receiving a small farm demarcated on the ground. It was a pseudo-individualisation, which systematically converted Maori customary land rights in to negotiable paper. By the purchase of individual interests and progressive partitioning of blocks, the Crown and private settlers acquired the bulk of Maori land in the North Island.[25]

As court-granted freehold titles to land became absolute, more individualised and successions purely hereditary, the Native Land Court and not tribal authority became entrenched as the system under which legal authority over Maori land was exercised.

Scholars have also pointed to the consequences of increased individualisation of title combined with the Court's practice in succession cases, after 1867, of awarding interests equally to all descendants of a deceased Maori landholder as creating fragmentation of land titles. The Mohaka River report found that ragmentation of titles under the Native Land Court system left Ngati Pahuwera with scattered land interests which were 'generally too small to be economic.'[26] Many of these same issues are applicable in the Whanganui district.

The individualisation of titles might have been more acceptable if Maori had been able to select what lands were to go before the Court and what land to retain under traditional modes of ownership. However, other Tribunal reports have consistently found that, in the way it established and regulated the Court, the Government left Maori little choice but to bring their land before it and accept the system of land tenure that it provided.

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[25] Alan Ward *Rangahaua Whanui National Overview*, Waitangi Tribunal, 1997, v. 1, p. 7. Williams, p. 57.
[26] Waitangi Tribunal, *Mohaka River Report,* 1992, p. 48, cited in Williams, p. 27, p. 179.

The Native Land Court in the nineteenth century rapidly became unavoidable for most Maori landowners. Without Crown derived title, land could not be sold nor could any secure legally-recognised leasing arrangement be entered into. This left Maori landowners with little alternative to going before the Court to have title to their land determined. Retaining land under customary title while developing it was seldom a viable option. Banks would generally not lend money to the purported owner of a block which could, at any time, be legally awarded to someone else by the Native Land Court. Even once the Court had awarded title to a block of land to multiple owners, any individual wishing to use that land for agricultural purposes would have to seek to have his or her share defined and partitioned out at further expense. Otherwise, any land they worked on was subject to the possibility of being awarded through a partition hearing, to one of the other owners or even to the Crown if it had purchased the interests of other owners. In the words of the *Muriwhenua Report*:

> The Maori Land Court system had placed Maori in a quandary. They were generally opposed to its purpose, which was to vest the hapu lands to individuals, but were bound to claim nonetheless, as the Courts would make awards to whoever did or the land would simply be held by the Government.[27]

1.2.2 Protections for Maori in Nineteenth Century 'Native' Land Legislation

The legislative action taken by the Crown from 1865 to 1900 reflected concurrently its responsibility to protect the interests of Maori, its desire to preserve its lucrative role as an agent buying and selling Maori land, and pressure from the settlers who dominated government to free-up land perceived as unused by Maori for settlement. As a consequence, legislation that protected Maori lands, has sometimes been described as half-hearted and ineffective.[28]

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[27] Waitangi Tribunal, *Muriwhenua Land Report,* 1997*,* p. 286.
[28] William, pp. 209-226.

One example of Crown imposed protection mechanisms was the 1870 Native Lands Fraud Prevention Act. This act and its successors remained in place throughout the 1880s and the early 1890s.[29] This system required that all alienations of Maori land be investigated and endorsed by a Crown-appointed Trust Commissioner. The intention of the Act was to ensure that dealings in Maori land were not 'contrary to equity and good conscience,' that transactions would leave vendors with sufficient land elsewhere and that they did not involve guns, ammunition, alcohol, or violate any restriction or reserve.[30] The Trust Commissioners have been criticised in general works about the court. Ward and Williams argue that limitations of their powers of inquiry and especially limited resources rendered them ineffective.[31] Trust Commissioners will be discussed in Chapter 5.

From 1865, the Native Land Court, whenever it was determining title to land or partitioning it, also had the powers to recommend or impose restrictions on its alienation. The laws governing restrictions are complicated. If alienation was restricted, a block could usually neither be leased for a term of more than 21 years, nor sold.[32] The Native Land Act 1873 apparently made restrictions tighter. It declared that no Maori land subject to a Memorial of Ownership could be sold or leased for more than 21 years unless all of the owners agreed. In reality, however, this was not as protective of collective rights as it appeared because if a majority of owners wished to, they could partition off their share and sell it. From the late 1880s, the power of restrictions was progressively reduced. All the owners could apply to have restrictions removed as long as they could satisfy the Court that they had 'amply sufficient' lands elsewhere.[33]

From 1888, the consent of a simple majority of owners was needed to remove restrictions. In 1892, restrictions could be removed unilaterally by the Governor for the purposes of sale to the Crown. From 1893, a majority of owners could sell land to the

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[29] Trust Commissioners were abolished in 1894. Williams, p. 214.
[30] Bruce Stirling, 'Whanganui Maori and the Crown', commissioned report for CFRT, 2002, v. 2, p. 343.
[31] Williams, pp. 212-6. Ward, *A Show of Justice, p. 252.*
[32] Williams, p. 276.
[33]Williams, pp. 278-9.

Crown, even if land did have restrictions on, and this decision was binding on all owners. By 1894, restrictions could be removed if one-third of owners agreed and all owners retained sufficient land elsewhere.[34]

Other measures appear to have operated to restrict alienations. From 1883 to 1894, for example, speculation before or for 40 days after the confirmation of title to a block of land through the Court was forbidden. However, the exemption for agents of the Crown from this provision weakened them.[35]

1.3 Contemporary Criticisms of the Court System

A major review of Native land legislation, the 1891 Report of the Commission on Native Land Laws, was assigned to Parliamentarians William Lee Rees, James Carroll and Thomas Mackay, all of whom travelled the country taking submissions from both Pakeha and Maori. The commission produced two reports, one by Rees and Carroll and the other dissenting report was begun by Thomas Mackay and completed by Alexander Mackay after his death.

The 'Rees-Carroll' report was vitriolic in its condemnation of the Native Land Court system, describing its effects as 'evil.'[36]

> For a quarter of a century, the Native land law and the Native Land Court have drifted from bad to worse. The old public and tribal method of purchase was finally discarded for private and individual dealings. Secrecy, which is ever a badge of fraud, was observed. All the power of the natural leaders and the Maori people was undermined.[37]

The commissioners were particularly critical of the way in which the Court system had led to the individualisation of title:

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[34]Williams, appendix 7, pp. 279-87.
[35] Williams, pp. 261-2.
[36] Rees and Carroll, p. x.
[37] Rees and Carroll, 20, p. x.

> Without doubt, all lands in New Zealand were held tribally. The certificates of title should have been issued to tribes and hapus by name and some simple method of public dealing with the land provided analogous to that which had always been recognized and acted upon in the early days and which, in the ownership of land and dealings of all corporate bodies had been practiced from time immemorial by civilized nations. Had this been done, the difficulties, the frauds and the sufferings, with their attendant loss and litigation, which have brought about a state of confusion regarding the title of land would never have occurred.[38]

Rees and Carroll were particularly scathing of the '10-owner rule', and the succeeding tendency of the Court to grant titles to small groups of individuals rather than to vest land in hapu or whanau. They contended that 'the property of the people other than the grantees was, in all such cases, taken from them under the misinterpretation of the statute, in direct violation of the Treaty of Waitangi' and that:

> so soon as title became vested in these individuals, Europeans converged to deal with them by purchases, leases and mortgages. Vast areas of land were thus acquired in many districts and thousands of Native people saw the lands, which in reality belonged to them, passing … into the hands of complete strangers.

They concluded that opening Maori land dealings up to private buyers had been a 'grave and serious error.'[39]

The force of the Rees-Carroll report was, however, diminished by the dissenting report. The Mackays were less critical of the Native Land Court system. They argued that Carroll and Rees had exceeded their brief in their judgements about the Court. The two reports differed in their underlying approach to racial and cultural assimilation. While Rees and Carroll based their finding on the premise that the law should accommodate traditional Maori modes of land ownership, the report begun by Thomas Mackay was based upon the view that the interests of Maori lay in their adapting to and assimilation into the Pakeha economy and society and that the Native Land Court system reflected the necessity of this change. It endorsed the view, expressed in 1867 by Judge Manning, that

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[38] Rees and Carroll, p. vii.

'the Native Land Act, 1865 satisfies a great want and vital necessity of the Maori people by offering them a means of extricating themselves from the Maori tenure and obtaining individual and exclusive titles to land.'[40]

Rees and Carroll proposed a new system of land titles to make title determination simpler, cheaper, more open and more comprehensible to Maori and questioned the right of individuals to have their interests in corporate land partitioned-off. The Mackays, in contrast, proposed legislation that better represented the interests of purchasers. In particular, they proposed special judges to resolve the problem of buyers who had obtained partial interests in land which they were unable to partition due to changing legislation, and made a case for the formation of Native Land Administration Boards to assist Maori to manage land title transfer and to act as trustees of land and funds derived from its sale.[41]

The Government had two reports and chose to more closely follow the path mapped out by the Mackays' report. However, it would be hard to contend that, after 1891, the Government was oblivious to many of the issues raised by Rees and Carroll.

1.4 The Role of Assessors

Under the 1865 Native Land Act, at each sitting of the Native Land Court, two Whakawa or 'assessors' sat with the Pakeha judge in the Native Land Court, ostensibly to advise him on matters of Maori custom. The two assessors (reduced from one from 1867) were effectively subordinate to the Judge in that they could not overrule him although periodically their assent was required to validate decisions of the Court.

The role of assessors has been heavily criticised in general works about the Court which often cite the submission to the Haultain Commission of 1871 of Wiremu te Wheoro, a former assessor of both the Magistrate's Court and the Native Land Court. Te Wheoro, in

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[39] Rees and Carroll, p. vii.
[40] Thomas Mackay (completed by Alexander Mackay) 'Report of Commission on Native Land Laws', *Appendices to the Journal of the House of Representatives* (AJHR) 1891 G1a, 1891, p. 2, p. 9.

joint evidence with Paora Tuhaere of Ngati Whatua wrote that assessors were 'of no use and have little or nothing to say to the cases that are being tried; they sit like dummies and only think of the pay they are going to get'. He added that they were 'like pictures in a shop window, only there to be looked at' and that the Judge invariably made his own decision.[42]

While, for some of the Native Land Court period, notably from 1874-94, the agreement of the assessors was required for a court decision, there is no record of the dissent of an assessor over any decision in Whanganui. Berghan and Inness' block narratives between them, record only four mentions of the assessors in the Whanganui in the almost 200 blocks they cover. In the Rawhitiroa title investigation, the assessor cross examined one witness on a question of boundaries.[43] In the Ngaurukehu title investigation, it was noted that the assessor had inspected the land on the ground to verify claims that some claimants had cultivations there.[44] In Rangataua, the opinion of the assessor was sought when the judge perceived the arguments for and against one group of claimants as being finely balanced. Finally in relation to a petition to alter a partition order in Taumatamahoe block in 1897, Judge Ward noted that the assessor concurred with his decision.[45]

In Whanganui, Resident Magistrate Woon spoke very highly of the Native Assessors with whom he worked, commenting that 'many land disputes had been arranged through the efforts of the Native Assessors, a most useful body of men.'[46] There is very little other evidence about the role of Native Land Court assessors in Whanganui. However, the notable absence of any recorded comment by them in the minutes of the 468 cases which came before the Whanganui Court from 1866-99 perhaps indicates that the

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[41] Rees and Carroll, xix. Mackay, p. 20.
[42] Williams, p. 150.
[43] Craig Innes, 'Whanganui Block Narrative Gap Filling', report commissioned for Waitangi Tribunal, 2004, p. 54.
[44] Berghan, p. 449.
[45] Berghan, p. 712, p. 903.
[46] Richard Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1878, p. 14.

assessors played a far less meaningful role in the Court than Woon suggests.[47] Woon was a man of stature who clearly had a relationship of mutual trust, respect and affection among the people of Whanganui developed through his role travelling the river hearing criminal and civil cases. For this reason, he may have valued and made more use of their skills than the more distant Judges of the Native Land Courts who sat predominantly in town.

It appears, therefore, that the input of assessors in the Court process in Whanganui was minimal and that this must have diminished the ability of the Court to respond to Maori aspirations in the management of their lands before the Court.

1.5 Evolving Policy and Practices of Land Purchasing

Within the framework of the evolving Maori land legislation, changes in purchasing policy and practice by the Native Land Purchasing Department also affected alienation patterns. As Marr observes in her Waimarino report, there were broadly two phases of Crown Maori land purchasing in Whanganui. In the first, from the beginning of the Native Land Court period, through the 1870s, land purchasing operations were confined largely to the southern parts of the district by war and the political climate of the upper reaches of the river. Despite this operations expanded, with land purchase officers focusing their attentions on using advances as a means of initiating purchasing on blocks of land. By the late 1870s, a combination of increased private purchasing activity, and the resultant need to compete with private purchasers was, according to James Booth the most active of Whanganui's land purchase officers, forcing the Crown to pay higher advances and take more risks with land purchasing. At the same time opposition to the Crown's activities, and tactics to obstruct the alienation of lands such as the disruption of survey was making it increasingly difficult to complete purchases, especially in the larger upper river blocks.[48]

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[47] Berghan and Innes, Block Narratives.
[48] Marr, Chapter 2.

The result, catalysed by economic recession and a slump in land prices, was a scaling down of Crown land purchasing operations in the early 1880s. New Native Minister John Bryce also advised that the tactic of advancing money on land, which caused both disruption and financial risk to the department should cease. Some advances were abandoned others were recovered from the interests of recipients in other blocks of through the partitioning out of the areas the Crown had acquired. Marr notes that the staff of the Land Purchasing Office in Whanganui was cut and that the office may have been closed in 1883.[49]

Land purchasing operations, however, cannot have stagnated for long. The planned passage of the Main Trunk Railway Line gave the Crown renewed impetus to purchase from the mid-1880s, and Crown purchasing accelerated as purchasing was pushed into the large blocks of the Waimarino, Murimotu and Tuhua districts. The momentum of these purchasing activities continued into the 1890s when the Crown continued to dominating purchasing in the district.[50]

1.6 Conclusion

As suggested earlier, Maori land legislation reflected concurrently the Government's competing interests of its responsibility to protect the interests of Maori, its own interests as a land purchaser and pressure from settlers to ensure that lands were available for Europeans. The rest of this report explores both the intentions and the effects of the Crown's actions in relation to Maori land in the nineteenth century Native Land Court era in Whanganui.

[49] Marr, Chapter 2.
[50] Marr, Chapter 2.

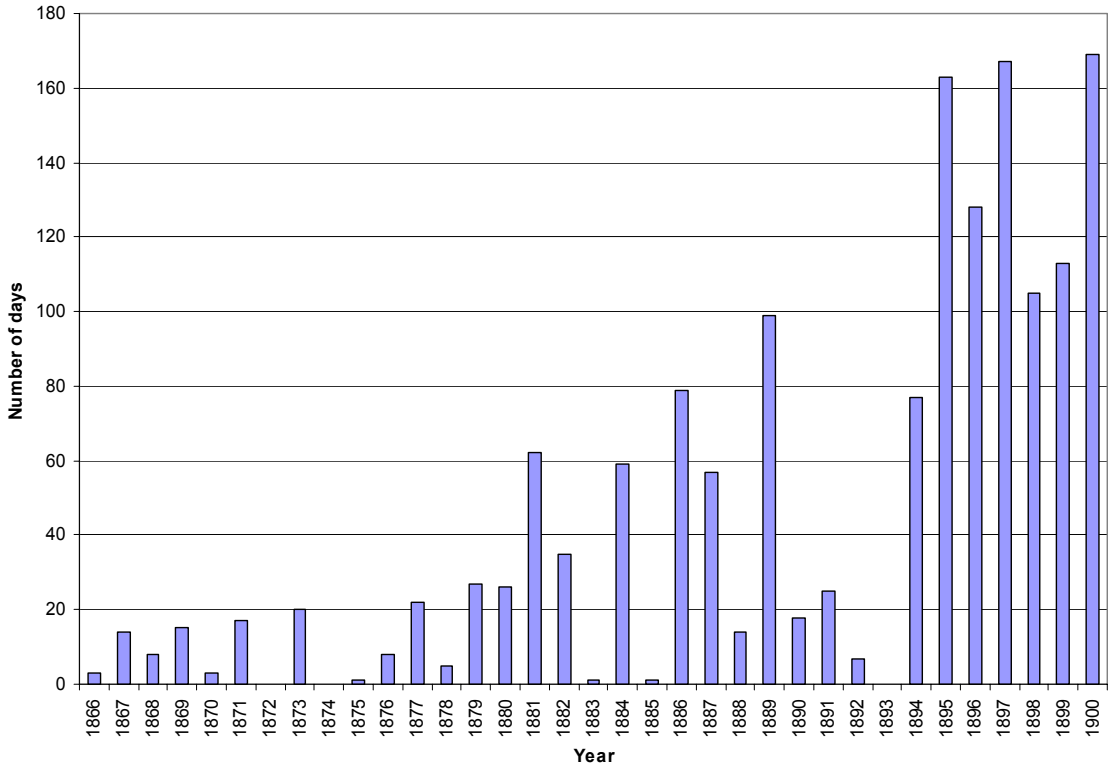
Chapter 2: The Native Land Court in the Whanganui District

This chapter examines the operations of the Native Land Court in the Whanganui district and the alienation of Maori land. It is not a comprehensive critique of the Court, but focuses on three key areas related specifically to patterns of alienation. It begins with a brief overview of the Court's operations in the district. Secondly, it addresses the way in which the new forms of Court derived title to lands and succession of land titles contributed to alienations. Thirdly, it examines Maori responses to the Court. Finally, it examines the economic cost to Maori of attending the Court including comment on the direct costs of court fees, the costs associated with having land surveyed, and the broader costs of legal representation, accommodation, food, travel and lost income during the sometimes protracted sittings of the Court and relates these costs to land alienation patterns.

2.1 The Operations of the Court in Whanganui

The Native Land Court sat for the first time in the Whanganui district in 1866. Figure 5 gives as estimate of the number of days that the Court sat for each year between 1866 and 1900. Details of how these calculations were made are in Appendix A. They show that, from 1866 to 1900, the Court sat for at least 1548 days and that the general trend was that the number of days sitting accelerated from the late 1870s with a hiatus in the early 1890s before a significant and sustained increase in the number of hearing days from 1894.

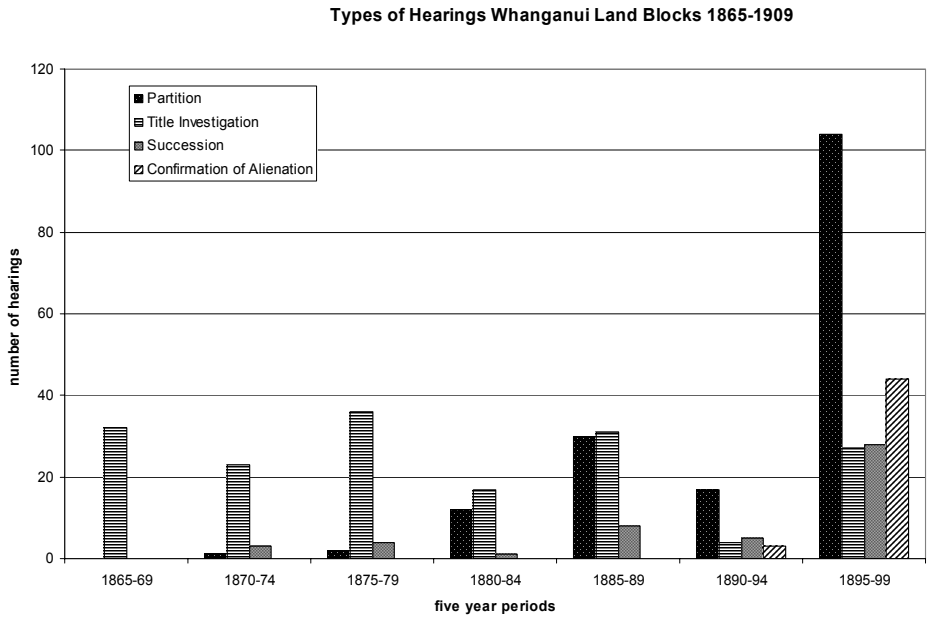
Figure 5: Number of Days of Native Land Court Sittings in Whanganui 1865-1900



Source: Berghan Narratives, Maori Land Court Minute Books via Maori Land Information System Database, Innes Narratives.

These figures should be considered alongside Figure 6, which outlines the four main types of cases brought before the Courts throughout each decade of the nineteenth century. There were 468 individual cases in relation to Whanganui blocks heard from 1866-1899. From the 1880s and especially the 1890s, the Whanganui Native Land Court hearings were dominated by partition hearings, alienations and succession hearings relating to titles that had earlier been determined. This suggests that this was when the most severe effects of the fragmentation of titles would have been felt.

Figure 6: Types of Cases Brought Before the Court 1865-1899



Source: Auckland University Index to Maori Land Court Minute Books.

In broad terms, there is also a geographical component to patterns of Land Court activities in the district. While the vast majority of cases in the early period of the Court, before 1880, related to lower river blocks, hearings after this date increasingly related to both upper-river and lower river blocks with the title hearings for many upper river blocks heard in the 1880s. Despite its distance from upper-river blocks, at least 90 percent of hearings in relation to Whanganui lands were held in Wanganui town itself. However, a few sittings after 1880 were held at Putiki Pa, Palmerston North, Marton, Upokongaro, Patea, Waitotara, New Plymouth and Otorohanga.[51]

[51] Data on places of hearings was drawn largely from the Auckland University's database of Native Land Court Minute books. It could also be obtained from scrutiny of Berghan and Innes' respective supporting documentss and the block research reports relating to Whanganui blocks.

2.2 Title Issues in Whanganui

2.2.1 The Ten Owner Rule

The working of the 10-owner rule was discussed in the introductory chapter. Under the 1865 Native Land Act, the title for any piece of land of less than 5000 acres could be granted to no more than 10 individuals. This undermined the collective basis of land ownership by whanau or hapu. Although, after 1867, the remaining owners could have their names recorded on the back of the Certificate of Title, this still gave them little say in how land was disposed of and the Court continued to favour granting titles to no more than 10 individuals until 1873.[52] The effect of this was that, for the 1866-73 period, land owned collectively by Maori communities in Whanganui was seldom if ever vested in any form of communal title. Hapu were frequently sent away from Court to choose which 10 or fewer names should go on the title for a block. While the Court often explained that these 10 individuals would act as trustees for the group, in law what was being conferred on those chosen to go on the title was not a trusteeship, but an absolute and alienable title. These titles could be and sometimes were alienated by these individual grantees without reference to the broader land owning communities.[53]

At least 21 blocks in the Whanganui district went through the Court for title determination before 1873, while the ten owner system was effectively in force. Of these, 20 were subject to the 10-owner rule. This does not necessarily mean that it was the wish of the owners in the cases of all of these blocks that title be conferred on more than 10 people, but there is evidence that this was the case with a number of them.

In Makirikiri, in 1866, 12 people recognised by their people as ‘owners’ came forward at the title hearing but under the law they could not all go on the title. They agreed that the

[52] Alan Ward, *An Unsettled History*, Bridget Williams Books, Wellington, 1999. Williams, pp. 341-2.
[53] Rees and Carroll, p. vii. Williams, p. 157.

block should be vested in a single grantee Mita Karaka. Few details are available of what happened next, but after discussions the block was granted to seven of the twelve.[54]

Table 1: Blocks Passed through the Native Land Court During the ten owner Rule Period (1865-73)

Block Name	Year of Title Award	Size (acres)	Notes
Kai Iwi	1869	12434	Title re-examined under Equitable Owners Act
Kaikai-Ohakune	1868	735	all sold 1873
Kaiwhatu	1868	4141	Four owners, all sold 1868
Kokomiko-Otaika	1868	368	all sold by 1875
Makirikiri	1866	3610	almost 2/3 sold by 1886
Makirikiri 2	1866	80	all sold 1886
Mangawhero East	1867	1151	94% sold in 1886
Mangawhero West	1867	1170	First alienation in 1900
Mataratara and Makirikiri	1867	930	all sold in 1890
Matataranui	1870	600	first known sale 1951
Omaru	1871	625	first alienation 1894. 13 registered as interested under s.17 of 1867 Act
Pikopiko 1 and 2 –	1871	3910	sold before 1886
Ranana	1867	3100	unsold at 1886
Te Korito	1867	119	unsold at 1886
Te Maire	1871		Title re-examined under Equitable Owners Act
Upokongaro	1866	355	all alienated by 1886
Upokongaro 2	1869	1406	all alienated by 1886
Waipuna Motuhou	1867	1499	unsold at 1886
Whataroa	1869	248	all alienated 1872

Source: Berghan and Innes Narratives.

In the 'Mangawhero' block which became Mangawhero East and Mangawhero West, two parties brought the land to court, Hunia te Iki of Ngatihinga and Epiha Taika of Ngatihoumahanga. Hunia te Iki estimated that there were about 40 people interested in the land, but it was decided that 10 from each hapu should be placed on the title. The claimants were not in agreement as to whether or not the block should be divided into two portions but the fact that the number of grantees would have to be further halved if it were granted as a single block may have contributed to the decision to create two

[54] Berghan, p. 188.

separate blocks with ten owners for each.[55] In this way the ten owner rule began the process of partition on the block.

Kai Iwi block, of 12,434 acres, is a peculiar example of the application of the ten owner rule. Although significantly larger than 5000 acres and thus eligible under the 1865 Act to be awarded to more than ten owners, only ten owners were put forward on the certificate of title. This was despite the fact that the principal Nga Tamarehe claimant, Reihana Terekuku, had stated in the title investigation hearing that 24 persons had interests in the land.[56] As discussed earlier, despite the partial removal of the ten owner rule in 1867, the Court, under the direction of Chief Judge Fenton, continued in practice to grant titles to no more than 10 individuals. The Kai Iwi case raises the possibility that in Whanganui, the Court also extended the ten owner rule, in practice if not in law, to blocks of greater that 5000 acres.

In another case, where it could not be agreed which 10 individuals should be placed on the title, the Court chose not to award title. In Kokomiko-Otaika, Judge Smith found that more that 10 people had interests in the block and noted that, as a result, he could not make an award. The costs of two surveys and the costs of the Court would therefore have been charged to the claimants without their gaining the benefit of a title.[57]

In several blocks where title was investigted before 1873, fewer that ten owners were placed on the title. This might be interpreted as meaning that the owners truly agreed that the land belonged to fewer than 10 people. However, there are indications that this was not always the case and that more than 10 people were considered as owners under traditional systems of tenure, but that only three or four were considered appropriate to act as trustees for the community. This was the case in Upokongaro, where Te Peina, who brought the land to Court, stated that while he was requesting that four names only be put on the title, 'I do not say that all interested agree to this arrangement, the land belongs to

[55] Berghan, p. 214.
[56] Berghan, p. 50.
[57] Berghan, pp. 66-69.

all in common.'[58] A similar situation arose in Pikopiko where 36 people were identified as owners, but only four were chosen to go on the grant.[59]

As noted earlier, the Native Lands Equitable Owners Act of 1886, in recognition of the injustices of the 10-owner rule, gave claimants the right to ask the Court to re-examine the title to blocks which had been granted under the rule, to determine whether the named owners were intended as trustees for a broader community and, if so, to award the block to that broader community. This provision was used in the Ranana block where title was awarded to 10 individuals in 1867. At the time of the original hearing, it was stated in court that these individuals were intended as trustees for a broader community and in 1888, a successful application was made to have the block revested in 599 owners.[60] Similarly in Kai Iwi block, an 1888 equitable owners hearing admitted 28 names to the title which had been determined in 1869.[61]

Such a re-evaluation of title was, however, impossible in those cases where blocks were sold between having their title awarded and the passing of the equitable owners legislation in 1886. In 10 out of the 20 blocks (excluding Kai Iwi) to which the ten owner rule applied, two thirds or more of the shares had been sold before 1886. Five of the blocks in the Whanganui district had their title re-evaluated under the equitable owners' legislation. However, in one of these, Te Maire block, the equitable owners award of 1889 was revoked after it was learned that the land had already been sold.[62] In this case, the Court appears to have both formally acknowledged that an injustice had been done in the original award, but failed to rectify it.

An example of the sale of lands vested in ten owners against the will of at least some broader community of purported owners occurred in Kaikai-Ohakune block, which was

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[58] MLC Whanganui Minute Book No 1, 14 Jul 1866, pp. 110-11, cited in Berghan, p. 1003. The question of putting fewer than ten owners on the title as trustees for a broader community was also discussed in the Ranana block. Berghan, p. 708.
[59] Berghan, p. 587.
[60] Berghan, pp. 708-9.
[61] Berghan, p. 53.
[62] Berghan, p. 946.

granted in 1867 to Aperahama Tahunuiarangi and nine others of Ngati Tukorero. At the title hearing, Aperahama acknowledged that the 10 who were placed on the title represented a broader community of owners, but that they agreed by those present in court to vest the land in those named on the title.[63] The sale of a portion of the land by Aperahama and seven others in 1873, however, brought about a flurry of protests. Pehimana Tarupeka wrote to the Court's Chief Judge Fenton on 1 January 1873, protesting that the people had vested the lands in the 10 individuals chosen on the understanding that they would lease the land rather than sell it. 'Had it been known that it was land to be sold', he wrote, 'the names of the whole of the tribe would have been put on the deed of sale.'[64]

Pehimana wrote again twice in March 1873 with Wi Te Kahu on behalf of 'all of the runanga' claiming that those who sold did not represent the 'more than 20 owners' and asking for the return of the block.[65] Fenton's reply however, recognised the letter of the law. He wrote 'the persons named by him with others were found to be the owners of 735 acres, and they have power to sell. If they have sold, there is no objection.'[66] Subsequent protests by Pehimana and others were unsuccessful in swaying the Crown in the matter and the block was sold.[67]

It is clear from these examples that the ten owner rule led to a variety of distortions of ownership patterns of Maori land in Whanganui and contributed to the alienation of land. As Figure 7 shows, it predominantly affected the southern blocks of the Whanganui district, as this was the area of greatest court activity prior to 1873.

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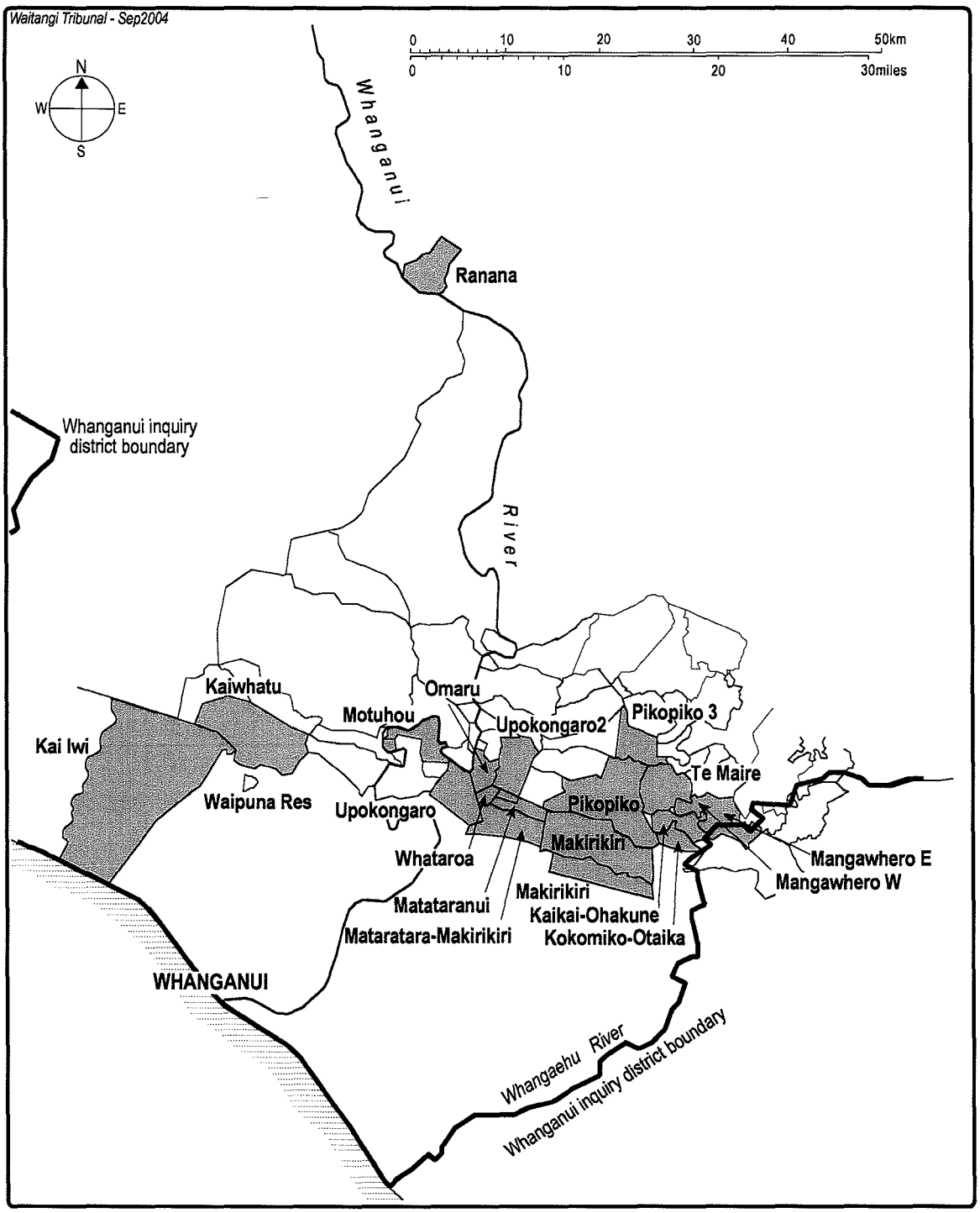
[63] Berghan, p. 84.
[64] Pehimana Tarupeka to Fenton, 1 Jan 1873,NLC 73/157, Whanganui Minute Book (MB), 42, cited in Berghan, p. 86.
[65] Pehimana Tarupeka to Fenton, NLC 1873/610, 1 Mar 1873, Whanganui MB 42, cited in Berghan, p. 86. Pehimana Tarupeka to Fenton, 11 Mar 1873, NLC 1873/611, Whanganui MB 42, cited in Berghan, p. 86.
[66] Berghan, p. 87.
[67] Berghan, p. 86. Berghan, pp. 86-8.

Figure 7: Blocks Which Passed through the Court During the 10 Owner Rule Period in the Whanganui District



Source: Berghan Narratives.

2.2.2 Individualisation and Fragmentation of Maori Land Titles

The end of the ten owner practice in this year should have been an improvement in the Native Land Court system of titles. However it was succeeded by a system of title which itself had many problems. The 'individualised' nature of land titles granted by the Native Land Court in the nineteenth century has been identified as a cause of injustice for Maori in both contemporary accounts and recently written histories of the Court. This section discusses two controversial aspects of title as they apply to Whanganui; firstly, individualisation of title and secondly, fragmentation of title through the laws governing succession of Maori land.

After 1873, the practice of restricting the award of land titles to no more than 10 individuals ceased. There were no sittings of the Court in 1872 and it appears that the last block to which title was determined under the ten owner rule was in 1871. The end of the ten owner rule in Whanganui coincided with the gradual movement of Native Land Court and Maori Land purchasing operations into the larger upper river blocks which could be awarded to vastly increased numbers of owners.

Under the Native Lands Act 1873, land could be vested in as many individuals as were recognised as having interests in the land with their names inscribed on a 'memorial of ownership.' While removing the previous injustice that some of those with legitimate interests in land were left off collective land titles, the new system shared one of the fundamental weaknesses of the old. The new collective titles to land neither defined the interests of each party on the ground in such a way as individuals could use an allotted piece of land, nor did they provide for any system of corporate or collective management of the land. A block with 50 owners effectively consisted of 50 shares, but each share could be sold individually without consultation with other owners. This system not only failed to recognise traditional Maori patterns of land ownership, but also created a system

of title quite different from that of general 'European' lands, which made it difficult for those awarded title to collectively or individually manage the land.[68]

Scholars of pre-European modes of Maori land ownership argue that this system of title poorly translated these traditional ways into modern titles. Hugh Kawharau describes customary Maori relationships with the land as descending patrilineally, but not rigidly so, to children of 'owners' who remained on the land and retained their ties with the ancestral hapu of the land. Hereditary rights of non-residents, he notes, could normally be reclaimed no more than three generations after leaving the land.[69] Angela Ballara's description of customary Maori land rights, is similar. She describes land ownership as collectively held under the mana of a chief. She also integrates concepts of tuku-whenua and raupatu and use rights over specific land based resources. Mana whenua, she notes, could also be voluntarily passed-on by a chief to a person who was not a direct descendant.[70]

Despite their slight differences in focus, Kawharau and Ballara broadly agree on three key points; that customary title to Maori land was collective; based primarily on descent and contingent on residence on land. This system would have protected land rights from fragmentation over generations which would have occurred through a system based solely on descent. It would also have maintained a relatively stable political authority over land which would have been threatened by a system based solely on residency.

Fragmentation of title through the system of direct succession imposed by the Native Land Court has been identified as one of the harmful aspects of Native Land Court process. The system put in place by the Native Land Court, by dividing land of a deceased owner equally among all male and female descendants, resident or non-resident, led rapidly to fragmentation of titles to Maori land throughout the nation.[71] As well as

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[68] Waitangi Tribunal, *Taranaki Report,* 1996, pp. 285-6.
[69] Cited in Ward, *A Show of Justice,* p. 186.
[70] Angela Ballara, 'Maori Land Tenure and Social Organizations', submission to the Tribunal on Kahungunu Claim 3/2/93, 1993.
[71] Ward, *A Show of Justice*, p. 187.

differing from the relatively stable customary form of land succession, the imposed system of succession also differed from that of English law. Under English law, fragmentation of land title had traditionally been avoided by the system of primogeniture, whereby land parcels passed in their entirety to the spouse or the eldest son of the deceased. In this way, it could be argued that the Native Land Court system of titles was a hybrid which took on some the least advantageous aspects of both Maori and British systems of descent.

In awarding equal rights and titles to individuals, the prerogative of tuku whenua and the mana whenua of chiefs over land was also diminished. As the Rees-Carroll Commission argued 'all of the powers of natural leaders was undermined. A slave or a child was in reality placed on an equality with the noblest rangatira (chief) or the boldest warrior of a tribe'.[72] This was a criticism made by Aperahama Tahunuiarangi, who petitioned Parliament in 1876 that his right to reserves in the Rangitikei district were small and held in common, and thus equal before the law, with other members of his tribe.[73]

The Rees-Carroll Commission was unreserved in its criticism of both the systems of land title and succession.

> In the Native Lands Act of 1873 the system of individual ownership was carried to its furthest limits. From granting land to a tribe by name … the whole people of the tribe became the owners – not as a tribe, but as individuals. Every Maori man, woman and child was declared to be an owner of land. This carries the right of property far beyond any law hitherto made. Amongst Europeans, the father of a family – the head of the household – is the proprietor during his life. So far was this doctrine extended that that children yet unborn were included in the list of owners … All the evidence, both Maori and European, unanimously proves that individual ownership of land is, as a rule, a thing unknown to Maori tribes.[74]

The Commissioners added:

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[72] Rees and Carroll, p. xi.
[73] Petitions to Native Affairs Committee, *AJHR*, L3, 1876, p. 15.
[74] Rees and Carroll, p. viii.

> An analogous proceeding would be found calling upon the Supreme Court to define the respective shares of every man, woman and child in New Zealand in wastelands of the colony and then proceed to partition … all tribes were once quasi-corporate all that was needed was to deal with these structures.[75]

Finally Rees and Carroll condemned the tendency of individualised title to land to undermine tribal leadership structures - corporate ownership of land, and the way in which this contributed to alienation of land.

> The alienation of Native Land under this law took its very worst form and its most disastrous tendency. It was obtained from a helpless people. The crowds of owners on a memorial of ownership were like a flock of sheep without a shepherd … they became suddenly possessed of a title to land which was a marketable commodity. The right to occupy and cultivate possessed by their fathers became, in their hands, an estate which could be sold. This strength which lies in union was taken away from them. The authority of their natural rulers was destroyed. They were surrounded by temptations.[76]

A number of the blocks in the Whanganui district could be used to illustrate the unmanageability of titles to land granted in the Court after 1873, the vulnerability of individual owners to land purchasers and the rapid compounding of the problem through succession. The cases of Puketotara, Kai-Iwi and Te Tuhi, illustrate this issue for larger blocks, while the experience of the Owners of Oruaanga and Makowai demonstrate that the issues of fragmentation and succession of titles could also create problems for communities of owners of relatively small blocks.

The Puketotara block will be discussed in more detail later in relation to its rehearing in 1881. At this rehearing, the block was granted at the request of claimants, to 237 individuals. By 1896, when the block was subdivided, this number had swollen to over 1000, a fact that must have made any attempt to manage the land collectively daunting and the prospect for each individual of selling a small share of a block not defined on the

[75] Rees and Carroll, p. xviii.
[76] Rees and Carroll, p. xii.

ground tempting. By 1901, Crown purchase agent Booth had secured the interests of hundreds of individual owners and had acquired 11,227 acres of what became the Puketotara Number 2 Block.

As noted above, in the 12,434 acre Kai Iwi block, the equitable owners rehearing in 1888 allowed the original list of ten owners to be replaced by a list of 28. The block then went through a repeated series of partitions and successions. In 1891, when there were six subdivision hearings to divide out three urupa and a kainga, the cumulative number of owners had increased to 31.[77] By the end of 1896, there were 26 blocks and 69 owners and by 1906, just 18 years after the title to a single block had been awarded to 28 people, there were at least 49 blocks and at least 89 owners. By 1918, the block had at least 78 subdivisions with at least 126 owners. The 1910s then saw the purchase of 28 of these parcels. Berghan's data does not record the number of sellers for each transaction but, of the five cases she does give, four were sales by individuals and one was a sale by three owners. This suggests, once again, a pattern of purchase of the interests of small groups of owners and partition and sale of some of those interests and it is likely that the increasingly framgmented nature of the titles contributed to these alienations.[78]

In Te Tuhi, a block of 20,112 acres that was awarded to 1117 owners in 1895, three purchasers acting for the Crown succeeded in acquiring from the owners around three-quarters or 14,878 acres of the block at a total price of £1846. It is not known how many sellers there were, although they would have numbered more than 500. Each would have got an average of less than £4 for their share.[79]

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[77] Berghan, pp. 48-83. It is highly probable that some people were owners of more than one block, however, to trace the total number of owners taking this into account would be a task of nightmarish proportions and is perhaps not relevant to the issue of ever complicating and fragmenting ownership for subdivisions of blocks. However, where blocks such as urupa are noted as belonging to 'all' I have not doubled the total recorded number of owners.

[78] Berghan has been unable to trace all subdivisions and also the number of owners is calculated only at times of subdivision rather than through succession cases, so these figures are conservative.

[79] The number of non-sellers is not given, however there were 473 non sellers. Berghan pp.979-83 and Block Order Te Tuhi 1B, 26/11/1901, Maori Land Information System (MLIS), Maori Land Court database.

Leasing land, at first glance, appears to have offered a viable alternative to sale in managing blocks with large number of owners. However, the revenue which individual lessees could derive from a block with vast numbers of owners was tiny. Motuhou Block 2 was a 58 acre block awarded in 1897 to 58 owners with survey liens of £15. The block which was valued at £5 per acre, was rented for £14 per annum. But even this respectable 5 percent return on capital value, when split between the owners would have yielded each an average of 4s 10d per-owner per-year.[80] In both these cases, the fragmented nature of the title would have contributed to each owner having tiny shares of the block, undefined on the ground which were of little economic value to individuals other than through sale.

Further problems caused by the laws governing succession even in smaller blocks are illustrated by the Oruaanga block, up the Waitotara river which was a 300 acre reserve created in a rehearing of the Mangapapa 2 block in 1881. Oruaanga was originally awarded to 145 owners. Nine years later, in 1892 when it was subdivided, the number of owners had swollen to 402. While each owner's share, undefined on the ground, had originally been an average of a little over 2 acres, it was now less that ¾ of an acre, almost impossible to manage and worth little in material terms other than as a saleable commodity. Given this set of circumstances, it is little surprise that W L Hirst was able to purchase the interests of small owners one by one, or in small groups, over the following six years. By 1898, he had acquired 254 acres, leaving 46 acres in the hands of 235 owners spread across eight subdivisions of the block.[81]

A very similar situation occurred in the nearby 300 acre Makowai block, which was awarded at the same time to 142 owners. Over the following year, private purchaser Joseph Smith purchased 212 acres from individual owners at a rate of £1 per acre. Under such an ownership regime, the individual shares of each would have become virtually worthless.[82]

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[80] Berghan, pp. 352-4.
[81] This figure is inconsistent with the figure of 39 acres 2 roods 20 perches given by Berghan as remaining in the block after the partition. Berghan, p . 527.
[82] Berghan, pp. 191-2.

Comments by Resident Magistrate Richard Woon suggest that Whanganui Maori were aware of the problems of managing land under the titles and the succession rules conferred by the Land Court. Woon noted in 1878, that a committee of Whanganui Maori had requested that title to Native Reserves be passed by 'entail general' to their descendants and that a committee of 'Natives' be appointed to determine titles to land.[83] There is also a record of Te Keepa te Rangihiwinui, petitioning the Court, on behalf of all of the awarded owners in the Mangamahu block, asking that title to the land pass to the first born of each of the owners. There is no record of the Court responding to this request, however, and the block was rapidly sold.[84]

The attempts made by governments to deal with the issue of small and fragmented titles to land in the twentieth century are addressed by Tony Walzl in his Whanganui Twentieth Century report and by Richard Kay and Heather Bassett in their Whanganui Vested Lands report.[85]

2.2.3 The Difficulties of Keeping Land Outside of the Court System

With some of the weaknesses of the Native Land Court system in mind, an important question is whether groups of Maori who wished to avoid the problematic nature of the titles that the introduced system created could simply avoid bringing their land to Court? In theory they could retain their land as customary Maori land. However, given the precedence given to the rights of the individual in the Court system, the reality was very different. If any party, even a single individual, under some permutations of the land laws, considered that they had a claim to a piece of land, they could make application to bring it to Court and have title determined and then apply for subdivision of whatever proportion of it they were awarded. After 1873, they could then sell it without reference

[83] Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1878, p. 14.
[84] Whanganui MB 2, p. 151, Maori Land Information System (MLIS), electronic resource.
[85] Heather Bassett and Richard Kay, 'Whanganui Leased Vested Lands', draft, CFRT, 2004. Tony Walzl, 'Whanganui 1900-1970', research report commissioned by CFRT, 2004.

to the wishes of other owners.[86] Once a piece of land was before the Court, all other parties were faced with the alternatives of appearing to defend their interests or risk losing title forever.

The power that this gave the individual undermined even the best organised collective attempts of Whanganui Maori to control land title and alienation. In 1874, Woon wrote that 'there is a feeling abroad … to put stop to land selling altogether, and only to lease, but this determination cannot be maintained as there are many who are not indisposed to sell.'[87] Within this context, Niki Waiata realised her value to the Government as one who brought land to Court. She tried to use this to press her case for advances from the Government on the Rangiwaea block. Waiata, who had been at least partly responsible for the first applications for title hearings in Ngaurukehu, Rangataua, Rangiwaea and possibly Waiakake wrote:

> Re the Rangiwaea block 60,200 acres which I and two others brought before the Native Land Court against great odds as the whole of the Natives in this district had joined Kemp in withholding their lands from the Court. Their intention was to keep their lands as they were in the time of their ancestors thereby keeping back all settlement. Our intention is to put all the lands 'in which we have a claim' through the Court at the present sitting. And we ask you (the Govt) to assist us [as] the expense are so great that we can't go on unless we are provided with funds. Now we ask the Govt to advance us a sum of money on this block to enable us to go on with the case and others for which claims have seen sent in. We think it is only fair that the Govt should assist us as had it not been for us none of the lands in the interior would have been brought before the Court perhaps for years to come.[88]

Another prominent bringer of blocks to Court was Aperahama Tahunuiarangi, who received advances on and brought several blocks to Court in the 1860s and 1870s, including Paratieke, Pikopiko, Pohuehue, Pukohu and Tauangatutu. In at least one block, Ohoutahi, this was contrary to the wishes of another significant claimant to the land,

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[86] Williams, pp. 285-6.
[87] Woon, 'Reports from Officers in Native Districts', *AJHR*, 1874, G2, p. 14, repeated with specific reference to Topine in Woon 'Reports from Officers in Native Districts' *AJHR*, 1875, G1, p. 11.
[88] Berghan, p. 801.

Mete Kingi.[89] While Aperahama was recipient of a pension for his service in the New Zealand wars, it would be too simplistic a conclusion to say that the lure of advances and government money was what drew him to bring blocks to Court. As one of the prominent lower river chiefs, it is perhaps normal that he should have led the title cases for many blocks. Also given the constraints on the ways in which land could be used without Court derived title, he probably also saw his decision to bring land to Court as being a means of pursuing the interests of his people in that they gained a secure, legally recognised title to their lands. That a system existed which allowed him to do this without negotiating with other parties to the land, however, is perhaps the real issue in relation to his actions.

Once land was brought to Court, other owners had no alternative but to appear and make their case and file a counter-claim. There are several instances in the records of the Whanganui Land Court, of parties protesting that they had missed out on their legitimate title because they had been unaware of or unable to attend Court, or of persons objecting to advances on the sale of land to which title had not been determined and who were told that they had a legal remedy only if they appeared in the Native Land Court.[90] In 1886, Hoani Rupe petitioned the Government that he had not had the chance to put his case in the Tauwhare block in 1879, because he had not been aware of the title investigation. In the interim the block had been sold and the Native Affairs Committee, to whom his petition was referred, simply commented that the hearing had been notified in the *New Zealand Gazette*.[91]

Protests in similar set of circumstances also occurred in relation to Mangapapa, Whakaihuwaka and Rawhitiroa blocks, where Whanganui parties claimed that the blocks had been granted to Nga Rauru interests because key Whanganui people had been absent from Court.[92] In relation to Taumatamahoe, Ngati Maru interests were also apparently ignored because of their purported absence from Court, a fact that was later

[89] Berghan, pp. 484-5
[90] Instances of these can be found in Berghan's narratives on Parapara, Paratieke and Tauwhare.
[91] 'Petitions to Native Affairs Committee', *AJHR*, 1886, I2, p. 45.
[92] Berghan Mangapapa block p. 205. Whakaihuwaka, p. 1072. Innes, Rawhitiroa, pp. 61-70.

acknowledged by their being offered part of the Whitianga block as compensation.[93] Te Kere Ngataierua also complained that he had not been present at the Waimarino hearing because he had not known it was taking place.[94] This raised the issue of how effective the distribution of notices of upcoming hearings was to remote areas of the Whanganui district and especially in border areas outside of the Whanganui river catchment.

2.3 Maori Responses to the Court

2.3.1 Attempts to Settle Titles Out Of Court

While the titles conferred by the Native Land Court frequently distorted customary patterns of land ownership, Judges of the Court, within the constraints imposed by the system of land tenure they were administering, could and did accommodate Maori views about which names should go on the title. In most title investigation hearings, once the Judge had ruled on who was the 'proper' ancestor of a block, he would ask the representatives of the winning claim to go away and prepare lists of descendants of that person to be installed as owners of the block. Although sometimes challenged by other claimants, these lists were seldom, if ever, challenged by the Court itself. Negotiated settlement were also routinely attempted in partition cases where all parties were present in Court.

As Table 2 shows, attempts at negotiated, out of court settlements relating to title were rare and occurred predominantly made in 2 periods, the 10-owner rule period before 1873 and the late 1890s. In the first period, out of court agreements were generally made in relation to the relatively small blocks around Whanganui town. Agreements were necessary because the Court would not allow all of the owners recognised by tikanga if they numbered more than 10, onto the Court derived title. Given the constrictive legal framework of the ten owner rule, it would be wrong to argue that these negotiated

[93] Steven Oliver, 'Taumatamahoe Block Report', report commissioned for Waitangi Tribunal, August 2003, p. 30.

agreements were an instance where the Court stood back entirely and allowed Maori themselves to determine who went on the titles. In a handful of other cases in the 1870s and 1880s, cases came to Court with agreement as to who should go on the title. But it was not until the late 1890s, that one judge, Judge Ward, began to routinely allow and even encourage negotiated settlements outside of court of land title matters among the parties.

Table 2: Negotiated Out of Court Settlements

Block Name	Judge	Year	Events	Result
Upokongaro	Smith	1866	Claimants came to Court with an agreement as to who should go on the title.	Number increased to 10 by agreement.
Ruahine	Smith	1867	Claimants came to Court with an agreement as to who should go on the title	Accepted by the Court.
Kaikai-Ohakune	Smith	1868	Claimants came to Court with an agreement as to who should go on the title	Accepted by the Court.
Kokomiko	Smith	1868	Claimants came to Court with an agreement as to who should go on the title	Accepted by the Court.
Upokongaro No 2.	Smith	1869	Claimants came to court with an agreement as to which 10 names should go on the title	Accepted by the Court.
Tauwhare	Heale	1879	Claimants came to Court with an agreement as to who should go on the title.	Accepted by the Court.
Rangataua Rehearing	Brookfield and Williams	1882	Judges suggested an adjournment to allow parties to negotiate. The main issue was how land should be divided up given that some had already accepted advances.	Parties objected, court proceeded.
Whitianga	Ward	1894	Court adjourned to allow arrangement as to partition between two major groups agreed.	Arrangement later overturned at a rehearing
Taonui, Wharepu and Maraetaua	Ward	1896	Attempt to settle major issues of title out of Court on the initiative of one of the solicitor.	No agreement case proceeds
Ohotu	Ward	1897	Lawyers for the parties called for an adjournment to discuss matters of title out of Court	Some matters settled, others heard by the Court.
Mairehau	Ward	1899	Judge Ward suggested an adjournment to allow the parties to try and come to an arrangement. Ward also asked in open court if those assembled agreed that a portion be cut out for descendants of one ancestor.	No agreement
Morikau	Ward	1899	Claimants came to Court with an agreement as to who should go on the title	Agreement accepted by the Court.

[94] Marr. p. 482.

Waharangi	Ward	1899	Claimants requested an adjournment to settle the matter among themselves	Agreements made and accepted by the Court as to ancestors for six subdivisions. One was unresolved and came before the Court.

Source: Berghan and Innes Block Narratives.

In 1897, the Ohotu block was brought to Court after discussions between the major claimant parties. When the case was called, Major Kemp, Henare Haeretuterangi, Ngataka Gray Mr Davis and others asked Judge Ward for an adjournment to continue their deliberations. After six days, the case came up again and Davis advised that there were still some issues which were under discussion, but the Court decided to hear the case. Some evidence was heard and then it was decided to continue discussions outside of Court. As a result, the vast majority of the settlements in relation to the block and the internal boundaries between Ngati Poutama, Ngati Pa, Ngati Rangi and Ngati Hine were settled between the parties outside of Court. The two issues that the Court heard evidence on related to claims to specific areas within these broadly agreed boundaries.[95] This remarkably sensible solution can be credited to a combination of a sympathetic Judge and a total lack of dissent about who should be involved in discussions over title. Had a single individual dissented from the agreement reached out of Court, the Court would have been obliged to hear and determine on all issues in relation to the block.

Out of Court settlements however, faced with the authority of the Court, did not always provide a lasting resolution to land title issues, especially as it appears that even after being endorsed by the Court, they could be overturned. This was the case in Whitianga block where an out of Court agreement to divide the block between Ngati Maru and the Whanganui descendants of Tauratauna was made. However, a rehearing was granted after a party of Whanganui argued successfully that Wi Turoa who had attended the hearing for Whanganui and made the agreement, had not been authorised to settle in this manner. The appellants argued that the case had been decided by negotiation and not on the merits of the parties' respective cases. The Court therefore felt compelled to overturn

[95]Berghan, pp. 476-9.

the agreed decision and reheard the case, eventually increasing the Ngati Maru allocation in the block.[96]

The other important point in relation to out of court settlements was that whatever names were placed on the title, alienable titles, with all of the flaws in relation to fragmentation of title, partition and succession were still conferred by the Court. To an extent, who was placed on the title to a block of land did not affect its vulnerability to alienation.

2.3.2 Attempts to Avoid the Adversarial Approach of the Native Land Court

One of the criticisms of the Court was that it was adversarial, winner take all fuelled by competition and conflict, led to costly litigation and internal dissention and conflict among Maori. Because a single party could drag all other claimants into Court, this undermined all attempts on the part of Maori to establish the boundaries between one group's land and another's by agreements made independently of the Court. In Whanganui, through the 1870s and 80s, there were repeated attempts to resolve boundaries outside of the Court, but ultimately all of them crumbled for want of official sanction.

In May 1871, a large hui was held at Parikino at which elders of Whanganui Iwi, Ngati Apa, Ngati Whiti and Ngati Raukawa assembled to confirm 'forever after' the boundaries of each Iwi's interests and produced a sketch map showing these boundaries.[97] However, such agreements were not sanctioned in law, and nothing prevented Topia Turoa, in 1877, from surveying lands which the Whanganui claimed as their own in preparation to bringing it to Court.[98] Similar inter-tribal boundary hui were held with 'Ngati Kahungunu' chiefs at Murimotu and Waitotara to set boundaries with Nga Rauru and in

[96] Berghan pp. 1098-1100.
[97] Meiha Keepa to McLean May 1871 and Teki Kanara [probably to Woon] 4/6/71, ANZ MA-Wang. 1/2 . Vincent O'Malley, *Agent of Autonomy*, Huia, Wellington, 1994, p. 75.
[98] Letter Mete Kingi to Wi Tako Ngatata 10/5/77 in ANZ MA-Wang. 1/2.

1876, a large hui was held at Waitotara to settle tribal boundaries with Ngati Maru and other Taranaki iwi.[99]

Evidence in Native Land Court hearings indicates that a major hui which had been held at Kaipo in around 1860 between representatives of Whanganui, Ngati Maru and Ruanui including Mete Kingi, Te Remana, Toakehuru, Topine, Taitoko and Mangu. This meeting had been held to renew much older agreements made at Kokako, probably in the 18th century, where the boundaries between neighbouring iwi had been discussed. According to Te Keepa, one purpose of the meeting at Kaipo had been to settle boundaries in the face of land selling or acceptance of advances by parties not universally recognised as owners. In the 1880s, at the time when land selling became a matter of pressing concern for upper river people, Whanganui had erected pou to mark the boundaries of this agreement on the ground. In the rehearing of the Whitianga, arguments surrounded whether or not all parties had been present at and agreed with the positioning of these pou, a point that was contended between representatives of Ngati Maru and Whanganui iwi. In the end, faced with contradictory evidence, the Court chose not to acknowledge the ancient agreements.[100]

Woon, in 1874, noted that some collective discussions did lead to land being brought before the Court:

> Meetings are constantly being held to discuss [the sale of lands to the government] and a determination come to have their lands surveyed and put through the Court so that the question of title may be ascertained and a definite policy pursued in respect to leasing and selling their lands.[101]

However, Woon's record of Topine te Mamuku and Tuhua lands indicated that a single determined party could override the wishes of others who opposed bringing land to Court. He observed, in 1875, that Topine had upset many upper river chiefs opposed to

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[99]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G2, 1874, p. 14. G1, 1876, p. 15. Ancient tribal agreements are also discussed in the rehearing of the Whitianga block in 1895 and this will be given further consideration in the final version of this report.
[100] Whananui Appellate Minute Book 4, p. 233. *Maori Land Information System* (MLIS).
[101]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G1, 1875, p. 11.

the Native Land Court by surveying lands in the Tuhua district in preparation to take them through the Court.[102]

The degree of Whanganui Maori interest in alternatives to the Court is indicated by the 800 people who reportedly welcomed Repudiation Movement leader Henare Matua to Kaiwhaiki in 1874. Given that the Maori population of the district at the time was given by a census in the same year as around 2000, this was an impressive level of interest in Matua's message of opposition to the imposition of the Court authority over Maori lands and opposition to land selling.[103]

Following Matua's visit, attempts were made to establish a runanga as an alternative Maori judicial system on the river which would settle both land and other judicial matters. As Woon wrote in 1875, 'the runanga is constantly at work settling land disputes and trying offences among the disaffected and disappointed members of the Maori community'.[104] Woon acknowledged the value of the runanga in 'investigating and promptly settling, to the satisfaction of the Maori disputants, quarrels about land, which might otherwise through the tardiness of the Land Court resulted in a breach of the peace.'[105] However, Woon could not accept that a Maori runanga could or should settle title to lands.

> The runanga, however, is not satisfied with merely settling the disputes, but arrogates to itself the power of granting and certificate of title and taking fees and professes to ignore entirely the operation of the Native Land Court, whose awards, in many instances, the Maori decline to accept by refusing to take up the Crown grants.[106]

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[102]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G1, 1875, p. 11.
[103] O'Malley, pp. 77-8. Population figure, Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, 1874,G2, p. 14.
[104]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G1, 1875,p. 11
[105]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G1, 1875, p. 11.
[106]Woon, 'Reports of Officers in Native Districts', *AJHR*, v. 2, G1, 1875, p. 11.

The attempts of the repudiationists and the runanga succeeded in slowing land sales, but Woon persisted in the belief that the only workable solution to Maori land titles was for Maori to have secure title settled through the Court.[107]

In 1878, he observed yet another effort on the part of Whanganui to organise a boycott of the Court through what he called a 'quasi-Parliament house' constructed by Mete Kingi Haimoana at Putiki and its failure.

> At its first meeting in August, an effort was made to "tapu" several large tracts of country and to forbid their survey for lease or sale. The majority of the meeting agreed to this policy, being a last effort in opposition to the selling proclivities of an influential number of Natives. A short time has proved that such a determination could not be carried out as, owing to the persistent acts of the land sellers and others. Mete Kingi, Kemp and other leading chiefs who were asked to hold the interdicted lands for tribes, publicly at the last meeting, gave up their charge of same and announced … that for the future, the Native landowners must use their own discretion and hold or sell as they thought proper. The result has been an openly manifest desire on the part of the Natives here to deal with their land, and numerous fresh sales of blocks are being undertaken in all directions.[108]

A further effort at organised opposition to the Court came with 'Kemp's Trust', established in 1880. This was an attempt to establish a trust covering half a million acres of upper-river lands to be administered for all by a council of chiefs. However, Kemp's trust was not supported by legislation and undermined by the continuing rights of individuals to bring land to Court. [109] As Woon observed in 1880, despite many adhering to the Trust's message to boycott the Court, Mete Kingi came to be in favour of attending Court and this must have contributed to the Trusts ultimate failure.[110]

The Rohe Potae agreement, which involved upper-Whanganui Maori is discussed in detail in Robyn Anderson's overview report on Whanganui Maori and the Crown as well

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[107]Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1876. p. 16. James Booth, 'Land Purchase Officers' reports', *AJHR*, G7, 1876
[108]Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1878, p. 13.
[109] O'Malley, pp. 82-3. Ward, *A Show of Justice*, p. 291. Anderson, *1865-80,* pp. 155-66.
[110] Woon, 'Reports from Officers in Native Districts', v.2, G1, 1880, p. 14.

as works by Cathy Marr. It was a last attempt to settle the boundaries between major groups of Maori first outside of Court and then to present these agreements to Court. The attempt to establish and maintain Maori authority over land in the Rohe Potae was ultimately unsuccessful.[111]

2.3.2 Criticisms of the Native Land Court's System of Title

David Williams, in his book, *Te Kooti Tango Whenua*, notes that many Maori supported the idea that some form of tenurial reform of Maori land was necessary, but that there was little agreement that the Native Land Court as it was constituted, was the means to achieve it. Whanganui Maori were frequent critics of the system of land titles presented to them by the Court. Even Whanganui Maori who had initially chosen to work with the Court such as Te Keepa Te Rangihiwinui moved from a position of accepting the Court to condemning it. In a letter to Colonel Haultain, who undertook a review of the Court system in 1871, Te Keepa wrote that a five-day hui to discuss the Court held by chiefs representing Whanganui Maori at Parenga had concluded that the existing court system undermined tradition in determining land titles. He argued that while his people 'did not condemn the old Court … we are desirous to have some alterations. Under the present system, men lose their lands, others get lands that does not belong to them, because they are strong on talk.'[112]

Five years later, there were still concerns about the system. In 1876, Whanganui Resident Magistrate Richard Woon wrote that, following the failure in Parliament of a bill aimed at reforming the Court, 'a widespread apprehension exists [among Whanganui Maori] that injustice, sooner or later, will be done to them in the matter of forcing them to part with their lands.'[113] By 1878, Whanganui Maori, at a meeting of what Woon described as a 'quasi-Parliament' at Putiki openly called for the Court to be abolished in favour of a

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[111] Robyn Anderson, 'Whanganui Maori and the Crown 1880-1900', draft, report commissioned for CFRT, 1998, pp. 37-61. Cathy Marr, 'The Alienation of Maori Land in the Rohe Potae (Aotea Block) 1840-1920', Waitangi Tribunal Rangahaua Whanui Series, 1996.
[112] 'Papers Relative to the Native Land Court Acts:', *AJHR,* A2a, 1871, p. 39.

'Native Committee' which would sit with the legal authority to determine title to land.[114] In 1886, representatives of Whanganui iwi met again at a large hui at Aramoho where many expressed clear opposition to the Court, calling for it to be dismantled. At the time, Ballance was successful in gaining significant if temporary Whanganui support for the Court by promising improvements to the Court and greater consultation over Maori land laws.[115]

2.3.3 Protests About Survey

Once the Native Land Court process had started in relation to a block, it was hard to stop. As noted earlier, once any individual had brought land to Court to have title determined, objectors were forced to appear or risk losing their land. However, participation in a title hearing meant that objectors could not avoid either the costs of the Court, the costs of survey or the fact that their land would pass into a form of title individualised, and often alien to the way in which they had related to it in the past.

Those who objected to blocks of land going into the Native Land Court process often attempted to oppose it at the point of survey when it became apparent what land was involved. Title to land could, according to the practice of the Courts, not be awarded without a survey plan although on occasion a provisional award of title could be made based on a sketch plan on the understanding that a survey was to follow.[116] In many instances, however, as long as dissenting parties could disrupt survey, they could delay the passing of lands through the Court. In the late 1870s and early 1880s, obstructions of surveys became a common tactic in opposing the intrusion of the Court into the interior of the Whanganui district. Whanganui Maori were much more effective in the guerrilla tactics of stopping surveyors, pulling-up pegs and confiscating survey equipment on their own territory than they were at defending cases in the foreign institution of a courtroom in town where the rules were stacked in favour of those wishing to have title determined

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[113] Richard Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1876, pp. 15-6.
[114] Woon, 'Reports from Officers in Native Districts', *AJHR*, G1, 1878, p. 13.
[115] Cathy Marr, 'Waimarino Block Report', report commissioned for Waitangi Tribunal, draft, August 2004, p. 296.

and sell. As a result, for a time, disruption of survey became the front line tactic in the battle between those opposed to and those in favour of using the Native Land Court to determine title to land.

Dispute occurred in the Murimotu district over the unsurveyed boundaries of the land leased by Topia Turoa. Te Keepa's armed excursion into the area, described in Bayley's report on Murimotu lands, was in response to his suspicion that the land in question was being surveyed in secret. It would be wrong to attribute Te Keepa's actions to unswerving opposition to the fixing of a boundary being fixed, but he was clearly opposed to this being done unilaterally under the mechanism of the Court.[117]

Throughout the 1870s and early 1880s, disruption of surveys were reported in the upper river blocks of Kirikau, Opatu, Mangaturuturu, Mangawhero and Urewera.[118] Whether this was a concerted campaign or simply a successful tactic employed by different groups is unclear. However, it is notable that these were areas far up the river where the forces of Government authority were thin on the ground and where land purchase officers were pushing surveying into areas where there was considerable resistance to the Court among both Kingites and sympathisers.

In Retaruke, and across the river in Opatu, Crown and private speculators competed for interests in the land before it was surveyed and the two Maori claimant groups headed by Topine and Paiaka each disrupted the surveyor Donald Munro in turn. As Munro wrote:

> All the Hauhau or King elements are up in arms and I have had no end of trouble with them, nearly three weeks of Maori meetings at a dozen different kaingas … The survey has been stopped three times and the chain and tools taken, requiring some diplomacy to get them back.[119]

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[116] Williams, p. 192.
[117] Nicholas Bayley, 'Murimotu and Rangipo Waiu', scoping report commissioned for Waitangi Tribunal, February 2004, p. 61.
[118] Berghan narratives for these blocks.
[119] Berghan, p. 513.

This diplomacy was 'chequebook-diplomacy'. Ostensible payments for assistance with survey, proved a valuable tool in undermining opposition to surveys. Munro wrote 'I have paid away about 70 pounds out of the 100 pounds of account of Retaruke and Opatu and have found it being useful.'[120]

While some parties in the district favoured the surveys, others clearly opposed them. John Annabell, surveying up the Ohura river along the southern boundary of the Opatu block, was forced to pay objectors who took his tools. Gilbert Mair, who was purchasing in the area at the same time, struck opposition from Kingites and other Whanganui who were worried at not receiving a share of the advances. Mair declared that he felt deceived by Paiaka who had stated that there was agreement to the survey. He found that he had to reduce the area surveyed due to opposition, but continued to manage the opposition to the survey by giving employment and money to those who objected.[121] As would later be the case with many blocks awarded under systems of individualised titles, exploiting individuals desire to assert their mana over land by accepting payments in relation to it, and its power to privilege individuals who co-operated became one of the Crown's key weapons to breaking down collective action in relation to lands.[122]

The upper river surveys were completed despite disruptions and this led to the alienation of many of the blocks in question thus weakening the position of those attempting concerted action to avoid land sales. By 1879, willingness to sell was apparently increasing and Woon noted that there were now plenty of uncontested blocks which could be surveyed and put through the Court. Consequently, he advised discretion in imposing surveys of blocks where there was dispute.[123] The following decade saw the alienation of around half of the Maori land base in the Whanganui district (Figure 2).

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[120] Berghan, p. 513.
[121] Berghan, pp. 514-5
[122] Woon also comments on up-river disturbances caused by survey conflict. Woon 'Reports from Officers in Native Districts' *AJHR*, 1875, G1, p. 11.
[123] Woon 'Reports from Officers in Native Districts' *AJHR*, 1879, G1, p. 9. Woon 'Reports from Officers in Native Districts' *AJHR*, 1878 G1, p. 14.

The disruption of surveys could also be an expensive undertaking for which the eventual grantees in the land bore the cost. By increasing the cost of survey and thus the pre-title charges recorded against the land, the Crown gained a greater toe-hold in land where survey had been disrupted. In the Karewarewa 1 and 2 blocks, in addition to the £142 5s charged for survey, a further £30 16s was charged for its obstruction. The disputed portion of the block was finally shared between the two opposing claimant groups Ngati Hinearo and Ngati Tukorero. The ultimate benefactor of the dispute was the surveyor James Thorpe. The money charged for the disruption of the survey equalled around a fifth of the eventual sale value of the disputed Karewarewa 2 portion of the block.[124]

2.4 Costs of the Native Land Court

> Years ago the Natives used to engage in tribal conflicts, but now instead of fighting each other in battle, they went to Court and fought over their claims to the land. They were no better off for doing so. Litigation impoverished them and a Maori, metaphorically speaking, might as well be killed almost as left without land or means. If this sort of thing went on it would happen that by and by all the land would be eaten up by the lawyers, the Native Agents and the expenses of Court [laughter]. Perhaps the reason why they were asking for a policeman was in order that he should lock-up the lawyers, native agents and Pakeha-Maori who came into the place [more laughter]. If so, there were solid grounds for this request.[125]

So spoke Richard John Seddon at a gathering of Maori at Moawhango on the edge of the Rangipo-Waiu Block in 1895.

The costs of surveying land before it was brought to court were a substantial component of the costs of the court process, but the financial and material costs of the Native Land Court process extended much further than the costs of survey. Attending Court placed other substantial economic burdens on Maori communities. In addition to a range of daily

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[124] Berghan, p. 139. A similar incident is alluded to in correspondence registers from Matthews 23 Dec. 1881. MA-MLP Register, ANZ.
[125] Reported speech of Seddon in 'Pakeha and Maori: A Narrative of the Premier's Trip Through the Native Districts of the North Island', *AJHR*, 1895, G1, p. 4.

fees for each party attending and for each witness, there were fees to file papers and appeals, and for stamp-duty on official documents. Whanganui Maori appearing before the Court had to pay the costs of legal representation, daily fees of surveyors and translators giving evidence before the Court, the sometimes substantial costs of travel to town and extended accommodation, food and livery costs there, and the unquantifiable costs of lost labour in looking after crops and livestock while attending often protracted sittings. As well as survey costs, court related costs fell not just on those who were willingly bringing land before the Court, but also those who were forced to appear to defend their customary interests in lands.[126]

Contemporary observers, as well as historians writing about the costs of the Court have described these costs as contributing to a serious injustice towards those appearing before it.[127] Rees and Carroll described Maori complaints about the 'expense, fees and duty', 'enforced attendance of claimants at distant places' and 'excessive survey costs' as universal and condemned the 'excessive daily fees' of the Court as 'so imperious that Natives not able to pay are refused a hearing and thus, in many cases, the real owners are compelled to stand by and see their land given to strangers'.[128] This section attempts to analyse the issues of the direct and indirect costs of attending Court as they relate to Whanganui lands in the late nineteenth century.

2.4.1 Survey Costs

In the Whanganui district, surveying costs varied greatly from one block to another, and depended on a number of factors, including the topography of the land, any disruptions to survey by parties opposed to it, and the degree to which a block was subdivided and re-subdivided. Table 3, derived from Paula Berghan's and Craig Innes' block narratives, gives details of survey costs recorded for a sample range of blocks in the Whanganui

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[126] M P K Sorrenson, 'Land Purchase Methods and their Effect on the Maori Population 1868-1901', *Journal of the Polynesian Society*, v. 65, no. 3, September, 1956, pp. 186.
[127] The Court, in Ward's evaluation brought about ' a costly paraphernalia of lawyers, agents, legal rules and precedents, a morass in which the Maori floundered for decades, frittering away their estates in numerous expenses and still all too often not getting equitable awards', Ward, *A Show of Justice*, p. 185.
[128] Rees and Carroll, p. xi.

district where the prices that blocks were sold for as well as survey costs can be calculated.

Table 3: Proportion of Survey Costs as a Proportion of Sale Price for Selected Blocks

Block Name	Year of Title Investigation	Number of Subdivisions	Survey costs recorded	Survey costs per acre	Sale price	Year of sale or partition of sold interests if date not known	Survey Costs as a % of Sale Costs
Aratawa	1879	0	£18 4s	1d	£1557	payments 1879-81	1.15
Aratowaka	1871	0	£ 200		£1700	1875	11.8
Huikumu	1881	1 (a 2 acre urupa excepted)	£91 3s 2d +£39 6s0d for costs of obstructed survey	1s 6d	£570	1879-81	16.0 (22.9 including obstruction costs)
Kaiwaka	1868	0	£47 17s	1s 4d	£1000	1876	4.8
Kararewa 1 and 2	1880	2 at time of TI but division not surveyed before sale	£151 + £30 for obstruction of survey	7s 6d	£1378	1878-82	13.1
Manganuiotahu	1876	0	£700	1s 6d	£2151	1878	32.5
Matawhitia	1884	0	£189 3s	2s	£929	1886	20.4
Otaranoho	1879	0	£139 4s		£476	1879	29.2
Parapara	1881	0	£69 18s		£363	1879	19.3
Whataroa	1869	1	Lien of£18 5s 2d		£200	1872	9.1

Source: Berghan Block Narratives and Innes Block Narratives.[129]

Table 3 indicates a number of things. Firstly that the costs of survey could be, and were frequently, recorded as a charge against the land. Secondly that they often constituted a significant proportion of the value of the land, at times almost a third of its sale value. Survey liens usually accrued compounding interest and this would have made land, once it had been through the Court, an increasing financial liability for owners and the need to pay this debt would have made land more vulnerable to alienation.

[129] The blocks figures are given for which Berghan had collected reasonably complete data sets. Because of this sampling method, it is possible that this table is not entirely representative and may favour the

Funds obtained from wage labour, agriculture or other sources could have provided an opportunity to free land from debt without alienating it. However, the ownership structures created by the Native Land Court for Maori land, by conferring titles on large groups of people who did not necessarily live on the land, made it difficult to clear debt through wage labour. This left the best options for clearing land debt, especially on large blocks as being sale, partial sale or leasing.

Some of these issues of survey debt can be illustrated in relation to Mairekura block. In Mairekura, the survey lien for subdivision A at the time of partition in 1903 was £54 3s 9d. By 1907, this had increased with interest to £84. In 1906, the rent on the block was settled at 1s 6d per acre for 21 years. At this stage, the outstanding survey costs were 2s 11d per acre, so for the first two years the rental income would have gone into paying off the survey lien.

Another example where leasing was used to clear debt was the Maraekowhai 2A block of 5006 acres with seven owners. This was leased in 1899 for £187 per annum, the survey lien on this block was £111, so the lien could have been cleared slightly under a year of leasing if all income was put to this purpose. In smaller blocks, patterns are similar. In Matataranui, the first year and a half of rental income would have been required to clear survey costs and in Taonui 1B the survey liens amounted to a little more than the first years rental of £20.[130]

2.4.2 Raketapauma Block and Survey

The costs of survey and how Whanganui Maori responded to them varied not just from one block to another, but within large blocks. Raketapauma is a large block, for which data on survey costs is relatively complete for this reason it has been chosen as an example of survey costs in a large heavily subdivided block. Title to Raketapauma was

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experience of blocks with less complex survey histories. For this reason, there is a case-study of a complex block later in the section.

[130] Maraekowhai, Berghan, p. 251. Taonui, Berghan, p. 866.

awarded in 1892 to 340 owners in 19 subdivisions.[131] In 1896, charging orders totalling £636 were spread across these subdivisions. Interest compounded on the unpaid survey liens. Although there is no consistent record of what the interest rates were, 10 percent per annum was charged on other debts in Whanganui at the time.[132]

Following the initial partitioning of Raketapauma, in 1897-98, the Crown began purchasing shares in many of the partitions. In 1899, it applied to have its interests partitioned out. Following this round of partitions, survey liens were recorded against each of the new subdivisions including those of non-sellers. The total recorded survey costs had increased from £632 to £1189.[133]

For the sections which the Crown purchased and partitioned, the survey costs as proportions of the total sale price are given in Table 4.

Table 4: Raketapauma Subdivisions - Survey Costs as a Proportion of Sale Price

Block Name	Number of partitions	Size	Proportion of Costs %
1A2	2	1161 acres of which the Crown purchased 51%	11.6
1E1	2	387	13.5
1I1	2	2516	13.5
2A	2	1356 of which Crown purchased 37%	20.6
4	1		6.2
5A	1		15.7
3B1	2		19.1

Source: Berghan Raketapauma Block Narrative.

Survey costs, thus, made up between 6.2 and 20.6 percent of this first round of purchases. In 1907, partial payments were made against the accrued survey costs of 13 of the subdivisions. With one exception, none of the recorded payments equalled the balance previously recorded as being outstanding. Thus, 10 years after the initial title

[131] This number was increased in an 1894 rehearing. Berghan, pp. 689-90.
[132] References in Berghan's text referring to nineteenth century interest rates for borrowing ranging from 5 to 12 percent can be found on pages. 329, 952 and 1010.

investigation, survey costs were still outstanding on many of those subdivisions which remained in Maori hands.

Leasing relatively good farmland would have offered a possibility of repaying the accumulating survey debt on these blocks and several leases are recorded from 1907-09. Table 5 compares leasing income for various blocks with the last recorded outstanding survey costs:

Table 5: Raketapauma Subdivisions: Leasing Income Compared With Survey Costs

Raketapauma Subdivision	Survey costs accrued	leased for per annum	time it would take to pay off survey costs if all rent was put into repaying debt	Same with compounding interest at 10% per annum
2B2	£5 16s 8d	£18	4 months	
2B3	£50 2s 7d	£10	5 years	8 years
2B5	£25 1s 6d	£50	6 months	
2B10	£9 2s 11d	13s 11d	13 years	Never. After 10 years debt would have increased to £12 1s 8d
2B11	£23 2s 8d	3s 11d for 10 years then £4 12s 4d for the next 11.	by the end of the first 10 years the debt would have reduced by £1 15s 3d to £21 7s 5d.	By the end of the first 10 years the debt would have increased to £51 17s 9d. by the end of the 21 year lease it would have increased to £61 0s 1d
2B12	£27 2s 8d	£2 5s 10d	11 years	After 11 years, debt would have increased to £33 17s 0d

Source: Berghan Raketapauma Block Narrative.

Even disregarding compounding interest, the ability of landowners to use leasing as a means of gaining capital to repay their survey debts varied greatly. It would have taken 4 months rental in one case, but more than a decade in others. As table 5 shows, had compounding interest been thrown into the equation, for some sections, leasing land to repay debt was not a viable option at all because even if all of the income generated from leasing were put into repaying survey liens, it would never meet the interest charges and the debt would have increased. It should be of little surprise that parts of 2B10 and 2B11

[133] Berghan, pp 689-704.

blocks, where leasing income offered little chance of repaying survey debt and providing income to owners, were sold in the 1920s.[134]

In yet other cases, such as Maungakaretu, non-sellers found themselves trapped by restrictions under the Main Trunk Railway Loan legislation on leasing land other than to the Government. According to Ngawai Tutawhiri who wrote to Under Secretary of the Native Department Lewis in 1891, this left them few options for recovering the costs of survey other than selling land to the Crown.[135] Ngawai also protested vigorously at the fact that non-sellers were forced to pay part of the costs of subdividing out the shares of sellers.[136]

Ngawai's protest highlights another feature of the Crown's practice of subdividing off the portion of a block that it had acquired. The cost of subdividing off the Crown's or another purchaser's share fell on the non-sellers proportionate to their remaining share of the land. As well as in Maungakaretu, this was the case in Popotea block where the Crown partitioned off its share of the block in 1896. The result was that the non-sellers were burdened with a survey lien over their part of the land of £30. Given that the Native Land Purchasing Department had estimated the non-seller block to be worth £86 8s 0d, this meant that the cost to non-sellers of their neighbours selling created a lien over the non-sellers' land equivalent to one-third of its estimated value. In 1912, the survey lien on the non-sellers' land remained unpaid and the Crown exercised its right to take land in satisfaction of the debt.[137] Land values had clearly increased, so it took just 44 acres of the 264 acres of the non-seller block. This subdivision of the interests of the Crown for unpaid survey lien, in turn led to further survey liens of about £3 3s being recorded against the remaining non-seller portion of the block.[138]

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[134] Innes and Mitchell, draft.
[135] Berghan, p. 326-7.
[136] Berghan, p. 325.
[137] This right came from the Native Land Act 1909. Williams, p. 317.
[138] Berghan pp. 615-7

The practice of the Crown or willing sellers partitioning lands and the Court apportioning the costs of partition across sellers and non-sellers alike applied in many of the blocks in the Whanganui district. This practice was criticised as unfair by Whanganui solicitor Samuel Thomas Fitzherbert when he appeared before the Rees-Carroll Commission in 1891, but the practice continued long after this.[139] Examples where this occurred include Mangapapa, Maungakaretu, Ngapukewhakapu, Puketarata, Rangataua, Rangiwaea-Tarere, Rawhitiroa, Ohura South, Urewera, Kai Iwi, Maraetaua, Oahurangi, Maungakaretu, Popotea and Whataroa 2.[140]

In Ngapukewhakapu, the Crown purchased and partitioned out its interests in the Ngapukewhakapu 1, 2 and 3 blocks. In 1905, charging orders on the non-seller blocks owned by 72 people came to £187.[141] To give some basis for comparison, the New Zealand Official Yearbook of 1893 records an average farm labourer's wages as being between £37 and £65 per annum in the Wellington Province.[142] Thus the charging order was equivalent to between roughly three and five years wages.

In Rangataua 2B block, in 1899, the Crown purchased and partitioned out the 114 acres it had purchased. The majority of owners had chosen not to sell to the Crown and they were awarded the remaining 227 acres. The non-sellers however were charged by the Court with part of the cost of dividing off the Crown's share totalling £18. In the intervening year, the non-sellers had not raised the capital to pay off this debt, which had increased to £22 10s and the Crown exercised its right to have the non-seller block further partitioned to recover the outstanding debt.[143] Through this tactic, the Crown acquired a further 14 acres of the block with the majority of the resultant further survey charge, £3 2s 10d, recorded against the reduced non-seller portion of the block. [144]

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[139] Rees and Carroll, p. 107.
[140] See Berghan narratives for each of these blocks.
[141] Berghan, pp. 435-6.
[142] The higher figure £75 probably applied if board was not deducted. *New Zealand Official Yearbook*, 1893, p. 225.
[143] This was most likely under section 78 of the Native Land Court Act 1894, Williams, pp. 292-3.
[144] Berghan, p. 729.

Finally, in the Urewera block, the Crown took 2780 acres or 22 percent of the land for survey costs from non-sellers in 1904 as it sought to expand the Tongariro National Park. In Oahurangi, a survey charging order increased from £29 17s 10d when it was made in 1895 to £68 in 1911 when the Crown used it to alienate 21 acres or 8.3 percent of the block.

Similar circumstances existed with private purchasing. In the Puketarata block 2, farmer James Smith purchased the interests of some of the owners. After a rehearing of the title to the block, in which names were added to the title, Smith succeeded in having his purchase recognised. Although he had paid the survey costs to have his subdivision partitioned out himself, he was able to have these costs apportioned by the Court over the whole block. Smith had paid £86 11s 9d for survey, but as the cost of the partition was apportioned proportionately over the whole block, the non-selling owners of the three other subdivisions, ended up paying £68 11s 9d and Smith paid £18.[145]

Surveyors sometimes also made agreements with landowners to take land in exchange for survey. This was the case in Mangapapa, where the surveyor took 4700 acres of land or 19.8 percent of the land area for the initial survey of the boundaries of the Mangapapa 1 block.[146]

The Raetihi block demonstrates an altogether different means of alienation of Maori land. In this case, the Crown's used its powers to lend money for survey as a lien against blocks and then alienate land in payment for this debt.[147] At an 1889 subdivision hearing, the Crown was awarded a substantial share of the block and non-seller Winiata Te Kakahi wrote to the Native Minister requesting that the Government lend non-sellers the money to survey off the Crown's share of the block. This partition would have allowed non-sellers a title to a defined area of land which could be used. Instead, Land Purchasing

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[145] Berghan, pp. 651-2.
[146] Berghan, p, 203. An arrangement was also made in Ohoutahi for the surveyor to take land if survey expenses were not paid within six months. There is no record of how this was resolved. Berghan, pp. 487-8.
[147] The Act used in this case was probably the Native Land Administration Act 1886, but this was a right that the Crown held from 1873. Williams, pp. 308-13.

Department Under Secretary Patrick Sheridan advised the Minister that the block was subject to Crown pre-emption and that it was the Government's intention to acquire all of it. Therefore, the Minister refused to either pay or lend money for the partition and in so doing restricted the use to which the owners could put the land. The Crown held all of the trump cards, and could chose to partition and charge survey costs or not as suited its interests. This was not an option for capital-poor non-sellers.

2.4.2 Court Fees and Direct Costs

Survey costs were the first of many costs related to the Court. Equally inevitable were the court fees. These costs directly imposed by the Court were as follows:

£1 per day for every party appearing in Court
£1 for the investigation of any claim
£3-£5 rehearing of a claim to be paid before a case would progress
10s to £1 for certification of documents
10s Witness fees for each witness appearing.[148]

Surveyors charged a daily rate for being present at Court hearings of around £2 2s, and due to the fact that batches of hearings were gazetted together for a sitting of the Court, with no specific date given for each block, these fees were also charged by surveyors waiting to attend Court. Interpreters, necessary in Court and also for the translation of Court documents, appear to have charged around £1 1s for interpreting a deed and another £2 2s per-day for attending Court.[149]

The fees of lawyers and agents are harder to calculate, but some insights into these can be gleaned from the records of the Court.[150] In the case of the Waiakake block, the lawyer

[148] Principle source, Stirling v.2, p. 312. Many of these figures are confirmed by those recorded in the Whanganui blocks. See Appendix B for methodology for recording costs in Whanganui.
[149]Stirling, p. 50.
[150] Williams, p. 190. Stirling, pp. 310-11, p. 316.

representing Te Keepa asked for an adjournment of the Court to allow for witnesses to arrive. The Court allowed this on condition that Te Keepa's party compensate the other party to the investigation, Nika Waiata, for his court expenses for the day's hearing. These were itemized as follows:

> Interpreter £2 2s
> Legal Counsel £5 5s
> Order of Adjournment 5s
> Upkeep of witnesses in town 10s per day.[151]

In a separate case, solicitor C Cook represented one party of claimants in Maungakaretu 3 block, where Land Purchase officer Patrick Sheridan paid £35 per share to buy interests on behalf of the government. Sheridan, in his report, noted that he had paid this money over in the presence of Cook and each recipient in turn paid Cook £5 for his legal services.[152]

Requests for advances on land to meet court costs were commonplace. In September 1884, Haimona Teaoterangi wrote to the Native Minister following the title investigation of Maungakaretu, asking for an advance on his hapu's land in order 'to keep ourselves in town. We are badness staying in town for long time.'[153] Another request was received from Hoani Tauhai for £10, as he had no means to travel home to Horowhenua. Cook wrote to Gill that:

> The time under which an application for a [re-hearing] having now expired without or having been given the Natives my clients are anxious to have the purchase of the block settled in order that they may be in a position to pay their debts and leave here.[154]

An attempt to quantify the actual costs charged directly by the Court was done by working through the document banks for the Berghan and Innes' narratives for Whanganui blocks. The figures for each block, as well as a full methodology for this,

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[151] 26 Jul 1881, Whanganui MB 03, p.146, In Berghan, Supporting Papers, Vol.30, p.16985
[152] Berghan, p. 322.
[153] Berghan, p. 314.

work are included in Appendix B of this report. This work indicates that the court fees alone were around £2700 for Whanganui land blocks for the period from 1865-1900.

An official account of the total Court fees charged throughout New Zealand, published in 1870 showed that of the £6086 in fees imposed, more than half were outstanding as charges against the land.[155] This suggests that, even in the Court's early years, there was a widespread difficulty among claimants in meeting its costs. With this in mind, the costs of the Court must have contributed to the alienation of lands especially where title to land was detained until court fees were settled, or where the Court, under the 1873 Native Lands Act, had the power to order that land to be transferred to the Crown in payment for surveys and other fees.[156]

The available data on court and related costs, indicates that claimants who chose to come to the Land Court with legal representation would have incurred costs of around £10 per day and for those without legal representation, costs approaching £5 per day. This can be compared once again to an average farm labourer's wages of between £37 and £65 per annum in the Wellington Province in 1893.[157] One day in Court would cost between 1 and 4 months wages for a farm labourer. When it is considered that some cases ran on for as much as 3 months, the potentially ruinous costs of the Court become readily apparent.

It is little wonder that in 1883 Te Keepa te Rangihiwinui and 278 others petitioned the Government expressing alarm at the cost of lawyers in the Native Land Court and stating that several blocks had been swallowed up by their expenses. Te Keepa's petition suggested that lawyers should be excluded from the Court.[158] It is difficult to judge from the sources available, however, how prevalent the use of lawyers in Court was. They

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[154] Berghan, p. 317.
[155] *AJHR*, 1871, v. 1., A No 2A.
[156] CFRT Native Land Legislation Database.
[157] New Zealand Official Yearbook, 1893, p. 225.
[158] 'Native Affairs Committee', *AJHR* 1883, I2, p. 11.

were certainly not present in all cases, although they appeared for parties from the 1870s.[159]

A further consequence of fees was the right of surveyors under the 1865 Native Land Act to request that Crown grants to a block be sent to them if survey fees had not been paid at the time of the award. The intention was that the surveyor would secure payment by holding the deed until the debt had been paid. This practice, which was applied by the Court in relation to at least seven blocks in the Whanganui district, before the provision was removed in 1867 may have left some grantees trapped - unable to pay surveyors until they could use their land to generate income and yet unable to bring leases or raise money on the land without the grant. This must have left them vulnerable to those wishing to advance money for the purchase of the block.[160]

Given that most hearings would have involved more than one claimant party, and that there were at least 1548 days of court hearings in relation to blocks in the Whanganui district between 1865 and 1900 (Figure 5), the total court costs across the district for this period would have extended into the tens of thousands of pounds.

The fees directly imposed by the Court, however, were the tip of the iceberg of the total costs associated with the Court. For example, the Court sat over a period of 12 weeks between 13 March and 7 June 1895 in relation to the 2700 acre Kaitangata block, and although it is not clear whether the Court sat continuously, the parties would have been obliged to stay in Whanganui through this time while around 50 witnesses were cross-examined.[161] The numbers attending the Court must have been huge. Similarly, the hearing of the 5150 acre Otiranui block took from August to December 1896. During this time, the Court sat almost continuously six days per week.[162]

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[159] To Taitoko from Te Keepa, Mar 16, 1877 in ANZ MA-Wang 1/2.
[160] Williams, p. 308. The seven blocks described by Berghan where this occurred were Kaitangata, Mangaone, Mangawhero East, Matatara and Makirikiri, Pikopiko 1 and 2, Ramahiku and Waipuna Motuhou. Paula Berghan, 'Block Research Narratives of the Whanganui District: 1865-2000', July 2003.
[161] Auckland University, electronic index to Maori Land Court minute books.

Some blocks went through the Court relatively quickly, but even smaller blocks such as Parikino, 226 acres, took the Court three weeks to hear and, as a result, would have generated significant costs in relation to the block's value.[163]

Complaints about the cost of the Court are equally revealing. In Maungakaretu block, in 1899, George Hutchinson of the Native Ministry wrote that he had made advances to Rora Potaka 'for the purpose of enabling her co-owners in this block of land to establish their claims to other blocks which, without such aid, they could not have done so'. Hutchinson had estimated that the advances on the block which included survey fees might be £150 but agreed in a letter two days later that Rora Potaka and her co-claimants had expended 'nearly £400' while in town for the Native Land Court sitting, could also be correct. Five hundred and forty-five acres of the 548 acre block were later sold for £870. If Potaka's figure is to be believed, as much as 45 percent of the purchase price of the block was eaten up by the costs incurred in town.[164]

In Puehurangi Block, yet another indication of the total cost of the Court process can be gleaned. The block of 398 acres was sold in 1894. At the hearing where the Court confirmed the alienation, its valuation was recorded as £436, but the price paid by the private purchaser D G Polson was £300. Polson explained that the reason he was offering so much less was that he had paid the owners £35 'for their assistance in enabling me to procure my title' and that with stamp duty and property tax valuation he had already paid in excess of £436 on the block. This explanation was accepted by the Court.[165] The fact that the Court found this a valid explanation indicates that the cost of attending Court and establishing title to land consuming almost a third of the value of a block was considered acceptable and that it was acceptable that these costs should be passed on to the vendors.

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[162] See Appendix B.
[163] Berghan, pp. 574-8.
[164] Berghan, p. 330, p. 334.
[165] Berghan, pp. 627-8.

2.4.3 Other Indirect Costs of the Court

Other significant court related costs were the costs to Whanganui Maori communities of travelling to, and staying in, the towns where hearings were held for the sometimes prolonged sittings of the Court. Most hearings in relation to Whanganui lands, were held in Wanganui town itself with a few sittings after 1880 at Putiki Pa, Palmerston North, Marton, Upokongaro, Patea, Waitotara, New Plymouth and Otorohanga.[166]

There were at least 1548 days of hearings between 1866 and 1900 or an average of at least 44 days per year (Figure 5). However, in some years the Court sat almost continuously as was the case in 1897 when it sat for 44 weeks in relation to Whanganui blocks. As a result, attending Court must have taken a significant proportion of the time and human resources of Whanganui Maori and cost large sums in travel and accommodation as well as time spent away from farming and other economic activities during hearings. Just halfway through the year, in June 1897, Land Purchase Officer William Goffe in Wanganui noted that 'Natives have been here since January attending Court and are very hard up'.[167]

This problem was compounded by the Court's tendency to gazette a batch of cases for a given hearing of the Court, without specifying when each individual case would be heard.[168] This would have obliged Maori to arrive and maintain themselves in town, sometimes for months before their cases were called. To repeat one example given in Cathy Marr's Waimarino history, the Waimarino title investigation was gazetted as one of a number of cases to be heard at a sitting of the Court commencing on 22 February, the Waimarino case, however, was not heard until a week later on 1 March.[169] In another

[166] Data on places of hearings was drawn largely from the Auckland University's database of Native Land Court Minute books. It could also be obtained from scrutiny of Berghan and Innes' respective supporting documentss and the block research reports relating to Whanganui blocks.
[167] Cited in Kathryn Rose, 'Whanganui Socio-Economic Impacts, 1860-1960', CFRT, 2004, p. 127.
[168] Sorrenson, p. 187, p. 91.
[169] Marr, draft, p. 262.

instance, Tautahi Wiremu Pakau wrote complaining that he had been waiting two-and-a-half months in town for the Raoromouku block to be called.[170]

Some indication of the extent of indirect costs of attending the Native Land Court can be gained from a petition from Hone Potaka and 401 others to the Chief Judge of the Native Land Court in 1897 in response to newspaper criticisms of the unhygienic condition of the Maori encampment at Whanganui:

> We feel very much hurt at the aspersions cast upon us by the Europeans, because we expend as much as £1500 in one month in that town in the purchase of bread, sugar, tea, meat, clothing and other things we require.[171]

At this rate of expenditure, given the number of months that the Court sat, Whanganui Maori would have spent in excess of £75,000 throughout the Native Land Court period to 1900.

Ultimately, these accumulating costs must have played into the hands of those land purchasers who spent time in town during court sittings advancing money on blocks, or buying shares. In 1879, Resident Magistrate Richard Woon wrote:

> In January last, a land court was held in town and the whole river population flowed thither to support their claims and watch their interests. For the summer, they took up their quarters in town and neighborhood and have been continually engaged in offering blocks for sale to the Government Commissioner, Mr Booth, who has been most successful in his negotiations, and has, by advances made secured the pre-emptive right of purchase by the Government over hundreds of thousands of acres of the interior.[172]

Woon added that, while he had convinced Maori to invest a portion of their sale proceeds in the bank:

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[170] Berghan, p. 822.
[171] Cited in Rose, p. 128.
[172] Woon, 'Reports of Officers in Native Districts', *AJHR,* 1879, G1, p. 9.

> the greater portion of their money [in excess of £4000] has been spent in town on food, clothing and, alas, *drink*! And a rich harvest had been reaped by the traders and publicans. The Maori think it is the correct thing and quite the fashion to frequent the hotels in which Wanganui abounds, and free access been given to them to those houses contiguous to their quarters, there they spend their time from early morning to night eating, drinking and carousing.[173]

Woon suggested that a more proper place to hold the hearings would be 'up the river' away from such temptations. Finally he commented on the fact that productive economic activities were being neglected due to the attendance of the populace at Court. He described 'abandoned pas and cultivations' with Maori and leaving their crops 'at the tender mercy of cattle and swine'.[174] Woon commented favourably on a four week sitting of the Court at Putiki in early 1879, where Mete Kingi had welcomed those attending on the marae. Hearings were also held about 5 miles up river at Upokongaro in 1880, 1881 and 1882, but this practice was not continued beyond this date.[175]

The conditions in which Whanganui Maori lived in town while attending Court were, by many accounts, deplorable. Woon wrote that:

> When traveling on the river and squatting on the town foreshore, a calico tent is his only shade and protection from the sun and rain, including the high winds prevailing from the sea.[176]

A winter spent in a cramped tent on the foreshore at Wanganui must indeed have been an uncomfortable existence for those attending the Court. Kathryn Rose's report on the social impact of Native Land Court hearings, cites several sources including the Native Medical Officer at Whanganui, Member of Parliament Mr Bruce, Resident Magistrate Ward and land purchase officer, William Butler, as attributing high rates of disease such as measles, influenza and diarrhea, which in turn led to high levels of mortality, to the

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[173] Woon, 'Reports of Officers in Native Districts', *AJHR,* 1879, G1, p. 9. Comments about alcohol also in Woon, 'Reports of Officers in Native Districts', *AJHR,* 1878, G1, p. 14.
[174] All from Woon, 'Reports from Officers in Native Districts', *AJHR*, 1879, G1, p. 9.
[175] Auckland University Index to Native Land Court Minute Books.
[176] Woon, 'Reports of Officers in Native Districts', *AJHR*, 1880, G1, p. 14.

cramped unhygienic conditions in which Maori were forced to live while attending Court hearings.

During a sitting of the Court, in 1887, Land Purchase Officer William Butler wrote:

> They were living in tents, some of which were old and of inferior quality, affording little shelter in bad weather. The mortality was principally among children who caught cold from exposure and invalids suffering from serious complaints who were brought down from the settlements, there being no-one to attend them there. There were also several deaths from measles, which might possibly have been prevented by medical treatment applied, if the patients had been better housed.[177]

Reverend A O Williams also wrote that in one year in the mid-1880s, there had been 'no less than 24 deaths' among the Natives forced to spend the whole winter in Wanganui attending the Court.[178]

There were, however, alternatives to squalid conditions for those who could afford it. In June 1879 and again in December the Crown Land Purchasing Agent paid accommodation costs for claimants to the Aratawa block who were willing to sell. A total of £38 6d, or as much as some farm labourers earned in a year, was later subtracted from the price the Crown paid for the block in exchange for accommodation for Maori at Chadwick's boarding house. A further £169 16s 8d was also charged as food for the Maori in October 1879, to Wanganui storekeepers Nicholas and Manson, and finally travel for the purchasing agent and for the claimants was recorded by the Land Purchase Department as a cost associated with purchasing the block.[179]

Maori had a stark choice between accepting advances to pay for accommodation and long periods of living in enforced squalor. When the Raoromouku block adjacent to Aratawa was heard in August 1880, Tautahi Paku, one of the claimants wrote asking for an

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[177] cited in Rose, p. 125.
[178] Rose, p. 127.
[179] Berghan, p. 31.

advance on the block to pay living expenses incurred during his peoples' two-and-a-half months wait over June, July and August for the case to be called. Tautahi explained:

> We have experienced much hardship during the last two months and a half and suffered much loss, our tents having been injured by the wind and the rain, and much food consumed five times have supplies of food been brought for our use while here … Besides all this four of our children and two of our old people have died in consequence of the hardship we have suffered in watching the Court dealing with the lands lest by being absent we should lose our rights.[180]

Finally, Hakiaha Tawhiao protested to the Secretary of Maori Affairs, that, on receiving a letter and assurances from Land Officer Booth that a hearing of the Opatu block would be held at Upokongaro at the end of March 1882, a party of 47 had travelled there from the Tuhua district, but the hearing had not been gazetted and did not take place. 'All the tribes have assembled at Upokongaro' he complained:

> and they have all undergone very great hardship arising out of their coming here fruitlessly, upon the letters sent by Mr Booth requesting us to come. We are sorrowful this day; let the Government make us an allowance of two hundred and fifty pounds to defray our expenses. Do you give effect to this appeal of the tribe, seeing that we have come a distance of 189 miles, from the source of the Whanganui river.[181]

Native Minister Bryce instructed that the request 'could not be entertained.'[182]

Little changed through the 1880s. By 1887, Land Purchase Officer Butler was still reporting from Whanganui that 'large numbers of Maori from all parts of the country lying from Taupo and Otaki have been congregating here during a considerable portion of the year.' He added:

> Serious complaints … have been made by them of the want of accommodation while attending Court in support of their claims to land and with some reason, for no doubt they are subject to hardships on these occasions when they are compelled, in their own interests to be in

[180] Berghan, p. 822.
[181] Berghan, p. 517.
[182] Berghan, p. 518.

> attendance for a great length of time which they would not perhaps feel so severely if sittings of the Court were held and shorter intervals and were not so protracted as they are at present.[183]

The burden of attending Court continued unabated and indeed increased through the late 1890s when, as Figure 5 shows, there was a significant increase in the number of days sitting per year.

2.4.4 Other Costs

Land purchase accounts frequently included other costs associated with purchase. These included the costs of travel and accommodation of those Land Purchase officers purchasing land for the Government and provisions provided by them for parties with whom they were negotiating. In the purchase negotiations over Mangapukatea block in 1881, Gilbert Mair paid £15 12s 4d for 'travelling expenses and canoe hire', and £16 15s 0d to storekeeper S Manson for 'food for the Natives.' It is unclear whether it was standard practice for such charges to be considered part of the payment for a block and deducted from the final sum that sellers received. If they were not, these expenses related to purchase would have at the very least indirectly reduced the price that the Crown was willing to pay to Maori for land. In this case, travel and food accounted for £32 7s 4d or 3.3 percent of the sale value of the land while survey, court costs and other expenses paid by the Land Purchase Officer came to a further 15.6 percent of the sale price of the land.[184]

Where land was purchased by officers working on commission for the Government, the commission of the land purchase officers was also recorded in the accounts relating to the land. In Karewarewa 1 and 2, McDonnell and Brassey were paid 50 pounds commission on Block 1 and £87 10s 0d on block 2. This makes their commissions about 8 percent of

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[183] Butler, 'Reports of Officers in Native Districts', *AJHR*, 1887, G1, p. 14.
[184] Berghan, p. 238. Marr also describes the charging of store goods against the land in relation to Aratawa block. Marr pp. 60-1. Berghan also describes charging of travelling expenses of purchase officer Mair in relatin to Otaranoho. Many other blocks have similar experiences.

the purchase price. In total, fees and expenses came to £329 on the blocks which were sold for a total of £1706.[185]

The final significant cost incumbent in selling land were land duties, imposed under sections 55-64 of the Native Land Act 1865. These required a duty of 10 percent of the price to be paid to the Crown on the 'first sale or other disposal except by mortgage, payable by the purchaser or lessee.' While this was not a direct cost on the seller, the cost of the duty would have been a factor in the negotiation of prices for land and would, ultimately have reduced the prices paid.[186] These fees, collected by the Native Land Court were substantial. Between 1880-87, the Native Land Courts nationwide collected £19,189 7s 10d in court fees and £124,407 5s in Native Land duties. This made the duties 86.6 percent of the Courts total revenue.[187]

2.4.5 Debt and Crown Land Purchasing

There are several examples that link debt directly to the alienation of land. Upokongaro block, for example, was purchased in 1872 under the peculiar arrangement of a price of £850 of which £350 was paid in cash and the remaining £500 was to be treated as a mortgage to be paid in full eight years later. The purchaser was effectively borrowing the money from the block's owners with no interest to complete the purchase.[188] This arrangement, which will be considered more fully in Chapter 4, was concocted, in the words of one of the Maori owners, over 'a couple of bottles of grog'.[189]

The Maori owners, who had not been paid the full price up-front, rapidly found themselves in debt and in 1873, a Mr Betts came before the Trust Commissioner wishing to buy the £500 mortgage from them for £200 cash. When questioned by the Trust Commissioner as to whether it would not be to his advantage to take the £500 at the end

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[185] Berghan, pp. 130-40.
[186] Williams, p. 189. CFRT Native Land Legislation database.
[187] 'Native Land Court Fees and Native Land Duties', *AJHR,* 1888, G8, p. 1.
[188] Berghan, p. 1004.

of the eight year mortgage rather than receiving £200 in the hand now, the vendor, Te Peina, responded 'Yes, but I am in debt and am afraid of imprisonment.'[190] The mortgage was eventually sold for £300. Te Rimu-Mangawhero block, was also partially sold to cover the cost of a 12 percent per annum mortgage that was in default.[191]

Rawhitiroa was a block that was under a burden of debt as Wiremu Kauika had accepted an advance against its purchase from the Crown. Kauika had also borrowed heavily from private sources and in 1885, his solicitor Cooke wrote asking the Government for further advances on the block which were 'required to pay pressing demands'. These demands probably included debt to land agent and speculator Thomas McDonnell who subsequently took successful legal action against some owners including Kauika, Uru te Angina, Kahukaka, Kupenga, and Te Weka te Kupenga and was awarded £750 by the Supreme Court. Storekeeper William Kells was also awarded £392 and Henry Nicholas was awarded £86 against the Chiefs' interests in unnamed blocks.[192]

Although the Native Lands Act of 1873 prevented the creditors from legally recovering the debt directly as a charge against the land, Kells succeeded in convincing some owners to sign over their interests in the land to him. Kells then took out a court injunction to prevent any payment of the block being paid into the hands of his debtors and arranged that the Crown purchase monies be paid directly to himself.[193]

Kells also attempted to get debts, which related to the purchase of store goods, distributed over all of the owners of the land, encouraging as many individuals on the Memorial of Ownership for the Rawhitiroa block as possible to acknowledge the debt. Native Minister Ballance instructed Lewis to inform Kells that the injunction would be resisted, but added that they would 'help him get his money.' Lewis then recommended that it be the three

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[189] Berghan, p. 1004.
[190] Upokongaro case, MA-W 2/1 Trust Commissioner Minute Book, National Archives. cited in Berghan, p. 1006.
[191] Berghan, p. 952.
[192] Innes, p. 69.
[193] Innes, p. 69

rangatira who had borrowed the money who should be paid the balance of the payment for the land in order to settle the debt.[194]

The Native Ministry then received legal advice that it was wrong that the debt should be considered a charge against the land and that the charging-orders which Kells had got some owners to sign were invalid, especially as they had not yet agreed to sell the land. The Minister replied by instructing Lewis that he:

> [did] not wish the objection, that there is no contract by all the owners to sell, raised in such a way as to imply an admission that the partially signed agreement which is in existence is invalid.[195]

This collusion between officials and private creditors was to the disadvantage of those Maori who did not wish to part with their land. Help in the recovery of private debt seems to be an inappropriate role for the Native Minister or the Native Department to be undertaking.

One cause of debt was the financial strain of customary obligations and practices and motives within the framework of the money economy. In the case of Rawhitiroa, Kauika had been desperate to borrow money on the land in order to provide for the visit of Te Whiti, Titokowaru and their people in 1885.[196] R Ward, Resident Magistrate, made a similar observation about the cost of the visit of Kingi Tawhiao and a party of 200 Waikato to the Whanganui district in 1883.

> He was well received by the Natives wherever he went, many obtaining advances on their leases, or borrowing money anyhow they could, asn in many instances temporarily impoverishing themselves in order to find means to feast their visitors, and to present large sums of money to Tawhiao.[197]

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[194] Innes, p. 70.
[195] Minute of Lewis to Chapman and Fitzgerald 10 March 1886, MA-MLP 1886/60, with 1893/100, ANZ, cited in Innes, p. 70.
[196] Innes, p. 60.
[197] Ward, 'Reports from Officers in Native Districts', *AJHR*, 1883, G1A, p. 11.

Woon further suggested that expensive hakari were seen as an important part of healing the wounds created in the adversarial setting of the Native Land Court:

> It is not uncommon for a young Chief to spend £50-60 [a year's agricultural worker's wages] in giving a dinner, with beer, champagne etc. to his friends and this to to be particularly noted after a sitting of the Native Land Court. If judgement has been given on a long-disputed question, both parties (claimant and counter-claimant) vie with each other as to who can give the most expensive entertainment in order to prove to each other than no feelings exist between them.[198]

Woon's comment goes some way to explaining what appeared to be improvidence, by showing feasting within context of ritual and custom adapting to an economy and a newly imposed and alien legal mechanism.

2.4.6 Land Sales as a Source of Capital for Land Development

That sellers frequently approached the Crown seeking to sell land is evident from the correspondence of the Native Land Purchase Department. What is not always clear is the motives behind this eagerness. In some instances it was clearly debt, but it is also possible that lands were sold as part of a rational pursuit of economic interests within the emerging capitalist agrarian economy. Did Maori, for example, sell some lands to acquire capital to develop other blocks? There is certainly evidence of sometimes quite successful Maori agricultural enterprise in nineteenth century Whanganui with several contemporary commentators noting its development.[199] However, there is also evidence that the Native Land Court could be disruptive to Maori agricultural practices. As Woon wrote in 1878:

> In agricultural pursuits, a retrograde movement has taken place, and, owing to the minds of the Natives having been absorbed in land business, the last planting season was almost allowed to slip by

[198] Woon, 'Reports from Officers in Native Districts', *AJHR*, 1873, G1, p. 16.
[199] Ward, *A Show of Justice*, p. 265. 'Census of Maori Population' AJHR, 1891, G2. Woon, 'Reports from Officers in Native Districts', 1879, G1 p. 9.

> without any of the usual crops being put in the ground, except such as were sown at a late period.[200]

If Maori had used the sale of their vast lands in order to raise capital to enter the colonial economy, one would expect them to have made significant progress by the end of the nineteenth century towards developing a modern agricultural industry. Table 6, showing agriculture and cropping in the Whanganui and Waitotara Counties for Maori and for the population as a whole for 1901, does not support this hypothesis. It shows that the Maori populations had over 1000 acres of land in crops and over 7000 acres of land in sown grass. However, on a per-capita basis, Maori agriculture was much less developed that that of settlers. Whanganui Maori made up 39 percent of the population and owned 38 percent of the land, but accounted for only 15.5 percent of land in crops, 16 percent of land in sown pasture, and 3.5 percent of the livestock. They lagged particularly in the predominant industry of sheep farming with 11 stock per head of Maori population against 140 stock per head of the total population.[201]

Table 6: Agriculture and Cropping in Wanganui and Waitotara Counties 1901

Crop	*Individual Cultivations by Maori (acres)*	*Common Cultivations by Hapu of Maori (acres)*	*Total Maori Crops (acres)*	*Total For Districts (acres)*	*Area per head of Maori Population (acres)*	*Area per head of total Population (acres)*
Potatoes	469.75	50	519.75	918	0.33	0.23
Wheat	126		126	772	0.08	0.19
Maize	129.5		129.5	119	0.08	0.03
Other	277	10	287	5060	0.18	1.26
Total Crops	1002.25	60	1062.25	6869	0.68	1.71
Sown Grasses	7311		7311	45784	4.67	11.39

Livestock Type	*Number of Stock*	*Total Maori Owned Stock*	*Total Stock for Districts*	*Stock Per head of Maori Population*	*Stock Per head of total Population*
Sheep	17200	17200	565051	11.00	140.63
Cattle	548	548	22789	0.35	5.67

[200] Woon, 'Reports from Officers in Native Districts', *AJHR*, 1878, G1, p. 14.
[201] It appears that the figures which relate to the counties in question do not include the population of Whanganui town.

Pigs	2688	2688	4928	1.72	1.23
Livestock (inc pigs, cattle and sheep)	20436	20436	592768	13.07	147.53

Maori Population = 1564, Total population = 4018

Source: Statistics of The Colony of New Zealand 1901, Results of a Census of the Colony of New Zealand, 1901.

Much more extensive details of Maori expectations in terms of the economic benefits of land sales and issues with Maori economic development in the Whanganui are given in Kathryn Rose's report on this subject.[202] The firm conclusion that can be reached here however, is that while some Maori may have sold land in order to develop other parcels for farming this had not succeeded on a large scale. Overall, by 1900, Maori were statistically much poorer in terms of agriculture than their European neighbours.

2.5 Conclusion

Between 1865 and 1900, almost all of the Maori land in the Whanganui district passed through the Native Land Court for investigation of title and 62 percent of it was alienated. This loss of almost all of this land occurred through purchase by Government Land Purchase agents and private purchasers. And while the Native Land Court did not directly alienate land it provided a mechanism through with pressure could be created on communities of Maori to sell land.

The system of land tenure created by the Court neither recognised customary systems of political authority and its relationship to the land, nor did it put in place a system which would allow Maori communities to easily respond collectively to the emerging 'modern' agricultural economy. Thus Native Land Court process actively undermined the system of tribal authority over land, and created fragmented and unmanageable titles which in turn this led to loss of collective control over the land and contributed to land alienation.

[202] Rose.

The ten owner rule and its successors which caused fragmentation of land titles rendered Maori land difficult to manage communally and contributed to its alienation.

Substantial debt, loss of revenue and even disease and death, were other consequences of Whanganui Maori attendance at the Native Land Court. Survey costs could be substantial, as could the fees of attending Court and staying in town for its hearings. These must be added to the relative devaluation of Maori land created by the 10 percent land duty imposed on the first alienation of any Maori land. If individually all of these costs nibbled away at the value of Maori land, cumulatively, they must have been financially crippling for communities of Whanganui Maori and there is little doubt that they also contributed to the sale of land.

Chapter 3: Crown Purchase Tactics in Whanganui

Before the establishment of the Native Land Court in 1862, the Crown had the exclusive right to purchase Maori land. After this, private parties were allowed to purchase land from Maori and could gain title to it once it had passed through the Court. Despite this, the vast majority of Maori land alienated in Whanganui from 1866 when the Court first sat in Whanganui to 1900, 86 percent or 1.13 million out of a total of 1.32 million acres was sold to the Crown.[203]

This chapter addresses the issue of some of the tactics that the Government's Land Purchase agents used to secure the purchase of Maori land in the Whanganui district. The methods of the agents were many and varied, and I have chosen to focus on two in particular which can be illustrated through examining patterns of land alienation. These are the use of advances and the progressive alienation of a block through the purchase of individual shares and partition. The chapter also discusses Crown attempts to keep the number of grantees on titles low to facilitate alienations and payments that the Crown made to influential members of Maori communities for assistance with purchasing. Another objective of the chapter is to examine the extent to which the framework of Native land legislation in which crown agents operated provided a market which favoured Maori land sellers over those wishing to retain their lands.

3.1 Pre-Title Advances on Maori Lands

Perhaps the most controversial tactic of the Native Land Purchase department officers is that of advancing money to willing sellers before the land had passed through the Court for title investigation. The practice of advances, 'tamana' or ground-baiting, has been roundly condemned in other Waitangi Tribunal reports and in published studies of the

[203] Craig Innes and James Mitchell, 'Whanganui Land Alienation Quantitative Study', draft, Waitangi Tribunal, 2004.

Court. The Te Roroa report, for example, found that the payment of Tamana 'effectively committed the recipients to sell land before the title had been determined' and that 'the payment of tamana was undoubtedly an established pressure tactic, an unfair practice designed to purchase land as quickly and cheaply as possible, and incompatible with the Crown's fiduciary duty under the Treaty'. Similar conclusions were reached by the Taranaki Tribunal.[204]

Accepting advances on land gave prospective sellers the financial means to bring land to Court and thus an advantage over rival claimants in gaining title to land. Accepting an advance was also perceived as a statement of possession. It was a recognition by a government official that the lands belonged to the advance's recipient. As such, it was viewed by some sellers as a first step to establishing title to lands. Consequently, if one party accepted advances, this could precipitate fears among others that they would eventually be paid less or miss-out on title altogether. This belief was not without foundation, as sometimes the Land Purchase Department or the Court apportioned advances paid at the time of partition over the shares of all grantees in the block as a body irrespectively of which individuals had taken the advances.[205]

The tactic of pre-title advances allowed the Crown to deal only with willing sellers and to obtain a share of a block before those who wished to retain the land had even had a chance to put their case for ownership. In this way, it undermined even the limited capacity for concerted decision making and action by a collective body of named owners which would have been afforded by a title from the Court. For similar reasons, the practice of advances allowed the Crown to set the price per-acre of a block without dealing with owners collectively.

In recognition of the injustice of the practice, advancing money on lands which had not been through the Court before or for 40 days after land came before the court was

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[204] cited in David Williams, *Te Kooti Tango Whenua: The Native Land Court 1864-1909,* Huia, Wellington, 1999, pp. 147-8.
[205]Cathy Marr, 'Waimarino Block Report', Waitangi Tribunal, draft, August 2004, pp. 57-8.

prohibited by law under the Native Land Laws Amendment Act 1883. The law, however, exempted the Crown from these provisions.[206] In view of the fact that the Crown was by far the largest land purchaser in Whanganui, this restriction would have had minimal effect in the district.

3.1.1 Extent of Crown Advances

Pre-title investigation advances on blocks in Whanganui, excluding advances specifically for survey costs, are recorded by Berghan and Innes in relation to at least 28 blocks. These are listed in Table 7 below. The table, however, probably still under-represents the payment of advances because it does not include all of those blocks where advances were made which were not ultimately brought before the Court, in some of these instances, these advances were recovered from the same parties to other blocks. Advances were clearly an important part of land purchase tactics before the early 1880s when Native Minister Bryce advised that the tactic should be discontinued.[207]

Table 7: Blocks For Which Advances Were Made in Whanganui District Before Title Investigation, 1866-1900

Block Name	Crown or Private	Year of First Known Advance
Ahuahu	Crown	1879
Aratawa	Crown	1879
Atuahae	Crown	1879
Heao	Crown	1872-3
Kaikai-Ohakune (pvt)	Private	1867 mortgage
Karewawa	Crown	1878
Kirikau	Crown	1874
Koiro	Crown	Unknown first negotiations 1872
Manganuiotahu- repaid	Crown	Pre 1877
Mangaporau – repaid 77	Crown	Pre 1877
Maungakaretu	Private	Pre 1878
Ohineiti- repaid	Crown	1875
Okehu	Unknown	1879
Opatu	Private	1879
Otaranoho	Crown	1879
Parapara	Crown	1879
Paratieke	Crown	1876
Parikawau	Crown	1879
Pikopiko No. 3	Crown	1878

[206] Williams, pp. 262-3. This law remained in force until 1894, Williams, pp. 261-2.
[207] Marr, p. 83.

Pohonuiatane	Crown	1879
Rangataua	Crown	1879
Rangitatau	Private	1878
Raoromouku	Crown	1879
Retaruke	Crown	1874
Taungatutu	Private	1870
Taumatamahoe (Tangarakau)	Crown	1879
Umomore	Crown	Pre-1881
Whataroa 2	Crown	1879

Sources: Berghan and Innes Narratives

Two aspects of the pressure created by pre-title advances are illustrated in the convoluted overlapping histories of Rangataua and Mangaturuturu blocks. One is the way in which receiving advances was seen as a statement of possession for a later title investigation hearing. The other is the confusion, jealousy and suspicion created by payments made before the boundaries of a block had been established before the Court.

Weronika Waiata of Ngati Rangirotea, who was eventually awarded interests in Rangataua, claimed in Court that:

> After I had sold the southern part [of Rangataua Block], Mikaere [Taikopai of Ngati Puku] then went to [Booth] to sell the north part and therefore [I] carried the survey round the whole, to assert my right. My survey was made before his. I asked for this survey openly on the same day as the sale to Mr Booth; then Mikaere went and sold land to him under the name of Mangaturuturu. I am not quite sure that that name covers Rangataua, but as I heard that he was selling land north of what I desired to alienate, I had the whole surveyed, intending to reserve this north part. When Mikaere first asked money from Mr Booth he declined paying it; afterwards, when Keepa threatened to stop all surveys and land sales he paid Mikaere money upon Mangaturuturu.[208]

In this block, it is clear that the claimants saw the acceptance of advances and especially advances for survey as being an important point in establishing title to a block, so much so that Weronika went on to state that her people had threatened to shoot Mikaere if he carried his survey into lands claimed by her hapu. There was also considerable confusion at the time that advances were made as to what the boundaries of the land being

[208]Rangataua Hearing, 16 August 1881, Whanganui Minute Book No. 3, pp. 294-5, cited in Paula Berghan, 'Block Research Narratives of the Whanganui District: 1865-2000', CFRT , July 2003, p. 721.

purchased were. As Booth later admitted under cross-examination, he had not been on the Rangataua block, but accepted the boundaries described by willing sellers Weronika Waiata and Metera te Urumutu, although he could not name the hapu to which they belonged. Despite this, he declared that he had been confident that he was paying the money to the right parties.[209] If Booth had set out to use the court system, advances and the mutual suspicion of neighbouring hapu to gain an entry into both blocks, he could scarcely have done so more effectively.

Another criticism of the system of advances is that they were negotiated with individuals and without the collective consultation let alone the collective consent of owners. This is demonstrated in the evidence of Te Rou Takapa of Ngati Puku, who were later awarded land in the Mangaturuturu block. He stated that, although Nika [Weronika] and Metera had received money on the land, he himself had 'never consented to the sale of any portion of the land, nor did I receive money or sign agreement about this.'[210]

In summary, Booth continued to advance money on both the Rangataua and Mangaturuturu blocks despite the fact that it was clear that ownership of them was in dispute. He capitalised both on the belief of claimants that surveying and accepting money on a block would help in asserting title to it. He also dealt with each party Ngati Rangiohautu and Ngati Puku separately and independently and capitalised on this pre-hearing dispute to advance money and obtain interests in the block for the Crown. At the same time, the advances system allowed him to gain a toehold in the blocks without dealing with the non-seller party led by Te Rou Takapa.

The Crown also dealt selectively with willing sellers in the Mangapukatea block. Advancing was begun by private land agents McDonnell and Brassey on commission for the Crown.[211] In February 1879, four claimants to the land led by Hupine Te Karapu, wrote to the Native Minister stating that they had asked that the Crown advance money to

[209] Berghan, pp. 718-9.
[210] Berghan, p. 718.
[211] Berghan, p. 235.

them to have the land surveyed but that it was not his intention to sell it. The request was refused.

Crown Land Purchase Agent James Booth then advanced money to seven other 'owners,' of whom one, Paira Tane Nui Oranga, also known as Paora Toho, was one. Booth confidently described Toho to Land Purchase Under Secretary R J Gill as the 'principal owner' 12 months before the block came to Court for title investigation. At the same time, he failed to acknowledge claims of the party who was unwilling to sell, Hupine. This indicates that, despite the fact that there was clearly a dispute over the ownership of the block before it came to Court, the Land Purchase Officer was confident about the fact that the party he was sponsoring would be awarded ownership. This confidence was rewarded. Toho was put up as the principal claimant before the Court unopposed and quickly completed the sale to the Crown after hearing. [212]

Another question in relation to advances paid on blocks is whether or not those who received them were clear that the money that they were receiving was an advance against the land. In Mangapukatea for example, as well as advances, the purchasers paid money for services such as canoe hire and guides as well as providing food. There is no indication that the distinction was made as to what payments were considered as charges against the land and which were payments for services, and confusion was a possible result of this. This sort of confusion was clearly evident in the case of Upokongaro, purchased privately where one of the vendors Te Peina told the Court that he had not realized that £10 pounds he had been given when discussing the purchase of the land had in fact been an advance on its purchase.[213]

Sittings of the Native Land Court in Wanganui town provided an excellent opportunity for the Crown Agents to begin advancing payments on a block. At these times, Whanganui Maori were obliged to congregate in town for extended periods in order to secure or defend their interests in lands. The expenses that they incurred during these

[212] Berghan, p. 237.
[213] Berghan, p. 1004.

times, made them easy prey for those wishing to advance money both on those blocks before the Court and on completely unrelated blocks. As noted earlier, Richard Woon wrote that the presence of what he called 'the whole river population' in Whanganui over the summer of 1878-79 meant that 'Mr Booth who has been most successful in his negotiations, and has, by advances made, secured the pre-emptive right of purchase by the government over hundreds of thousands of acres of the interior'.[214]

The pre-emptive right to which Woon refers existed under the Government Native Land Purchase Act 1877, which forbade dealings by private parties in lands that the Crown had begun negotiating purchase of.[215] This is discussed in more detail in Chapter 4 which deals with the Crown's relations with private land purchasers.

The power of Crown purchase agents to pick and choose which individuals to negotiate with, the divisions that this caused where some in a community favoured selling and others not, and the fear that those who did not hurry to accept advances would get less are all evident in relation to the Ahuahu block. Crown Agent Booth began purchasing Ahuahu in 1879. Cathy Marr writes:

> Haumu explained that Booth had paid £1000 in advances. However, he and his hapu did not wish to participate in the sale and wanted to withdraw their piece from the block under negotiation. In response, Booth claimed that Haumu had refused to attend the meeting he had called and was 'insolent' when sent for. He also claimed that Haumu had asked for a large payment for himself. Booth reported that he was confident Haumu's threat to withdraw land would not come to much, as Booth had already got his relatives to sign the purchase agreement. He reported that he had told Haumu that he would now have to wait until the land passed through the Court to press his interests.
>
> Sheehan received several other angry letters from those claiming interests in the same block, who believed they had been ignored or badly treated by Booth. One letter claimed that Booth had held one meeting concerning the block where £1000 had been advanced. He had then held a second meeting for those who had been unable to attend the first one, but only had £500 to be shared among those

[214] Richard Woon, 'Reports of Officers in Native Districts', *Appendices to the Journal of the House of Representatives* (AJHR), 1879, G1, p. 9.
[215] Williams, p. 331.

> people. It seems that many owners felt they were not being treated equally by Booth. Another letter complained of being missed out from either meetings or money payments altogether. A number of complainants also sought reserves for themselves in the block, as they had received no money. Officials of the Land Purchase Department appeared largely unmoved by these complaints. Those making them were variously portrayed as jealous, greedy or indulging in empty threats, while those wanting areas of land excluded were advised to make their case when title was investigated through the Land Court.[216]

The Crown agents' practice of dealing in secret to advance monies on blocks to establish a Crown interest without confronting non-sellers is also apparent in several other Whanganui cases. In Maungakaretu block, Haimona te Aoterangi and six others wrote to Native Department Under Secretary H T Clarke that Thomas McDonnell had advanced money to a few individuals against the wishes of many of the owners.

> He went to Whanganui to pay money to the people[.] their were but few who took money[.] he gave his brother one hundred pounds for the people of Murimotu, it was not approved of[.] Our hearts are sad at Mr McDonnell's action, the money was not paid at a meeting of the people, but it was done, like feeding fowls.[217]

Anderson notes that accusations were also made of secret advances in the Paratieke block, where Te Kahu wrote to Native Land Court Chief Judge Fenton that:

> My land at Paratieke has passed into the possession of the Government, but the Court will be again moved by me with reference to the land, as the sale of it was not clear. It was clandestinely sold by Mr Booth and Aperahama Tahunuiarangi.[218]

3.1.2 Post Advances Period: Distribution of Payments in Rawhitiroa

While the policy of paying advances stopped in Whanganui in the early 1880s, the Rawhitiroa block, supposedly the boundary between Whanganui and Nga Rauru peoples,

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[216] cited in Marr, p. 59.
[217] 20 July 1878, Ataimona Te Aoterangi et al to Clarke, MA1, 1878/2512 found in MA/MLP 1897/102, ANZ, Supporting Papers Vol.9, p.4749, cited in Berghan, p. 305.

demonstrates that the way in which the Crown distributed money for blocks even after title investigation continued to create controversy.

By 1881, budgetary pressure was increasing resistance in government to advancing money on lands. When Wiremu Kauika and others asked for advances on the unsurveyed Rawhitiroa block, Under Secretary of the Native Department Gill issues the following response:

> Say that the Government declines at present to enter into any negotiation for the purchase of the Rawhitiroa Block. The Native Land Court should first investigate the title.[219]

A title hearing was held in 1884 and, although the survey of the land had not been completed, an interlocutory order was made in favour of 60 members of Kauika's hapu Ngati Porua, pending survey. In 1885, with a rehearing application before the Court, Kauika sought again to sell the estimated 42,560 acres of Rawhitiroa and the 14,270 acres of Kaimanuka to the Crown. At the time, Kauika was desperate to raise money to manaaki Te Whiti Tohu and Titokuwaru who were expected in the district. [220]

McDonnell advised the Under Secretary that Kauika 'is trying to get advances on land from anybody who will listen to him but he is acting without consent of Chiefs or tribe'.[221] It is unclear how accurate McDonnell was in this assertion as Wiremu Kauika, Te Uranga Waiwhare, Kahukaka te Kupenga and Moe Tapapa subsequently wrote to the Native Minister to offer the sale of Rawhitiroa, Kaimanuka, Te Ngaue and Kaitieke.[222] Under Secretary Gill again warned the Minister against advancing on the land as there was dispute amongst the owners:

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[218] Te Kahu to Fenton, 15 Mar 1876, NLC 1876/588, file Wh 196. cited in Anderson, *1865-80,* p. 97.
[219]Minute from Gill to Butler on MA-MLP 1881/492, with 1893/100, ANZ. Rawhitiroa Supporting Documents page: 203, cited in Innes, p. 60.
[220]McDonnell to Sheridan, 25 April 1885, MA-MLP 1885/108, with 1893/100, ANZ cited in Innes, p. 61.
[221]McDonnell to Sheridan, 25 April 1885, MA-MLP 1885/108, with 1893/100, ANZ cited in Innes, p. 61.
[222]Innes, pp. 57-8.

> What is asked is that a large advance of money be made on land that the owners themselves are quarrelling about. Until they agree I cannot recommend that any advance be made, in fact the payment should be final and not an advance.[223]

However, Gill and McDonnell were clearly overruled because the next day Gill noted that the payment of an advance had been agreed to. Gill wrote:

> these natives (four) had interview with the Hon Native Minister and assured him that there was now no quarrel or dispute among themselves as to the sale of the lands mentioned to the Government. Native Minister authorised my paying to them £500 [underline in original] as part of purchase money.[224]

The party who had convinced the Minister were Kauika and the three others who had traveled to Wellington in an effort to sell the land. In view of this, it is not surprising that they assured him that there was no dispute among them about selling the land. What seems strange is that the Minister advanced the money despite the advice of his staff that there were other parties who objected to the earlier advances.

Anger on the part of other owners followed. Pango Peina wrote to the Native Minister to express disapproval of the payment. He argued that Kauika 'was not authorised by the tribe to apply for any money upon the land.'[225] Gill noted that 'there are 60 grantees in this block. Pango Peina is an owner to the extent of one third of a share or interest.'[226]

Serious dispute then arose about how the £500 paid to Kauika and the three others was distributed. In June 1885, Uru te Angina reported the arrival of Kauika at Waitotara. He

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[223]Note by Gill, 27 April 1885, on the reverse of the translation of Wiremu Kauika, Te Uranga Kaiwhare, Kahukaka te Kupenga and Moe Tapapa to the Native Minister. 27 April 1885. MA-MLP 1885/108, with MA-MLP 1893/100, ANZ cited in Innes, p. 61.
[224]Note by Gill, 28 April 1885, on the reverse of the translation of Wiremu Kauika, Te Uranga Kaiwhare, Kahukaka te Kupenga and Moe Tapapa to the Native Minister. 27 April 1885. MA-MLP 1885/108, with MA-MLP 1893/100, ANZ, cited in Innes, p. 50.
[225]Pango Peina to the Native Minister. 13 May 1885. MA-MLP 1885/1834, with 1893/100, ANZ, cited in Innes, p. 61.
[226]Minute, Gill 9 June 1885. MA-MLP 1885/1834, with 1893/100, ANZ, cited in Innes, p. 63.

wrote that Kauika and the others had brought the money with them. Kauika had £300, Kahukaka £100, and Te Uranga and Moe Tapapa divided £100 between them.

A letter was then written on behalf of Uru Te Angina, Wiremu Kauika, Piki Kotuku, Te Harawira Tararoa and Kahukaka te Kupenga to Gill and Native Minister John Ballance asking that when the survey of Rawhitiroa and Kaimanuka was complete, the money be paid in a lump sum to Kauika and Te Piki Kotuku and not divided among all of the individual owners.[227] However, also on 8 June, Piki Kotuku telegraphed Ballance asking that the payments for the Kaimanuka and Rawhitiroa blocks cease and that requests for further sales and payments were 'being done by Kauika only, not by me or by Uru te Angina or by the people owning the land.'[228]

It is not clear that the intentions of Kauika were dishonourable or at all outside of the role of a prominent Nga Rauru chief. If he was recognised as a leader, it might have been wholly appropriate that he accept the money on behalf of his people and use it as he claimed, to settle collective tribal debts. Nonetheless, Gill was justifiably prudent in recommending that no further advances should be made and that the balance should be paid after the survey was completed.[229] It is unclear how the £4500 pounds later paid on the block were distributed. However, once again, the process of advancing money on a block before title or disputes had been resolved created a sense of injustice. The payment of individuals in Wellington, away from the public hui on the land which had been the practice of most pre-1865 purchases, also left room for dispute as to who the money was being accepted on behalf of, whether they had the authority to do so, and what the extent of dissent over the transaction was.

A number of other incidents indicate that the problem of dispute over who had received payments, whether they were entitled to them and how these advances were subsequently

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[227]Uru Te Angina, Wiremu Kauika, Te Piki Kotuku, Te Harawira Tararoa and Kahukaka te Kupenga to Ballance and Gill. 8 June 1885. MA-MLP 1885/150, with 1893/100, ANZ, cited in Innes, p. 64.
[228]Piki Kotuku to Ballance 8 June 1885. MA-MLP 1885/151, with 1893/100, ANZ, cited in Innes, p. 64.
[229] Gill, note to Under Secretary Native Department 10 June 1885. On reverse, Piki Kotuku to Ballance 8 June 1885, MA-MLP 1885/151, with 1893/100, ANZ, cited in Innes, p. 64.

distributed reveal that the issue in Rawhitiroa was far from unique. In another instance, the Crown sought to recover pre-title advances on Opatu and found that some vendors disputed having received their share of them. In this case, Land Purchase Officer William Butler suggested overcoming the problem, by offering those who were complaining reserves in the block as compensation if they sold.[230]

In the Maungakaretu hearing, solicitor C Cook protested to Under Secretary Gill on behalf of his clients that they had received none of the advances on the Maungakaretu 5 block and, as a result, 'the amount expended by them in the N.L. Court should as an act of generosity be refunded.' As a result £47 8s in court fees were paid for Winiata Te Puhaki. This was the second appeal made by Winiata in this respect, the first, made without the intermediary of a lawyer requesting a higher price for his share on the grounds that he had not been party to the advances was refused.[231] Another appeal also made without the intermediary of a lawyer, from Hone Tumango on behalf of his hapu Marukahana that advances which they had not received had been charged against their share of the block, appears to have received no response.[232] Another appeal by Matiu Tikaorangi to the same effect also appears to have been ignored.[233]

3.1.3 The Risks for the Crown in Making Advances on Land to Which Title Had Not Been Awarded

In rare instances, the Crown almost got its fingers burnt by its advances in Whanganui. The Crown advanced heavily on the Karewarewa block on the basis of an agreement with some claimants to purchase it for 7s 6d per acre.[234] As part of this, it advanced £143 to Ratana Te Urumingi and £2 5s 6d to Haimona Hiroti some time before 1881. Neither of these men was subsequently awarded title in the block. The block's principle grantee,

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[230] Marr, p. 252
[231] cited in Berghan pp. 320-2.
[232] cited in Berghan, p. 318.
[233] Letter Matiu Tikaorangi to Native Department summarized in MA-MLP correspondence register 13 Mar. 1885, ANZ. A similar issues was raised in a letter from Hoani Paiki in 1880 where Topine was said to have appropriated all of the payments on a block for himself. MA-MLP correspondence register 13, Mar 3, 1880.
[234] Berghan, p. 134.

Reneti Tapa, originally refused to acknowledge this debt against the land. Native Department officials then considered attempting to recover their advances in the Native Land Court, but were advised that the could would not recognise their payments. Reneti and the other owner Aperahama Tahunuiarangi however, apparently had the price of the advances to Ratana and Haimona removed from the final price they received.[235]

In another complex case, that of the Rangitatau block, the Crown advanced £253 to parties who were not subsequently awarded any part of the title to the land.[236] However, according to Berghan, it succeeded in recovering this sum from the party awarded title.[237]

In both cases, the fact that the blocks were under proclamation under the Government Native Land Purchases Act 1877, meant that the owners were not allowed to lease the land or sell to any party other than the Government, would have given the Government considerable leverage in recovering these advances.[238] In the only other block where it was recorded that a portion of the advances were made by the Crown to parties not awarded title, Okehu, no record of how any of the advances were recovered could be found.[239]

3.1.4 Refunding of Advances

For claimant owners, receiving advances usually led to the alienation of at least part of the land in question. But this was not the only possible outcome. They could, in some cases refund Crown advances. This was usually done to take up a more lucrative offer from another purchaser. In the 16,062 acre Mangaporau block, in 1877, the five Ngati Haunui grantees repaid government advances of £920 in order to sell the land at a higher rate per acre, to a private purchaser.[240] In Pikopiko 3, £170 was refunded to the Government in 1878 and a private sale followed. Finally, advances on Ohineiti of £25 were refunded to the Government in early 1879, and a private deed of sale was drawn up

[235] Berghan Narrative, pp. 139-40.
[236] Whanganui Minute Book 7, p. 141, in Berghan supporting documents, p. 12543.
[237] Berghan, p. 773.
[238] Berghan, pp. 762-82.
[239] Innes, p. 38.
[240] Berghan, p. 231.

18 months later.[241] In none of these cases did the refunding of advances lead to the retention of the land by those awarded ownership. The accumulated costs of survey and the Land Court costs still had to be paid somehow. The Crown, however had the power to prevent such refunds after 1877 when the Government Native Land Purchases Act gave it the power to exclude private dealings over blocks where it had begun purchasing.[242]

While the Government Native Land Purchases Act 1877 enabled the Crown to prevent private dealings over land over which it considered it was negotiating the sale, the Crown was apparently free to decide that it no longer wished to purchase a block and could demand the repayment of the accrued advances. Alternatively, the Crown could apply to the Court to have that portion of the land that they had paid for with advances partitioned out and this is a tactic that it employed in the early 1880s during its temporary scaling down of land purchase operations in Whanganui.

In the Rangataua block, in 1882, where the Native Department decided not to pursue purchasing because road access to the land would be poor, it decided to pursue the option of a refund. Head of the Native Land Purchase Department R J Gill advised the Native Minister John Bryce that:

> Rangitaua contains 22,965 acres, price to be paid 7/6 per acre[.] £968 has been advanced on purchase and survey [account] £8611 is required to complete the purchase. This land will be for some years inaccessible by roads. I recommend Mr Booth be instructed to recover the payments made and then the proclamation be withdrawn.[243]

Bryce responded that Gill should attempt to recover the advances; 'or if Mr Booth cannot recover, Court can be asked to define Govt interests.'[244]

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[241] Berghan, p. 591. Berghan, p. 474. Three more cases of offers of refunds are recorded in the MA-MLP register for 1880-81.
[242] Williams, p. 331.
[243] 11 Aug 1880, Telegram from Booth to Gill, MA/MLP 1 1880/551 found in MA/MLP 1896/260, ANZ cited in Berghan, p. 713.

Where the Crown made advances on blocks which were never brought forward for title investigation, as was the case in Tangarakau, the advances were reclaimed from the interests of the same parties in other blocks. In this cases the advances were reclaimed in the purchase of Taumatamahoe.[245]

3.1.5 Advances and Land Prices

One reason that Crown land purchasers were eager to advance money on blocks to willing sellers was that it gave them the opportunity to set a price per acre early with those most eager to sell rather than with a collective group of recognised owners. This allowed the Native Land Purchase Department to budget for the purchase of a whole block, but also made it easy for it to later divide off its interests at the rate of its advance price rather than the non-sellers choosing. In Rangataua, when the Crown decided to stop purchasing in 1880, it had paid £968 in advances and survey costs at a rate of 7s 6d per acre which it had agreed with those who were willing to sell. There were an estimated 22,965 acres of land in the block. It could therefore have its interests partitioned out proportionate to its payments at the rate of 7s 6d per acre.[246]

In Maungakaretu, where purchasing was initiated by private agents McDonnell and Brassey on behalf of the Crown, they estimated prices to be between 4s and 7s per acre, but were informed by Under Secretary Lewis that they should not make any further advances until a specific rate-per-acre had been agreed to with the vendors. Lewis wrote:

> The Natives to whom these advances are to be made must at the time of payment sign an agreement specifying rate per acre - to sell the land to the Crown after it has passed through the Native Land Court, until which time no further advances can be sanctioned.[247]

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[244]This approach, however, appears to have been forestalled by a rehearing on the block. Berghan, pp. 713-4. Steps were taken to recover advances on other blocks in 1880. Booth to HO, 3 Nov 1880 in MA-MLP register, ANZ.
[245] Steven Oliver, 'Taumatamahoe Block History', Waitangi Tribunal, 2003, pp. 39-40.
[246] Berghan, p. 726.
[247] 12 June 1878, Lewis to McDonnell and Brassey, MA1, 1878/1895 found in MA/MLP 1897/102, ANZ, cited in Berghan, p. 303.

At this stage, no survey had been done to determine how many acres there were in the block, nor had the owners or the relative shares of each been determined. Sellers were disposing of interests of undefined size as parts of an area of undefined boundaries.

Although title investigation had already been carried out for the Rangiwaea block, in 1893, head of the Native Land Purchase Department Patrick Sheridan advised the Minister that they should make 'a small advance to fix the price.' In doing this, he took advice from the Surveyor General who noted that 'Quality of the block varies, but I think an average price of 5/- per acre would allow selling it at a profit.'[248] Butler was thus instructed to make advances to 'one or two principal owners' to set the price.[249]

This was a common purchase tactic in upper-river blocks including Opatu, Kirikau and Retaruke in the 1880s where prices fixed by agreements relating to tiny fractions of each block, were made with small numbers of 'owners'.[250] Marr also records that a price per share was set after title determination on Waimarino, but that land Purchase Officer Butler succeeded in paying an average of considerably less than his set price across the lands which he purchased in 1886.[251]

[248] Berghan p. 802
[249] Berghan, p. 802.
[250] Marr, draft, p. 69.
[251] Marr, Chapter 5.

3.2 Serial Partition and Alienation

From the early 1880s, the Crown appears to have abandoned the tactic of pre-title investigation advances on Maori land in the Whanganui district. At this stage, the larger upper-river blocks were coming before the Court and being awarded to large numbers of owners. The strategy of land purchase officers now more often involved waiting for Court to award title to a block of land and then pursuing the individual interests of as many of the individual owners who had been placed on the title as could be persuaded to sell and then partitioning out their acquired share of the land.

In many of the large blocks in Whanganui, especially those which came to Court later and where owners were numerous, the government land purchase officers needed to obtain literally hundreds of signatures to complete purchases. The issues relating to these forms of title were explored in detail in Chapter 2. While the post-ten owner rule system created a form of collective title, the nature of this title made it difficult, if not impossible, for grantees to manage blocks collectively. A block with 100 owners effectively consisted of 100 individual shares which could be alienated without collective discussion among the owners. Whanganui Maori got the worst of both collective and individual systems of ownership. The form of title was collective in that no owner owned a defined part of the land, but effectively individual for the purposes of alienation.

This system left the door open for land purchasers, some private but mostly agents of the Crown, to acquire and collect interests from individuals. Crown agents could and did purchase the interests of individual owners over a period of time as each became willing to sell or was forced to do so by financial hardship. After 1877, the Crown could apply to the Native Land Court to partition off an area of land for the Crown proportionate to the number of shares it had acquired.[252] In these cases, the costs of the court and partition-survey were apportioned as a lien across the lands of the non-sellers. In many cases, a

[252] Williams' Appendix 8 describes the evolution of Maori land law relating to partition of interests in a block. Williams, pp. 285-95.

second and even a third round of Crown purchases and partitions would follow, until a diminishing number of non-sellers were left with collective ownership of smaller and smaller blocks faced with ever-increasing survey liens.

In late nineteenth century Whanganui, this form of serial partition and alienation was practiced in most upper river blocks including Kirikau, Maraekowhai, Taumatamahoe, Waimarino, Ohura South, Whakaihuwaka, as well as Mangapapa, Maungakaretu, Tupapanui, Ngaurukehu, Tauakira, Ngapukewhakapu and Raketapauma. Detailed histories of all of these alienations can be found in the narrative and block reports of Berghan, Oliver (Taumatamahoe), Marr, Clayworth, Oliver, Schuster and Shoebridge (Ohura South).[253] In all of these cases, non-sellers found themselves, with each Crown partition, needing to appear in court or risk leaving the Crown a free hand to choose the part of the block it wanted in the partition. They were liable for survey fees and their dwindling land base remained trapped in a form of title that was difficult to manage.

The Crown truly had all of the trump cards in the partition-alienation game. It could also prevent partition where this did not suit its overall purchase strategy for a block. In 1894, with Crown purchasing in the Rangiwaea block in progress, a Whanganui law firm Fitzherbert and Marshall wrote to Land Purchase Department Official Patrick Sheridan indicating that some owners wished to partition their shares out of the block in order to sell them privately and asking whether a survey had been done of the block. Sheridan advised that the survey, paid for by the Government, should not be made available to the non-sellers.

> Such surveys as were necessary to purchase the land were paid for by the Government. The purchase is progressing fairly well and should not be interrupted by a partition at the present time with no other object evidently in view than an intention to pick the eyes out of the

[253] Berghan, Cathy Marr, 'Waimarino Block Report', Waitangi Tribunal, draft, August 2004. Steven Oliver, 'Taumatamahoe', Waitangi Tribunal, 2003. Steven Oliver, Tim Shoebridge and Lecia Schuster, 'Ohura South Block History', draft, Waitangi Tribunal, 2004, Peter Clayworth, 'Located on Precipices and Pinnacles: Waimarino Reserves and Non-Seller Blocks', Waitangi Tribunal, 2004. Nicholas Bayley, 'Murimotu and Rangipo-Waiu 1860-2000', report commissioned for the Waitangi Tribunal, June 2004. Tom Bennion, 'Research Report on the Parikino Claim', Report Commissioned for the Waitangi Tribunal, 1995. Wai 903 A22.

> block for sale to some private person. Will you please direct the District Officer not to send the plan which we paid for to the Court without authority.[254]

The absence of the original survey would have made partitioning if not impossible, prohibitively expensive for those who did not wish to sell their undivided interests to the Crown.

3.2.2 Crown Attempts to Keep the Number of Grantees Low

In cases where the Crown wanted to purchase a block after title investigation, it was in its interests in completing the purchase that the block be awarded to as few owners as possible. This was the case in Opatu where the Crown had advanced £1359 on the block before the title investigation hearing in 1886. At this time, purchase officers believed they had acquired at least 83 percent of the block.[255] However, things came unstuck for the Crown when the title investigation placed 67 names on the title to the block. Purchase Officer Booth wrote that:

> I endeavoured to have the number of names on the list reduced, but in the absence of the Tuhua people who were admitted by the claimants to be largely interested, they declined to exclude any of them.
>
> On the whole I considered it inadvisable to insist upon a less number being put in the title (on the ground that the land was under negotiation by the Govt) fearing that the fact of Ngatai and others being omitted might prejudice the successful investigation of the title to the larger blocks on the Whanganui river...[256]

This example shows that Crown purchase officers were present at title hearings and sought to influence the names that went on certificates of title, in order to make it easier to purchase. In this case, broader political considerations convinced Booth to back-off.

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[254]Berghan, pp. 807-8.
[255] Minister to Booth, 14 July, 1881, MA-MLP 81/285, Berghan supporting documents, p. 7750.
[256] 4 February 1886, Butler to Lewis, MA-MLP 1 1892/203, ANZ, Berghan supporting documents, p.7807, cited in Berghan, p. 512.

Much of the correspondence about attempts to keep numbers of grantees low relates to cases where the Crown failed to achieve this end. In Puketotara, an initial hearing in 1880 found that there were 17 owners of the block. According to Berghan, the list of names that was put forward to be put on the title was presented by Land Purchase Commissioner Booth. At the request of the owners named on the title, a rehearing in 1881 increased the number of owners from 17 to 237 and Booth, who had advanced money to at least some of the original grantees, bemoaned that, following the rehearing, 'the number of grantees precluded all hope of completing the purchase.'[257] In truth, it only slowed the march of Crown purchasing in the block. By 1901, the Crown had acquired and partitioned out 16,305 acres, or almost three-quarters of the block.[258]

When the Urewera block, came before the Court in 1887, the Crown was seeking to extend the Tongariro National Park beyond the original 'gift' of the Mountain peaks, and the Native Land Purchase Department sought to have as few names as possible placed on the title of the portion of the land which it wanted for the Park. When this failed, purchase officer Butler fell back on the tried and trusted strategy of acquiring individual interests and partitioning. He wrote:

> I did my best when this block was before the Court to get the Maoris to agree to a few names only being put in the title for that portion of it which is included in the Park. Major Kemp also urged them to do so but they would not hear of it. There would be no difficulty however in purchasing any portion of the land, but if it is only intended to purchase a part of it the simplest way would be to get a subdivision applied for.[259]

[257] 20 Aug 1881, Minute from Gill to Native Minister, MA/MLP 1 1881/338 in MA/MLP 1 1903/130 ANZ, cited in Berghan, p. 663.
[258] Berghan, p. 668.
[259] 27 Jul 1887, Butler to Lewis, MA/MLP1 87/240 found in MA/MLP1 1904/83, ANZ, [not copied], cited in Berghan, p. 1016.

3.2.3 Payments for Assistance with Purchase

Payments by land purchasing officers to influential Maori chiefs in exchange for their assistance in securing the purchase of lands was a common practice in the Whanganui district throughout the 1870s and 1880s. The nature of these payments varied. In some instances they amounted to paying more to one party for their share of an award in a block of land than others in recognition of their status. In other cases, such payments appear to have been made with the explicit condition that payment was contingent on these people working to convince members of their hapu to sell land. Sometimes payments were made independent of the acquisition of specific shares and were simply recorded in the accounts books of the Land Purchase Department as being for such vaguely defined services as 'assistance with purchase'. Finally, influential men such as Te Keepa and Mete Kingi were employed by the Land Purchase Department on salary for extended periods to assist with purchases.

It could be argued that such payments and employment were a recognition of legitimate chiefly authority by Land Purchase Officers and that it was quite proper for the Crown to employ men familiar with the ways of both Pakeha and Maori as intermediaries in land dealings. The opposing perspective is that the Crown should have recognised that the employment of community leaders as land purchasers was a serious conflict of interest to be avoided. Their employment could be seen as an attempt to bribe men of influence to encourage their people to part with their lands in a way which undermined Maori leadership and relations with the land. From this perspective, the Crown was paying those who should have been counselling their people over the respective merits of selling or not selling, to encourage them to choose the latter path.

Chapter 2 described how members of Maori communities were frequently paid for their assistance with surveying lands, a practice that was, as resistance to survey and Crown purchasing increased, extended in the late 1870s to payments made to individuals who objected or might object to survey in exchange for their non-interference.

Payments for assistance with survey occurred right from the beginning of the Native Land Court era. In 1869, for example, Te Keepa te Rangihiwinui asked to be paid 300 acres of land with secure title in exchange for helping with the boundary survey of Waitotara block.[260] Throughout the 1870s, Te Keepa was employed by the Land Purchase Department to assist with purchase. Marr suggests that Te Keepa's and fellow Land Purchase Department employee Mete Kingi's roles were 'largely political' and that rather than actively purchasing land, the two men were on the payroll to help prevent 'obstruction' to land purchase activities. 'The chiefs', she writes 'provided much needed advice and prestige to the purchase office, and, in-turn appear to have regarded their payments and involvement as acknowledgement of their mana.'[261] A letter from land purchase agent Booth to head office of 1874, however, indicates that at least sometimes Te Keepa's involvement extended to making payments. Booth noted that he and Te Keepa had paid deposits on several blocks.[262] In the case of Retaruke, Te Keepa told the Court that:

> These men all signed before us, before myself, then a Commissioner, and others … I assisted Mr Booth in procuring the signatures of the sellers in Retaruke. Mr Booth paid the money, having gone up the river with Mr Gill and myself to Maraekowhai: we got certain signatures there, and made a reserve there for the children.[263]

These land purchasing chiefs were exceedingly well paid. Purchase Officer Booth recommended that Mete Kingi be appointed as a land purchase officer for the sum of £300 per annum. This equates with the salary of between five and eight agricultural labourers and indicates the high value that was placed on the co-operation of these men in purchasing.

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[260] MA registered files, inward letter, Te Keepa 22/6/69. [disposed of CD 69/4736]
[261] Marr, p. 51.
[262] 15 Oct 1874, MA MLP register, ANZ.
[263] 2 Aug 1881, Whanganui MB 3, cited in Berghan, p. 838.

Aside from direct employment by the Land Purchase Department, more ambiguous payments were also made to chiefs. In 1879, in the disputed Parapara block, Mete Kingi was paid £20 for unspecified 'assistance' with the purchase although he was not one of the grantees placed on the memorial of ownership on the block.[264] The payment was recorded as an advance and as a charge against the land. Mete Kingi was also paid £20 for assistance with the purchase of Tangarakau, a block which was later included within the boundaries of Taumatamahoe, and £20 for assistance with the purchase of a block called Ngatukuwaru.[265]

In the same year, 'Te Aro', Aropeta Haeretuterangi, was paid £35 'for his trouble' by McDonnell and Brassey who began purchasing Maungakaretu on commission for the Crown. Aropeta was later paid a further £88 for his share in the block. He was also paid to assist with several surveys including Murimotu where he smoothed relations between surveyors and objectors.[266] Booth justified making payments to chiefs on the grounds that private purchasers were doing the same and that the Crown needed to do likewise to compete with them.[267]

In Pohonuiatane and Waimarino, the Crown paid more to influential owners for their shares in exchange for their endorsing the idea of selling. Although the Land Purchase Department considered each share of Pohonuiatane to be worth £78 11s 6d, Butler suggested that

> Hakaraia Korako, Major Kemp's brother in law, who is also one of the most influential members of the Ngati Marukahana asks £100 for his interest and I think that by acceding to his request we would secure his influence and valuable assistance and thereby acquire the interests of nearly if not all the members of his hapu.[268]

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[264] Berghan, p. 553. Native Land Purchase Department Ledger 1872-74, MA-MLP 7, ANZ, p. 317.
[265] Ibid, pp. 316, 326, 347.
[266] D H Munro, the surveyor wrote that 'A man named Periana Pau and others offered some opposition - they afterwards ceased to oppose having arranged with Te Aro.'10 Jul 1873, Evidence of D.H. Monro, Murimotu hearing, pp 651-3, cited in Berghan, p. 356.
[267] Booth report, 5 July 1879, MA-MLP 1/4 , NLP 79/193 p. 2 cited in Marr, p. 53.
[268] 27 Apr 1891, Butler to Lewis, MA-MLP 1 1897/213, ANZ cited in Berghan, pp. 602-3.

The Native Department agreed to this payment.[269]

The tactic of payments for support in promoting the purchase of land has been described in detail by Cathy Marr in her research on the Waimarino purchase of 1886-87. Marr records that, not only were influential chiefs and early sellers Wi Turoa, Topia Turoa, Kiriwehi Matatoru, Te Rangihuatau, Tohiora Pirato and Wiremu Kiriwehi paid more for their interests than other owners, but that some continued to be paid small amounts for 'services re purchase of Waimarino' after their shares had been acquired.[270]

Marr notes that Butler also made an agreement with three owners, Ngapakihi Pukahika, Potatau Te Kauhi and Ani Mohoao that if they supported his continuing efforts to purchase Waimarino he would give them £100 to divide amongst themselves and would put their names on the titles of the purchase reserves.[271] With this in mind, Marr may well be right in her conjecture that several other chiefs including Winiata Te Kakahi and Tamakana Waimarino who received two payments for their shares may have been paid one amount as deposit, and a second amount in exchange for ensuring that the rest of their people sold.[272] Te Rangihuatau was paid £63 10s for his share in the block, then a further £100 for services in 'assisting' with the purchase five months later.[273] Te Heuheu Tukino, who was not a grantee in the block, but who did apply for a rehearing in October 1886, was paid £100 on the block's purchase account the following month. His application for the rehearing was dismissed with no reason given.[274]

Marr records the following other payments, Te Keepa Tahukumutia, was paid £35 for his interest in the block, £5 later for 'assistance' with the purchase and a further £15 for further assistance at a later date. Tataruna was paid £5 for 'assistance', Wineti Parahihi £10 for 'services regarding signatures' and a further £40 for 'assistance and travel expenses' Hamuera te Kaioroto was paid £7 1s 9d for travel to Parihaka to purchase

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[269] Berghan, p. 603.
[270] Marr, p. 325, p. 336, p. 340
[271] Marr, p. 368.
[272] Marr, p. 362.
[273] Marr, p. 386.

signatures in addition to the share of his interests and Hama Tapukawiti was paid £20 for 'services' relating to the signatures of Parihaka owners.[275]

In 1888, Alexander Bell of the Native Department wrote to the Native Minister requesting that inquiry be made into claims from Piripi that he had been promised a pension in connection with the purchase of Waimarino.[276] Whether or not such a promise was made, Piripi's co-operation appears to have been obtained on his understanding that this was the case.[277]

Another occasional practice of the Crown was the payment for land in goods or the payment of store-debts in exchange for land. In Opatu in 1878, private purchaser John Hurley began advancing on part of the block with a payment of £100 pounds cash and £45 in store goods. Although such pre-title arrangements were legally void, the Crown saw the value of advances having been initiated on the block and bought Hurley's acquired interests including the store debts from him.[278]

In 1878, when the Crown employed private contractors McDonnell and Brassey to purchase the Maungakaretu block, Under-Secretary Lewis insisted that payments be made 'in cash in the presence of a credible European witness … Orders on Storekeepers and others cannot be entertained. - if the Natives receive cash they can pay their own bills'.[279] However, this instruction was not strictly adhered to. In October 1879, Crown purchasing agent James Booth, when seeking to purchase land in Aratowaka block, without money to offer, made an arrangement for store debts to be recorded as a charge against the land.[280] In early December, Booth again wrote to Head Office asking for

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[274] Marr, p. 386. On rehearing, p. 51,
[275] Marr, pp. 386-7.
[276] MA-MLP register Bell to Minister, 88/123, March 1888.
[277] MA-MLP inward register, Ngatai to Minister 18 Mar, 1887.
[278] Berghan, pp. 511-5.
[279] 12 June 1878, Lewis to McDonnell and Brassey, MA1, 1878/1895 found in MA/MLP 1897/102, ANZ, cited in Berghan, p. 304.
[280] MA-MLP register Booth to HO, 29/10/1879. (filed 29/7/1879)

permission to expend £30 on food for a proposed meeting over the survey of the Rangipo lands.[281]

The Native Land Fraud Prevention Act 1870 prohibited the payment for land in firearms. This, however, also appears to have been a rule that government purchase agents did not always follow. In 1879, Booth wrote to the Minister that he had offered a gun to two principal owners in Murimotu, subject to the Minister's approval, and again in 1880 a surveyor working for the Crown, H V Barclay, requested permission to pay Peta te Rahui a gun, not in exchange for land, but in exchange for using his whare as a store.[282] Finally, the Land Purchase Ledger for 1879, records that the sum of £6 4s 6d was recorded as a charge against the Raoromouku block to pay for 'gun for native' and in Taumatamahoe, the same month that advances were made on Tangarakau block, Te Rangihuatau was given a gun, valued at £6 4s 6d by land purchase officials.[283]

Other land purchase tactics are further discussed in other reports. Cathy Marr for example in her Waimarino report refers to the purchase of shares of minors from trustees, promises of reserves and economic infrastructure in her Waimarino report. It is beyond the scope of this report to explore these questions in detail.

3.3 Conclusion

The tactics of the Native Land Purchasing Department in securing Whanganui lands in the nineteenth century Native Land Court era were many and varied. The widespread payment of pre-title investigation advances committed land to sale before it had formally been awarded to anyone. It also encouraged a climate of rivalry, jealousy and fear in which Maori were encouraged to see accepting advances as a first step to award of title. Advances allowed the Crown to deal, if it wished in secret, with individuals and this undermined the possibility of collective management of blocks by communities of owners once title was eventually awarded. Likewise, advances could allow the Crown to

[281] MA-MLP register Booth to HO, 30/10/1879.
[282] MA MLP register, Booth 29 Oct 1879, Booth, 8 Dec 1879, Booth 30 Dec 1879.

establish a price for a block without dealing collectively with owners and, the partial Crown monopoly which existed over many blocks in the district made it difficult for later sellers to negotiate an increased price.

After advances by Crown agents ceased in around 1880, the Crown leaned more heavily on the practice of serial purchase and partition of blocks after title investigation. This tactic further undermined any attempt at collective management of blocks and facilitated their purchase. Payments by Crown purchasing agents to influential Maori for services in securing signatures of their people on deeds of transfer, the exploitation of debt and collusion with private creditors to secure lands are other questionable practices on the part of crown land purchase agents. The effect of these actions should not be considered as single acts and circumstances, but as overlapping practices which compounded to create real disadvantages both to those Maori who did not wish to part with their lands and to those who did and sought to negotiate favourable terms.

[283] Maori Land Purchase Department Ledger book, MA-MLP 7 v. 3, ANZ, p. 317. Oliver, p. 14.

Chapter 4: The Crown and Private Purchasers in Whanganui 1865-1900

The establishment of the Native Land Court, removed the Crown's right of pre-emption over Maori land purchasing which had effectively stood since 1840. Although monopolies were partially restored and removed by legislation periodically throughout the rest of the century, private purchasing was never entirely stopped. Were Maori sufficiently protected in their dealings with private purchasers? How did the partial monopolies over land purchasing created in favour of the Crown affect Maori and were there sufficient safeguards where restrictions on private purchasing were created to ensure that Maori vendors were not disadvantaged by them?

The Crown had multiple agendas in relation to private land purchasing. It saw the settlement and use of land acquired by private purchasers as part of the capitalist colonial economy as potentially beneficial to the colony as a whole. Another objective was the need to develop the colony's infrastructure. The purchase of Maori land and its on-sale to settlers was one method of funding such development. Legislation relating to the Main Trunk Railway Line prevented private purchase over 4 million acres of Maori land in the central North Island including more than 1 million in the upper-Whanganui district. but this was justified by the fact that this would allow the Crown to develop infrastructure in a controlled way, sell the land it did acquire to recover the costs of the project and ensure that the land was not snapped-up by large private speculators .[284] The Crown's third objective was supposedly the protection of the interests of Maori. At times, these three objectives coincided. Where they did not, it is important to examine which was given precedence.

[284] David Williams, *Te Kooti Tango Whenua: The Native Land Court 1864-1909,* Huia, Wellington, 1999, p. 221.

4.1 The Extent of Private Land Purchasing

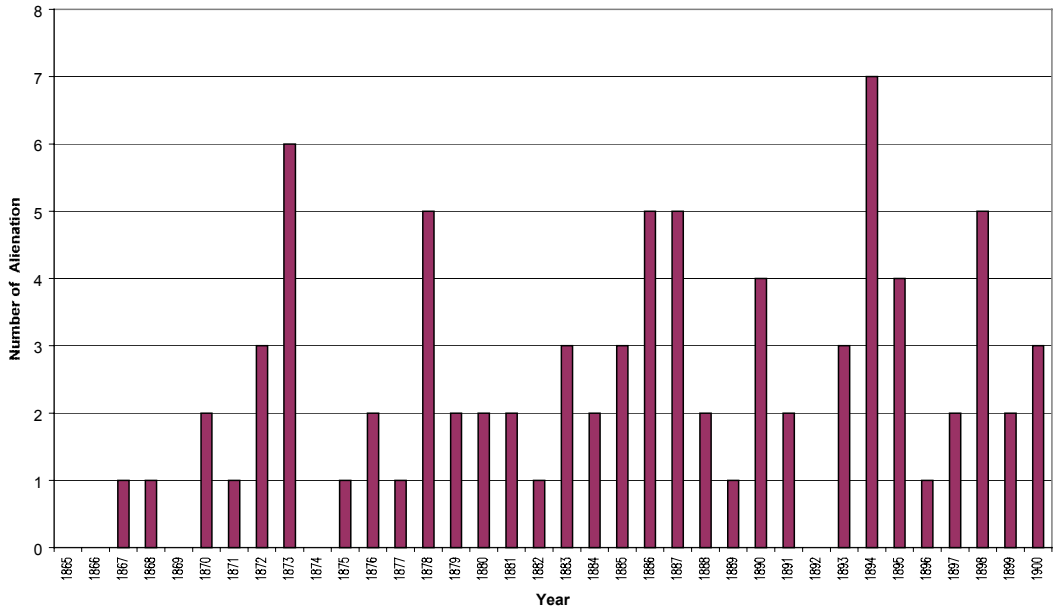
Between the beginning of the Native Land Court era in Whanganui in 1866 and 1899, private purchases of Maori land in Whanganui accounted for 184,000 acres. Over the same time period, the Crown acquired 1.24 million acres of Maori land. Therefore, private purchasers were responsible for around 14 percent of purchases in the period.[285] Rates of private purchasing varied greatly within this period but at no time did private purchasing stop completely (Figures 8 and 9). As was the case with Crown purchasing, the 1880s was the period of heaviest private purchasing with 88,171 acres of Maori land alienated in this decade. As Figures 10 and 11 indicate, private alienation as a proportion of total land alienations also fluctuated.

These patterns will be explored later, but it is evident from figures 9, 10 and 11 that while private purchasers alienated an equal amount of Maori land to the Crown in the 1870s, the advent of increasingly restrictive legislation governing private purchasing from the late 1870s and through the 1880s coincided with a dramatic fall in the proportion of land alienated to private purchasers. The fact that this restriction coincided with the period when the large blocks of the upper Whanganui district became available supports the interpretation that the Crown was relatively effective in establishing for itself a monopoly over the purchase of these blocks.

It should be borne in mind, when considering this data, that each alienation of land by a private purchaser may have represented many and in some cases hundreds of individual payments to individual owners.

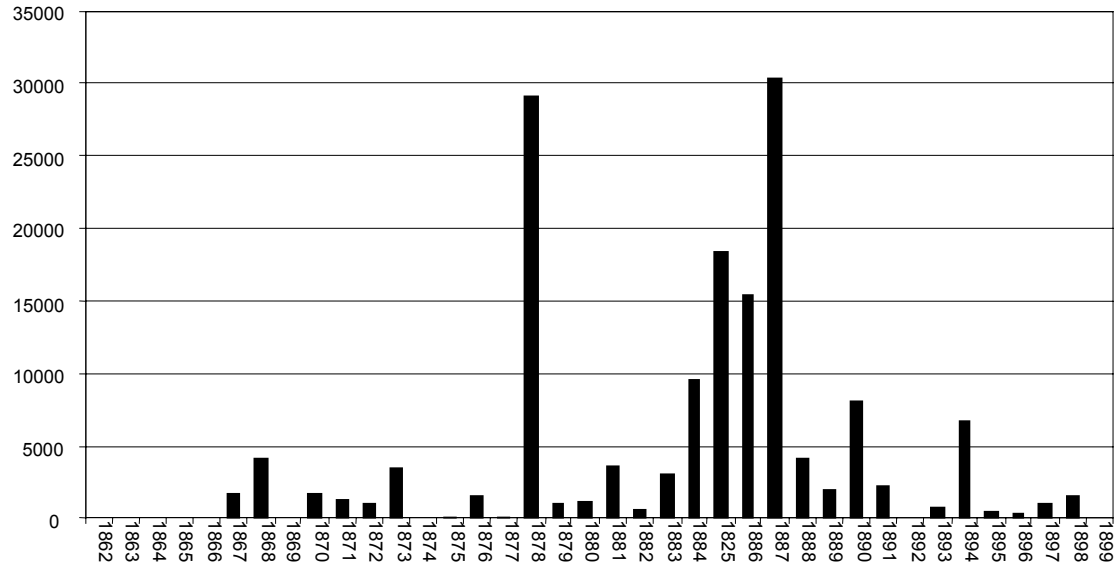
[285] Innes and Mitchell, 'Whanganui Land Alienation Quantitative Study', draft, 2004. The figures here are probably on the low side as only around 96 percent of total alienations for the district have been tracked.

Figure 8: Number of Blocks or Subdivisions Alienated through Private Purchasing per Year



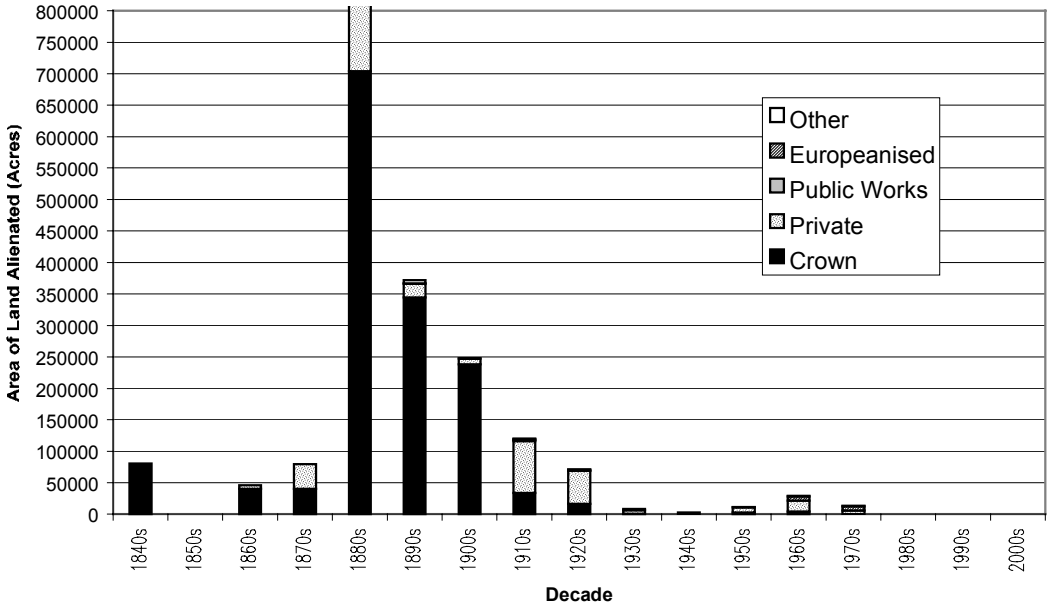
Source: Craig Innes and James Mitchell, Whanganui Land Alienation Quantitative Study, draft, 2004.

Figure 9: Area Alienated to Private Purchasers by Year (acres)



Source: Craig Innes and James Mitchell, Whanganui Land Alienation Quantitative Study, draft, 2004.

Figure 10: Stacked bar graph of Crown and Private Alienations by Decade

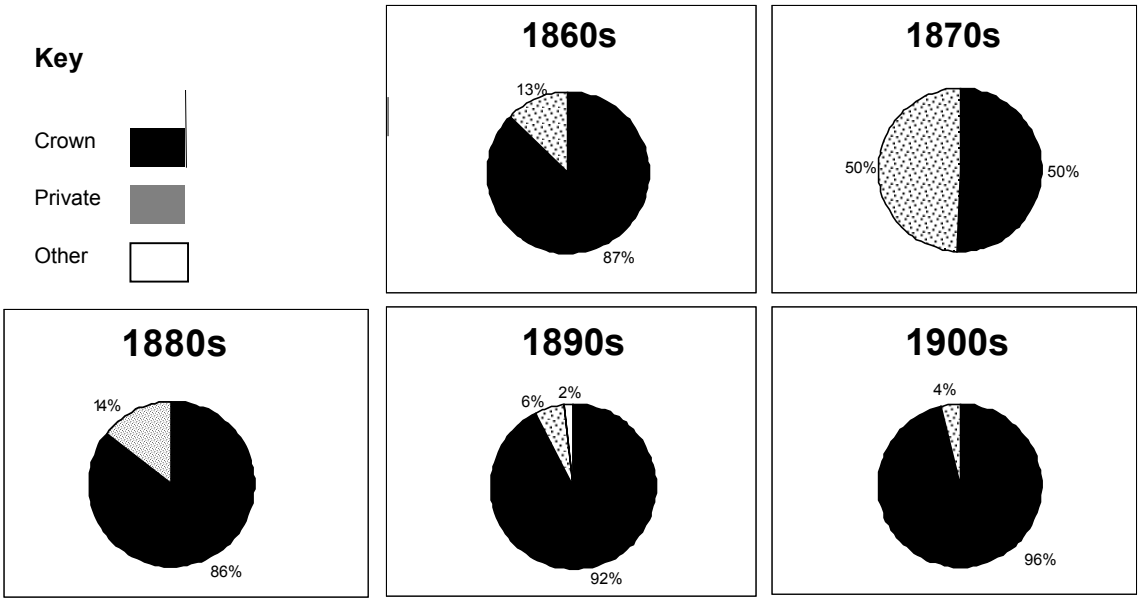


Source: Innes and Mitchell Draft.

Throughout the period from 1865-1900, 84 private land transactions and 113 Crown purchases were recorded (Figure 8).[286] Crown purchases were on average much larger than private purchases. The average size of Crown purchases was 10,992 acres, while the average private purchase was 2203 acres. Only 13 of the 84 private purchases (15 percent) were of blocks larger than 2000 acres, while 61 of the Crown's 116 (52 percent) were.[287] This difference can be largely explained by the block narratives of Berghan and Innes which show that private land purchasers were often local farming families rather than big land speculators and that the Crown was successful in severely restricting the purchase of larger upper-river blocks by private purchasers.[288]

[286] Innes and Mitchell, draft.
[287] Innes and Mitchell, draft.
[288] Paula Berghan, 'Block Research Narratives of the Whanganui District: 1865-2000', CFRT , July 2003. Craig Innes, Whanganui Block Narratives Gap Filling, 2004.

Figure 11: Proportion of Land Alienated to Crown and Private Purchasers by Decade to 1900s



Source: Innes and Mitchell Draft

Despite this, a small number of private agents and larger speculators did play a role in land purchase in Whanganui. Thomas McDonnell and his business partner Major Brassey both worked for the Crown purchasing on commission, but were also involved in private purchasing in a number of blocks including Maungakaretu, Karewarewa, Rangipo-Waiu and Murimotu.[289] Large sections of the Rangitatau block were also purchased by a syndicate of businessmen, headed by a Mr Driver from Otago. As the rest of this chapter will show, where larger speculators did appear, the Crown used legislation which allowed it to control or pre-empt sales to keep their activities tightly in check.

In the 1870s, 50 percent of land sold was sold to private purchasers. This was partly due to the changing political context of purchasing in the mid 1870s, the political context of land sales changed as the threat of armed conflict in the district diminished and upper-

[289] Berghan. Maungakaretu, p. 302, Karewarewa, p. 130, Rangipo-Waiu and Murimotu, p. 752.

river Maori became more disposed to selling land.[290] Large areas of Maori land as far north as Mangaporau were now available for private purchasing. The new possibilities for private purchasers, however, were rapidly reduced by new legislative restrictions imposed by the Crown including the Native Land Purchases Act 1877, which allowed the Crown to prevent private dealings on any block where it declared that it was negotiating purchase, and the Native Land Alienation Restriction Act 1884, which declared the upper river area off limits to private purchasers. While private purchasing continued to increase, doubling in the 1880s, Crown purchasing grew seventeen-fold in the same period. The 1890s then saw a slump both in private purchasing, and in private purchasing as a proportion of total alienations of Maori land.

4.2 Tactics of Private Land Purchasers

The tactics of private land purchasers in the Whanganui district bore many similarities to those of the Crown which were described in Chapter 2. The payment of advances on land by private purchasers before title had been settled was a relatively common practice before 1883 when the Native Land Laws Amendment Act made it illegal for people other than Crown agents to advance money on blocks.[291] There were at least eight blocks where instances of advances by Private purchasers have been recorded in Whanganui before this date, but these would have involved the payment of advances to many more people. Private purchasers also engaged in the tactic of paying influential chiefs to help them procure land. In Rangitatau block, for example, where a standoff existed between the Crown and the private syndicate headed by Mr Driver, the syndicate was accused of paying Nga Rauru, chief, Wirihana Puna, a retainer of £20 per month to keep him 'on side'.[292]

Private purchasers also took advantage, as the Crown did, of legislation which allowed them to deal with individuals in purchasing shares in collectively-owned land, and then

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[290] Woon comments on this repeatedly in the late 70s and early 80 for example 'Reports From Officers in Native Districts', *AJHR,* p. 10, 1878, 'Reports From Officers in Native Districts', *AJHR*, p. 10, G1, 1879
[291] Williams, p. 262.
[292] Berghan, p. 766.

either applying to have the shares they had acquired partitioned out, or encouraging the vendors to do this on their behalf.[293] Where the purchasers were local farming families, this could occur over an extended period of time.

Alcohol was brought to purchase negotiations over the Upokongaro block in 1872. Private purchaser Hugh Irvine arrived to negotiate the purchase of the block with bottle in hand. Vendor, Te Peina Tawaruangahau described proceedings as follows.

> Irvine was there and brought a couple of bottles of grog. I had 3 glasses, small glasses, two white men were there Georgetti and another. Mr Edwin Woon came there, and brought a letter addressed to the Government asking the Government to consent to the sale. £350 cash, being paid down and £500 to remain at mortgage for 8 years. I objected and wanted the whole £850 down the others Ruini, Roto, Hauhauru, consented afterwards, Repeka, and then I consented and they gave me £10 when I signed.

As discussed earlier, Te Peina Tawaruangahau also explained what happened after this meeting.

> It was not until afterwards I found it was an advance only on the purchase money. It was about four months. I forget how many after that the answer came from Wellington. We then had another meeting, I agreed and signed the conveyance. I was quite sober when I signed the conveyance with the lawyer present and knew what I was doing.

It is clear that, at the time Te Peina gave this evidence before the Trust Commissioner that he was still willing to sell. However, it is equally clear that the terms of the transaction were set at the earlier meeting where Te Peina had, by his own admission been drinking and had not understood the nature of the payment.

The fact that Te Peina later endorsed the terms agreed to before a lawyer and before the Trust Commissioner seems to indicate that he fully accepted the terms. However, the

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[293] The legislation governing who could partition shares out of a block changed frequently throughout the period in question. From 1873, willing sellers could partition out their interests in a land block. From 1878, this right was extended to any person or group, Maori or non-Maori who owned 70 percent or more of the

lawyer present may have been acting for the purchaser, and this gives no indication that the nature of the transaction or Te Peina's rights following the initial acceptance of advances were explained to him.

The presence of alcohol at negotiations has not been documented in relation to other blocks, but another issue in Upokongaro was relevant to the purchase of many more of the blocks in the Whanganui district. The title to the land had been awarded under the ten owner rule whereby four names had been put forward to represent the Ngati Iringarangi hapu as owners of the block. Had the sale negotiations taken place at a collective hui of the hapu rather than with the small group of named owners concerned, as would have been the case in the pre-Native Land Court era, the result might have been different.

Another aspect particular to private purchasing was the close relationship between leasing and purchase of Maori land blocks. It appears that debt, sometimes involving borrowing from the lessees themselves, led to the alienation of blocks which had been leased. Okirae Block was leased by its Maori owners in 1878 and sold to the lessor in 1886. At the time of the sale, there were 13 years left to run in the lease. The remainder of the rent would have yielded the owners £2245 plus the return of their block. Instead, the owners sold it for £1500. These disadvantageous terms strongly suggest that debt may have been a factor in the sale. Omaru and Te Rimu were also leased, mortgaged and sold to the tenants in quick succession, while Upokongaro 2 block was leased and then sold to the lessor without any record of a debt.[294]

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shares. From 1882 to 1886, only Maori owners could seek partition. From 1886, any party with undivided shares could apply for a partition. Williams, pp. 285-6.

[294] Fiona McCormack, 'Private Purchases in the Whanganui District 1865-1900, Preliminary Findings on Private Sales and Suggestions For Future Research', CFRT, draft, September 2002, p. 11. Berghan, pp. 53-4. Berghan supporting documents, p. 7678.

4.3 Crown Motivations in Restricting Private Purchasing

In the late 1870s. Agents of the Crown in Whanganui increasingly expressed fear that competition with private purchasers would increase the prices that the Crown agents would have to pay. In 1877, in the 16,000 acre Mangaporau block, the owners had refunded 920 pounds which had been advanced by the Crown and sold the block to William Craig for what was presumably a higher price.[295] Some time in 1878 or 1879, money was also refunded on Ohineiti block shortly before a deed of transfer was signed to a private purchaser.[296]

In the late 1870s, Crown agents in Whanganui were showing increasing concern about such competition. In 1879, while Booth was advancing money on the Raoromouku block, he wrote that he had been instructed to secure a large estate for the Crown as private speculators were dealing 'very extensively with Natives at the time'. Booth implied that that this competition was responsible for his needing to advance large sums of money on the block and added that he had been obliged to increase the prices that the Crown was paying for lands because of the competition from private purchasers.[297] Maori such as Mete Kingi who was negotiating with the Crown in Raoromouku, were obviously learning the value of fostering competition between land purchasers.

Richard Woon, in 1878, also wrote that:

> One or two large blocks of land have been sold here lately to Native land agents at an increased price from that offered by the Government … unless the law is altered vast tracts of land will pass into the hands of European capitalists and monopolists, whereby the settlement of the country will be greatly retarded.[298]

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[295] Berghan, pp. 229-34.
[296] Berghan, p. 474.
[297] Berghan, p. 821.Booth Report 5 July 1879, NLP 79/193 MA-MLP 1/4, ANZ.
[298] Woon, 'Reports from Officers in Native Districts', *AJHR,* 1878, G1, p. 13.

This reveals a second factor that may have led to restrictions on private alienations. A suspicion among the Government that land speculators would inflate prices for Maori land and thus inhibit the development of small farm settlements which were seen as the most desirable way of developing land in the colony.

As Anderson notes, in 1880, Booth wrote that the Crown was being forced to advance larger sums in the purchase of blocks to compete with private purchasers who were 'dealing very extensively with the natives … and every chief of any consequence was in the pay of the speculators'.[299]

4.4 The Crown and Private Purchasers

The effect on Maori of the Crown's initial freeing up and subsequent restriction of private land purchasing can only be fully understood with reference to the rapidly evolving legislation regulating private purchasing. This section will briefly describe the impact of some of the most important pieces of legislation regarding private purchasing.

4.4.1 The Native Land Purchases Act 1877

When the government became concerned about the impact of private purchasing on its ability to control land purchasing from in the late 1870s, it introduced legislation to restrict it. Private purchasing was circumscribed by the Native Land Purchases Act 1877, which made it unlawful for private purchasers to acquire lands that the Crown had declared by gazette notice that is had already begun dealing over. Thus, even a minimal advance by the Crown to a party claiming to be the owner of a block, was grounds for the Crown to legally shut-out all competition from private purchasers over it.

It is hard to see this law, which established a local Crown monopoly on any block it wished to initiate purchasing on, as a measure to protect the interests of Maori landowners. The Crown exercised its right under this Act frequently in the Whanganui

[299] Booth to Gill 27 April 1880. NLP 80/310. In MA/MLP 1 1886/134. cited in Robyn Anderson, 'Whanganui Iwi and the Crown, 1880-190'0, draft report for CFRT, March 1998.

district and was accused at the time of using legislation to suppress competition and prices for Maori land.[300] This right of the Crown was modified in 1893, under the Native Land Purchase and Acquisition Act when a majority of owners was given the right to apply to have a proclamation withdrawn.[301]

This restoration of the right of Maori land owners to deal with whom they wished, however, was short-lived. The 1893 Act was superseded by the Native Land Court Act 1894. Maori land could now only be alienated through government-appointed land boards, and it was once again made illegal for anyone to buy Maori land other than agents of the Crown.[302] These restrictions were slightly softened in 1895 when an exception was made to allow direct sale and purchase of land near towns or blocks of less than 500 acres.[303] Table 8 lists the names of the 86 blocks in Whanganui which were gazetted under the 1877 legislation and its successors.[304]

Table 8: Whanganui Blocks Gazetted Under the 1877 Native Land Purchases Act and its Successors

Block Name	Estimated Size where given (acres)	Year Crown Gazetted
Murimotu		1878
Retaruke	20,585	1878
Pikopiko No. 3	1112	1878
Maungakaretu	100,000	1878
Otamakapua	147,000	1878
Mangiora-Ruahine	35,660	1878
Te Ranga	7000	1878
Karewarewa	1500	1878
Mangaere	6250	1878
Te Ngaue	10000	1878
Otairi	100000	1878
Te Kiekie	1500	1879
Mangatawhara/ Mangatawhero	2000	1879
Opatu	20,000	1879
Atuahe	30,000	1879
'Ranga-Murimotu'	10,000	1879
Pouatawenga	4000	1879
Te Parapara	3000	1879
Ahuahu	4000	1879

[300] Cathy Marr, 'Waimarino Block Report', Waitangi Tribunal, draft, August 2004, p. 51.
[301] Williams, pp. 334-5.
[302] Williams, p. 330.
[303] Williams, p. 336.
[304] Parikawau was apparently gazetted twice under different Acts.

Block Name	Estimated Size where given (acres)	Year Crown Gazetted
Raoromouku	60,000	1879
Tangarakau	70,000	1879
Mangaetoroa	12,000	1879
Otaupari	3000	1879
Ohakune	10,000	1879
Otupere	3000	1879
Te Wharau	6,000	1879
Otairi No. 2	100,000	1879
Rangitatau	41,676	1879
Apamatua		1879
Puke-Ariki		1879
Owhango		1879
Okehu		1879
Tuawatea		1879
Paipaiaka		1879
Ruapehu	12,000	1879
Taipohatu		1879
Ngatukuwaru	2000	1879
Parikawau		1879
Rangataua		1879
Taruamouku		1879
Tataramoa		1879
Omata	6000	1879
Hautaua	2000	1879
Otaranoho	2000	1879
Papakawa / Papahawa		1879
Ngahuinga		1879
Raikohua		1879
Wataroa		1879
Huikumu		1879
Raroamouku No. 2		1879
Hukuroa		1879
Potakataka		1879
Tanupara		1879
Maungakaretu	100,000	1879
Taumatamahoe	100,000	1878
Mangatawhero	2000	1879
Puketotara	10,000	1879
Rangipo-Waiu	44,450	1894
Rangipo-Waiu No. 2	27,550	1894
Rangipo-Waiu No. 1	26,000	1894
Murimotu No. 1	500	1894
Murimotu No. 2	8,822	1894
Murimotu No. 3	13,000	1894
Murimotu No. 4	11,000	1894
Murimotu No. 5	13,081	1894
Rangiwaea	59,800	1894
Rangiwaea-Kapurangi	100	1894
Rangiwaea-Tarere	300	1894
Raketaupama	16,500	1894
Ruanui No. 1	5666	1894
Ruanui No. 2	5000	1894
Ruanui No. 3	500	1894
Popotea	679	1894
Rangataua North No. 2	704	1894
Maungakaretu No. 5B	1,704	1894

Block Name	Estimated Size where given (acres)	Year Crown Gazetted
Parikawau	559	1894
Kahakaha	2015	1894
Motukawa No. 1	2000	1894
Motukawa No. 2	30,935	1894
Tauakira	49,540	1894
Ngaurukehu A	6939	1894
Ngaurukehu B	2313	1894
Whitianga	26,400	1894
Maraekowhai	40,590	1894
Taumatamahoe No. 2	69,365	1894

Sources: *NZ Gazette, v. 85, 5 Sept, 1878, p. 1230. NZ Gazette, v. 69, 12 July 1878, p. 1012. NZ Gazette, v. 7, 16 Jan, 1879, p. 69. NZ Gazette, v. 20, 20 Feb, 1879, p. 253. NZ Gazette, v. 73, 10 July, 1879, p. 931. NZ Gazette, v. 78, 5 July, 1878, p. 1028. Under Native Land Purchase Act 1892. NZ Gazette, v. 67, 1894, p. 1422. NZ Gazette, v. 72, Sept 4, 1894, p. 1511.*

It would be difficult to accurately identify how many of these blocks were actually alienated to the Crown as the names of the blocks gazetted, with descriptions of the area they covered, frequently had different names and overlapping boundaries with the blocks that were eventually surveyed and brought to court and ultimately alienated. Another factor to be considered beyond the areas which the Crown actually gazetted was the deterrent effect of the Crown having the right to gazette blocks.[305] This meant that any private party initiating purchase ran the risk of losing their advances if the block was subsequently gazetted by the Crown. Tables 9 and 10 and Figure 12 show the lands which the Crown initiated purchases during the period when it had the right to prevent competition with private purchasers by gazetting its intention to purchase from 1877 to 1893, as well as the blocks in which the Crown purchased land between 1894-1900, when a partial Crown monopoly existed and this gives a different perspective on the scope of these restrictions.

[305] *New Zealand Gazettes* 1877-1900.

Table 9: Blocks the Crown Started or Continued Purchasing 1877-93

Block Name	Size (acres)	Year Crown Started Purchasing or partition date if this is unclear	Area Remaining in Māori hands at 1900 (acres)[306]
Ahuahu	11,640	1877	7884
Aratawa	4207	1879	0
Atuahae	4650	before 1881	0
Heao	8365	early 1870s	0
Huikumu	1206	1879	2
Kaitangiwhenua	103,768	partition 1880	11,582
Karewarewa	3679	1878	0
Kirikau	17,993	first payment 1874	442
Mangaere	6250	partition 1881	0
Mangaotuku and Huiakama	47,400	partition 1884	0
Mangapukatea	2485	1879	0
Maraekowhai	54,000	1892	31,471
Maungakaretu	63,600	1878	5544
Opatu	6435	1879?	153
Otaranoho	1361	1879	0
Pohonuiatane	35,538	1889	4592
Puketotara	22,524	partition 1881	17,346
Raetihi	17,200	1887	11009
Rangataua	22,964	1880?	226
Raoromouku	8697	1879	0
Retaruke	20,585	1874 other payments after 1877	3265
Taumatamahoe	146,000	1879	31404
Tokomaru	16,547	1877	13
Umumore	842	partition 1881	0
Waimarino	452,196	1886	73,165
Total	1,080,132		**198,098**

Sources: Innes. Berghan. Innes and Mitchell.

[306] Where land had been 'purchased' but not partitioned out by the Court at 1900, these figures are not included as alienated.

Table 10: First Known Crown Alienation on Blocks the Crown Purchased 1895-1900[307]

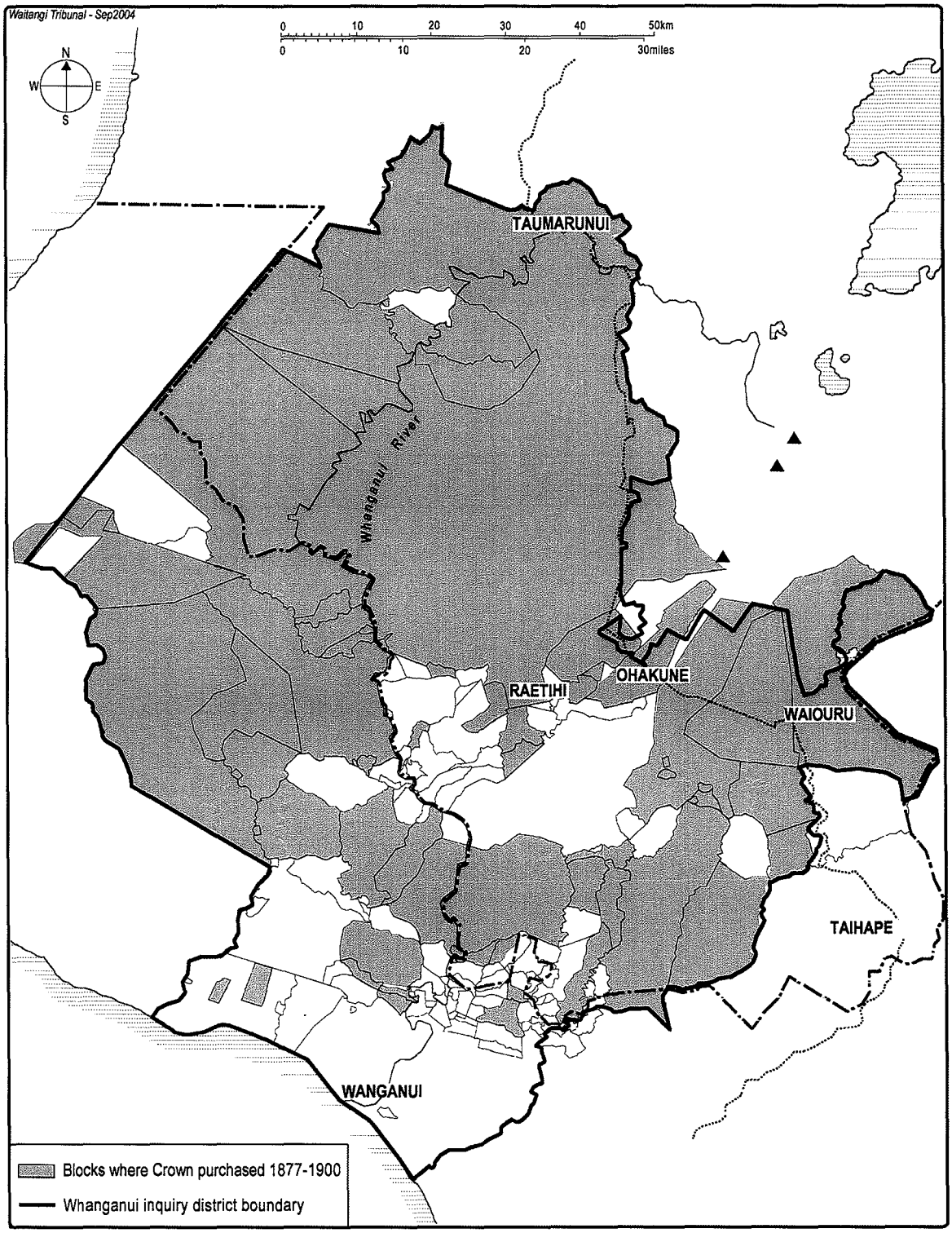
Block Name	Area (acres)	Year the Crown Started Purchasing or partition Date if this is unclear	Area Remaining in Māori hands at 1900 (acres)[308]
Kahakaha	2015	1895	840
Mangapapa 1	23,270	1896 (previous private purchasing)	507
Maraetaua	7500	1901?	7500
Murimotu	46,403	partition 1900	46,403
Rangipo-Waiu	98,000	partition 1900	98,000
Parapara	915	1899	0
Popotea	607	partition 1896	360
Raketapauma	19,639	1897	11780
Rangiwaea	57,392	1896?	28,983
Taonui	7250	1895	7250
Tauakira	50,700	partition 1896	19,516
Te Tuhi	22,806	1897	16,856
Tupapanui	5124	1898	5124
Ohura South	116,152	1894	43,487
Whakaihuwaka	67,210	1899	67,210
Whitianga	26,400	1897	11,593
Ngaurukehu	9251	1896	8131
Total	**560,634**		**373,540**

Sources: Innes. Berghan. Innes and Mitchell.

[307] There were no alienations in the period in 1894 when land could only be alienated through government-appointed land boards.

[308] Where land had been 'purchased' but not partitioned out by the Court at 1900, these figures are not included as alienated.

Figure 12: Blocks Where the Crown Purchased Land 1877-1900



Sources: Berghan. Innes. Innes and Mitchell.

There are numerous examples which could be chosen to illustrate this suppression of competition under the 1877 legislation. In Karewarewa block two months after title

investigation, the Crown learned that Major Wilson from Waikato had advanced £100 and was negotiating the purchase of part of the block. Land Purchase Department Secretary Gill then wrote to Wilson that:

> Karewarewa land Whanganui is proclaimed as land over which Her Majesty the Queen has paid money and purchasing – Any dealing therefore of private persons is illegal. Rumour has it that you are purchasing.[309]

Gill also wrote to Trust Commissioner Charles Heaphy to advise him that the block was under proclamation and that he should not certify any private purchase over it. Wilson did not complete his purchase and the block was acquired by the Crown early the following year.[310]

In another complex case in the late 1870s, land agents Thomas McDonnell and partner Major Brassey were purchasing Maungakaretu block on behalf of the Crown and attempting to purchase another block, Mangapukatea, on their own account. McDonnell entered into a long correspondence with the Land Purchase Department when it was decided to withdraw from the Maungakaretu sale, whereby he attempted to negotiate terms with the Crown that included a free hand for him and Brassey to purchase in Mangapukatea. The Land Purchase Department refused to entertain this proposition and the Crown exerted its right to exclusive purchase Mangapukatea as well as Maungakaretu.[311]

In 1889, three years after the investigation of title of Pohonuiatane block, solicitor George Cornelius Rees wrote to the Minister on behalf of his client James Beard, asking that the Government proclamation be lifted in order to allow his clients to purchase part of the block. The offer was considered by the Minister, but he was advised by Under Secretary Lewis that the land was covered in a government proclamation, and that it could be purchased at an advantageous price by the Government. Lewis advised that 'it is

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[309] Gill to Wilson, 19 Oct 1880, MA/MLP 1 1880/681 in MA/MLP 1 1881/361 ANZ, cited in Berghan, p. 133.
[310] Berghan, p. 133.
[311] Berghan, pp. 235-7.

a very desirable block to acquire and I think that we should refuse to remove the proclamation until the government has exercised its own right of purchase'.[312]

As well as eliminating competition with private purchasers, proclamations under the 1877 Act could be used to pressure Maori to sell. In his report of 1881, Land Purchase Officer James Booth reported that, for one block in the Murimotu district, a group of owners was refusing to cooperate with the survey. Booth recommended that the Crown apply to have that portion of the block it had purchased partitioned out, and then use the fact that the land was under proclamation to force the objectors to 'agree to give value for the money they received'.[313]

Some Whanganui Maori expressed discontent with the Crown's right to establish a local monopoly. A letter from Mr Manson the husband of a part owner of the Rangiwaea block, Hotu Matene, who was offering land for sale noted that:

> Mr Barnicoat wrote some time ago and asked 12/- an acre. We think the land is well worth 20/- and we could get that price if we were allowed to sell to other than the Government. I am well aware of the injustice on the part of the Government, but we are at your mercy. I ask you to give us something near the value and be kind enough to inform me as soon as convenient.[314]

Manson later tried other tactics in an effort to get a higher price for the land, apparently unsuccessfully, including offering to help convince his wife's relatives to sell their shares in exchange for payment.[315]

Aperahama Tahunuiarangi objected to another aspect of the 1877 legislation in a petition in 1879. He complained that the advancing of money to some individuals on a block, compelled all other owners, whether they were party to this transaction or not, to dispose

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[312] Sheridan to Lewis, 19 June 1889, MA-MLP 1 1889/106 in 1897/213, ANZ, cited in Berghan, p. 600.
[313] Booth Report, 1881, NLP 81/285, MA MLP 1/9, ANZ, cited in Marr, p. 52.
[314] Manson to Minister of Lands, 4 Dec 1893, MA/MLP 1 1893/233, cited in Berghan, p. 803.
[315] Berghan, p. 806.

of their interests only to the Crown. Aperahama charged that this practice was both a violation of the terms and spirit of the Treaty of Waitangi and of principles of justice.[316]

4.4.2 The Native Land Alienation Restriction Act 1884 and the Railway Exclusion Zone

The Native Land Alienation Restriction Act 1884, like the 1877 Act, was designed to create a Crown monopoly over land purchase in the Central North Island, including portions of the upper Whanganui district. The difference between the two pieces of legislation was that one awarded a monopoly for specific blocks, the other applied automatically over a large defined geographical area. Almost half of the Whanganui district or over 1 million acres, was subject to the legislation, including all of the blocks on the western side of the river north of about Koroniti. This pre-emption zone shown in Figure 12 extended as far as 50 kilometres from the final route of the railway. While the legislative base for this legislation changed, it remained effectively in force almost continuously from 1884-1900.[317]

With the impending construction of the Main Trunk Railway line from Marton to Te Awamutu, the Government anticipated that land values along the route of the line would rise sharply. According to Native Minister John Ballance in 1884, 'all the land [in the exclusion zone was] likely to be increased in value by the railways'.[318] As Williams asserts, the Crown created for itself a statutory monopoly in order to pay much less for this land than they would have had to if competing with private purchasers. This was justified on the grounds that the Maori would benefit from the increased value of the land that they retained around the line and that the sale of the land acquired by the Crown would help pay the huge costs of the construction.[319]

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[316] Copy of Petition, MA 23/13a ANZ, cited in Marr, p. 54.
[317] Robyn Anderson, 'Whanganui Maori and the Crown 1880-1900', draft, report commissioned byCFRT, 1998, p. 52.
[318] Ballance, 1 Nov, 1884, NZPD, v.1, p. 316, cited in McCormack, p. 12.
[319] Williams, p. 221. Marr, p. 180.

As Anderson notes, numerous other promises were made to Maori in relation to the increased value of their lands and its preservation in Maori hands under the Native Land Alienation Restriction Act and its successors. Ballance had notably promised Maori at a hui in Ranana in 1885 that 'land which is worth now not more than five shillings an acre will be worth five pounds an acre when the railway runs through their land'. He also suggested that the infrastructure created by the railway would further enrich Maori living close to it.[320] Ballance had also assured the Maori at Ranana that the Native Land Alienation Restriction Act would obviate the need for Maori to sell land and that they would be encouraged to lease lands around the railway.[321]

The idea that Whanganui Maori benefited from increased value of their lands created by the railway was seriously undermined by the alienation of large areas of those lands in the railway exclusion zone. As Anderson observes, Ballance told Parliament that 'there [was] only one safe way of getting land from the natives along the line, and that [was] by purchase.'[322]

As a consequence, substantial sums of public works monies were expended from 1884 in acquiring lands within the railway exclusion zone.[323] Of those in the Whanganui district which consisted of 418,682 acres of land, the Crown had acquired 316,708, leaving Maori 101,974 acres. By 1897, the Crown had already acquired 75.6 percent of these lands around the track in Whanganui.[324]

Two years after the railway was fully operational in 1910, the Crown had already acquired most of the blocks which abutted the railway line. As Figure 13 shows, around

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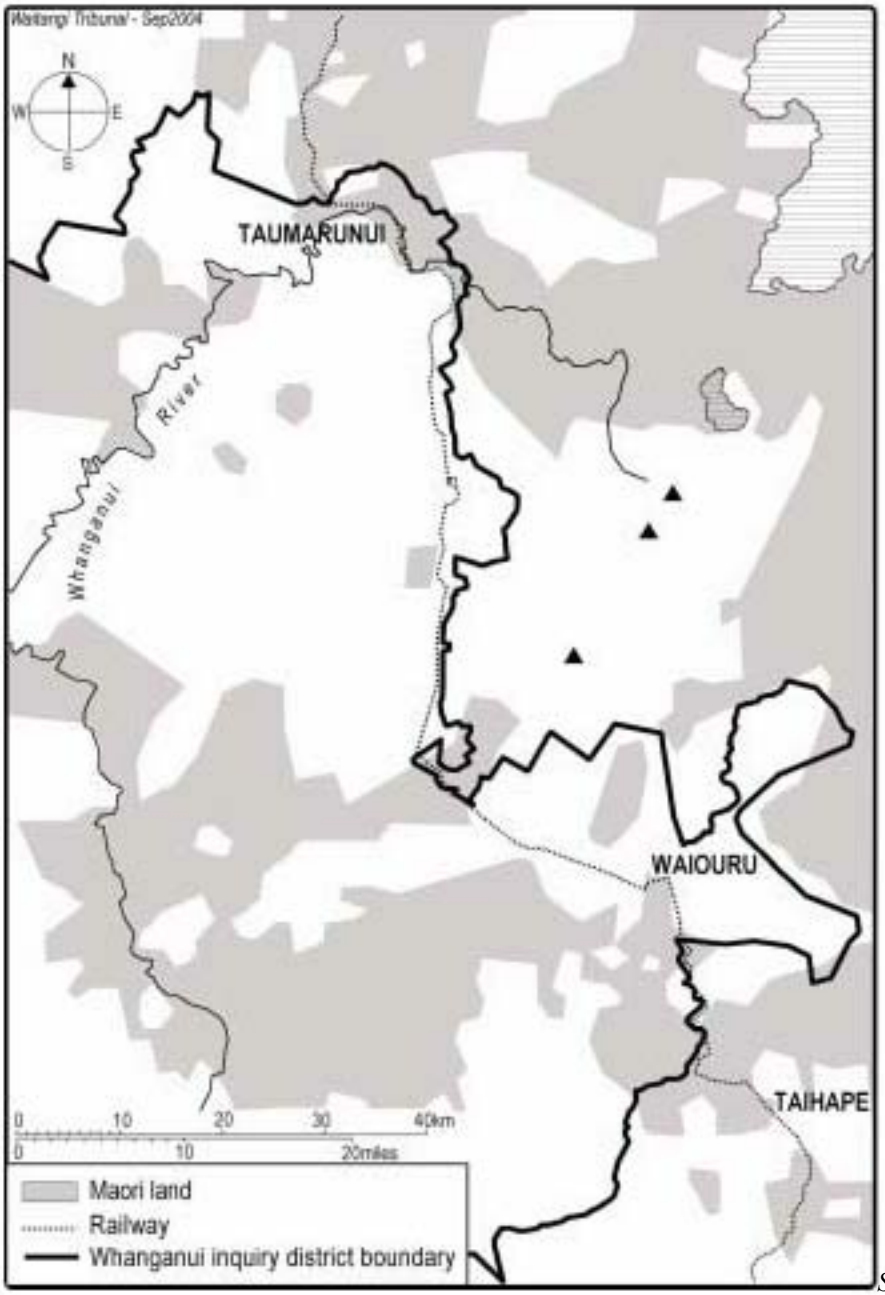
[320] Anderson, 'Whanganui Maori and the Crown 1880-1900', pp. 52-3.
[321] Anderson, 'Whanganui Maori and the Crown 1880-1900', 1998, p. 53.
[322] cited in Anderson, 'Whanganui Maori and the Crown 1880-1900', 1998, p. 53.
[323] Anderson, 'Whanganui Maori and the Crown 1880-1900', 1998, p. 53.
[324] In 1897, the Crown published a return of areas and values of lands in the vicinity of the railway that it had purchased. AJHR 1897, D. Table 4.3 also demonstrates that, for the seven Whanganui district blocks of land intersected by the line, the Crown had acquired 78.2 percent of the 716, 975 acres of land by the time of the track's opening in 1908. This left 156,855 acres or 21.8 percent of land in blocks intersected by the line in Maori hands. Figures derived from Innes and Mitchell, draft.

three-quarters of the land directly bordering the track on each side and been sold. The land required for the actual line 1 chain wide was not more than 2000 acres.[325]

Figure 13: Whanganui Land Remaining in Maori hands along the Main Trunk Railway Line 1908



Source: New Zealand Historical Atlas, p. 84.

[325] Marr, p. 182.

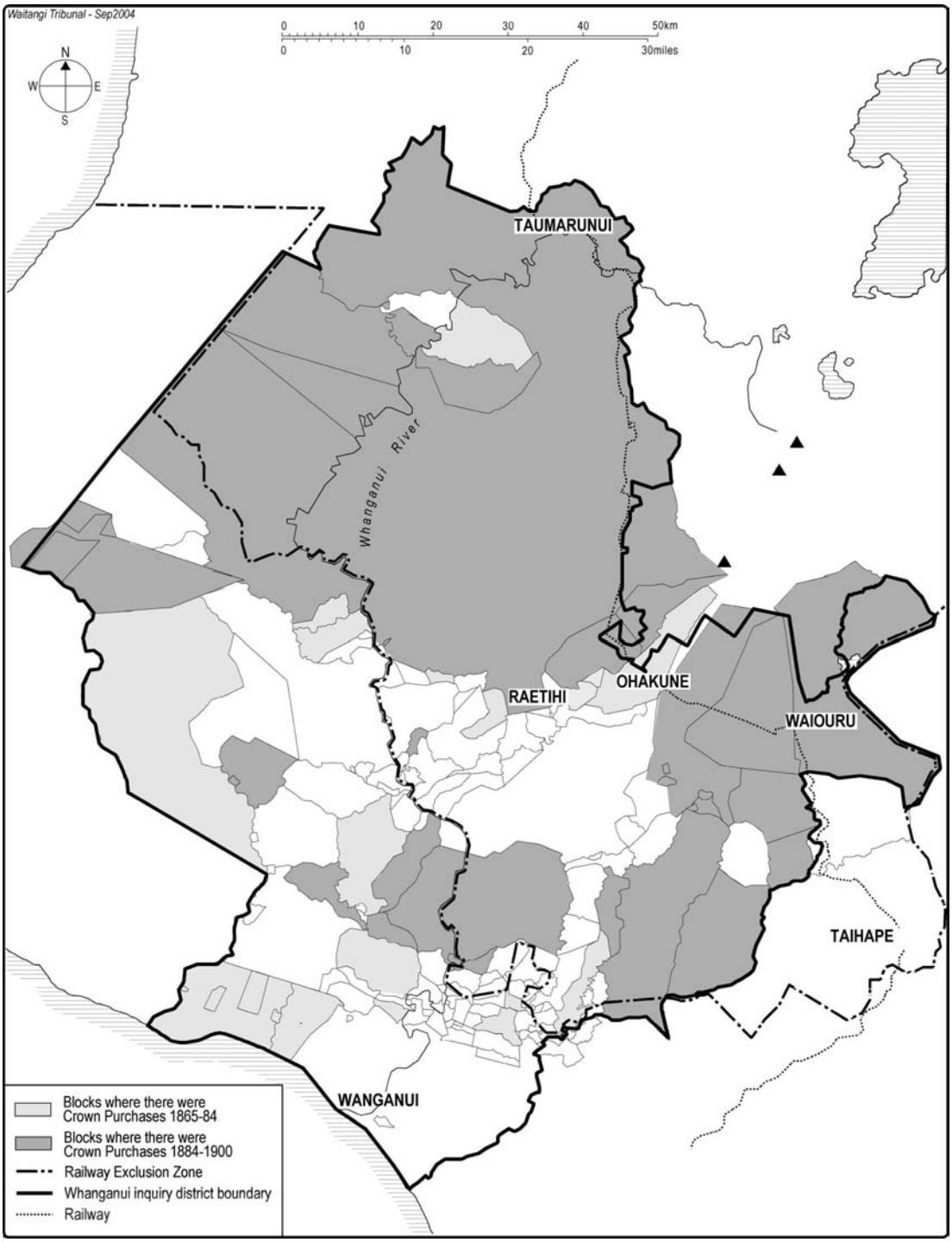
Table 11: Maori Land Remaining in Blocks Crossed by the Main Trunk Railway Line in 1908

Block Name	Original Area (acres)	Area remaining in Maori hands at 1908 (acres)
Ohura South	116,152	30,200
Raetihi	17,200	11,009
Rangiwaea	57,892	26,246
Rangataua	22,618	0 (approx)
Murimotu	46,403	16,285
Waiakake	4514	0
Waimarino	452,196	73,115
Total	716,975	156, 855

Source: Data from Innes and Mitchell, Draft.

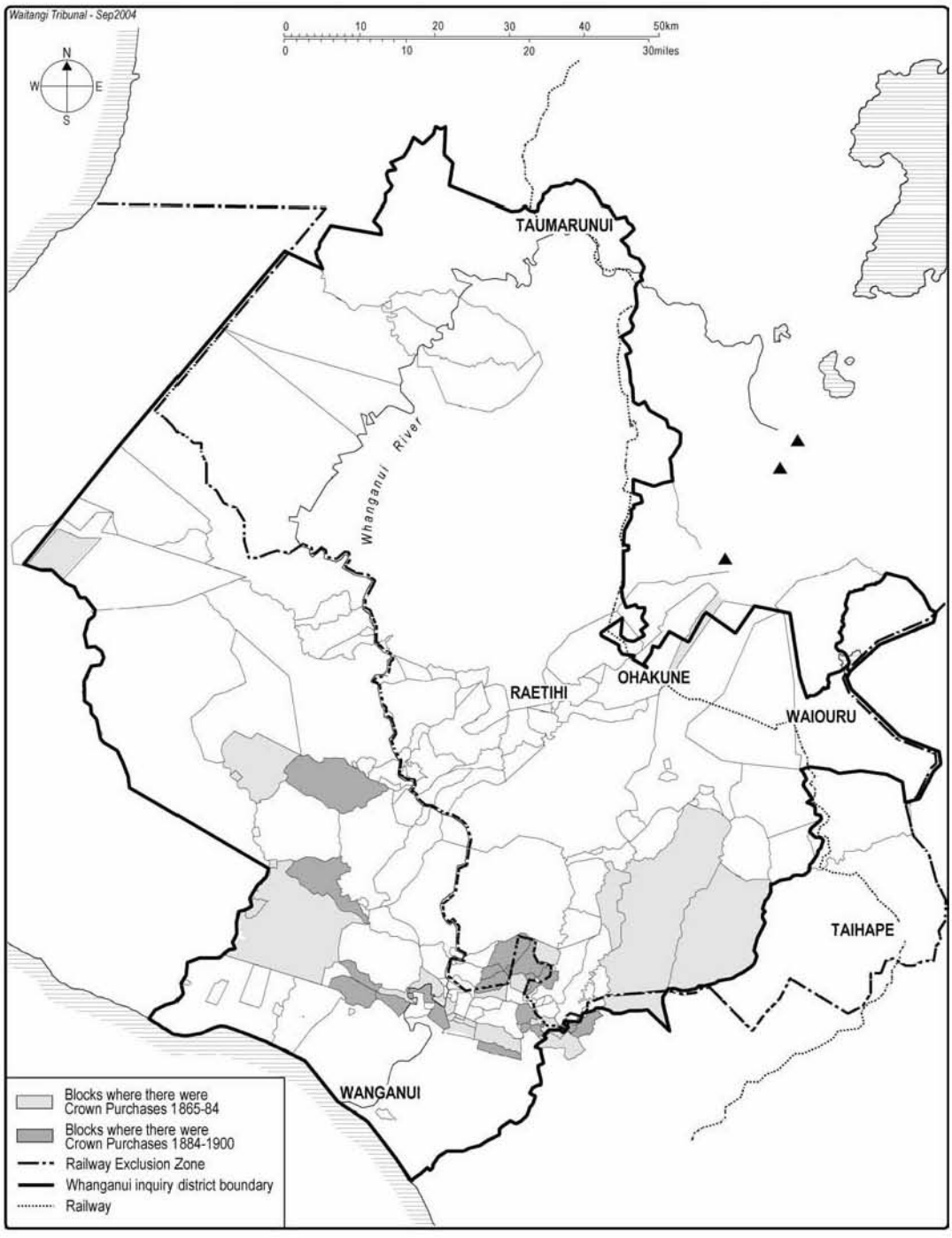
Figure 14 and 15 show the blocks in which Crown and private parties made purchases both before and after 1884. Before 1884, all private purchases in the district were within a 30 kilometre radius of Wanganui Town and broadly to the south of what was to become the boundary of the railway exclusion zone. This tight geographical frame can be attributed to the political climate which made upper river purchasing difficult. For the same reasons, pre-1884 Crown purchasing, while extending a little further north and west to include parts of Kaitangiwhenua, Aratawa and Raoromouku, Kirikau, Atuahae, Huikumu, Umumore, Tawhitioariki and Rangataua, was also largely confined to the lower part of the river.

Figure 14: Blocks Where the Crown Purchased Land 1865-84 and 1884-1900



Source: Innes and Mitchell, Whanganui Land Alienation Quantitative Study.

Figure 15 : Blocks Where Private Purchasers Purchased Land 1865-83 and 1884-1900



Source: Data from Innes and Mitchell, Whanganui Land Alienation Quantitative Study

The Crown took full advantage of its statutory monopoly. From 1884 to 1900, all of the Tuhua lands, Waimarino, the grasslands of the Murimotu district and the lands between modern day Maungaweka and the Whanganui River, roughly half of the Whanganui district and more than a million acres, were subject to a statutory Crown monopoly.

As Figure 14 indicates, the Crown purchased land in most of the blocks in the railway exclusion zone before 1900. With the possible exception of Waiakake block, there were no private purchases that occurred in this area from 1884-1900. Maori with land in the zone could neither lease, sell timber, nor sell their land to private parties and this left them few alternative to raising capital from them other than sale to the Crown.

The Crown jealously guarded its upper-river monopoly. In Opatu block in 1885, an owner, Paiaka te Pikikotuku, wrote to the Native Minister offering to refund the Crown's advances on the block in order to lease it to Mr Hurley. The Land Purchase Department Under Secretary Patrick Sheridan, however, advised the Minister that:

> The writers have signed agreements to sell these lands to the Crown and have received large advances upon them. After the lands have passed through the Court these agreements will be enforced. Any European dealing with them is liable under the Act of 1884, to a fine of £500 and 12 months imprisonment.[326]

With this possibility of leasing firmly extinguished, the owners only option for raising capital from their land was sale to the Crown and this is what they did. Sheridan was able to announce to the Minister that an agreement had been reached for the Crown to purchase the land in question three weeks later.[327]

A similar set of circumstances occurred in the Maungakaretu 4B block, in 1893, where the owners requested permission to lease the land on the grounds that:

> at present land is of no use to them as it is situated in the main trunk proclaimed area and cannot be treated with private by all of them

[326] Sheridan to Lewis, 15 Sept 1885, MA-MLP 1 1892/203, ANZ, cited in Berghan, p. 519.
[327] Berghan, p. 520.

> being aged Natives and want the rents to live on. They have paid heavy expenses to Government for subdivision and survey and now find they cannot lease... [328]

Sheridan replied that:

> Maungakaretu No 4B block is subject to the provisions of Section 3 of "The North Island Main Trunk Railway Loan Application Acts Amendment Act 1892" it cannot be leased or otherwise disposed of to any person other than Her Majesty before the 1st day of January next.[329]

The block was, however, leased in 1894 when the provisions of the 1892 Act apparently lapsed.[330]

4.5 Conclusion

The conclusion that can be drawn in relation to private purchasing in Whanganui, is that the vast majority of land purchased in the Whanganui district in the Native Land Court era was purchased under conditions of varying degrees of statutory monopoly in favour of the Crown. These restrictions affected large numbers of land blocks and vast areas of land. All land east of the river and north of about Koroniti was effectively a Crown monopoly from 1884 to 1900, while private purchasing continue to be possible under restricted circumstances in the lower part of the district, it was also severely constrained by the 1877 Act and its successors.

There are numerous examples of the way in which the Native Land Purchase Department exercised its legal rights to acquire Maori land in the Whanganui district relatively free of competition from private purchasers. Comments from government officials in the district indicate that these restrictions were, to an extent a response to fears about competition and the possibility of elevated prices and elevated risks in terms of advances which

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[328] Ernest Wright to Public Trustee, 11 Apr 1893, MA-MLP1, cited in Berghan, p. 327.
[329] 19 May 1893, Sheridan to Officer in Charge, MA-MLP1, ANZ, cited in Berghan, p. 327.

private purchasers might pose for the Crown. With this in mind, it is not hard to imagine that the overall effect of restriction imposed on competition would also have suppressed prices to the disadvantage of Maori land-sellers.

[330] Berghan, p. 328. *New Zealand Statutes,* v. 56, 1892, p. 327. A thorough analysis of the relevant legislation was not possible within the scope of this project.

Chapter 5: Safeguards Protection Mechanisms and Rights of Appeal

Governments in nineteenth century New Zealand were subject to a range of pressures in relation to Maori land purchasing. Not only did they want to ensure that land was made available for settlement and acquire Maori land for public purposes such as public works, but they also had a duty of care towards Maori to ensure that dealings over their land were conducted in a fair and equitable manner. This chapter examines the legislative and other mechanisms that were put in place during the Nineteenth Century Native Land Court era to protect Maori in their land dealings.

The chapter investigates four of the safeguards that the Crown put in place; formal reserves and restrictions on land alienation, Maori rights to appeal Native Land Court decisions, the protective role of the Crown-appointed Trust Commissioners and the effectiveness of direct petitions and appeals to Parliament over land issues.

5.1 Reserves and Restrictions Imposed by the Native Land Court

David Williams argues convincingly that the Crown intentions in imposing restrictions was never to prevent their alienation in perpetuity, but rather to prevent Maori from alienating all of their lands before they had become accustomed to the European economy and modes of land use. In support of this contentions, he cites MP and Native Minister C W Richmond in 1867 who wrote:

> The restriction will not affect the majority of cases and when introduced will not … permanently prevent alienation, but will tend with respect to a small part of the Native property, to retard its sale, so as to give a somewhat longer time and better chance for the adoption of European habits of mind before the Maori settles down to the poverty and necessity for labour to which he must in most cases come.[331]

[331]Cited in Williams, p. 215.

Williams' argument is consistent with the evolution of legislation which allowed restrictions to be removed with increasing ease as the Native Land Court era progressed.

5.1.1 The Laws Governing Restrictions on Alienation

The Native Land Court, whenever it was determining title to land or partitioning it, had the powers to recommend or impose restrictions on its alienation. These recommendations were sometimes made in accordance with requests from Maori for restrictions, and sometimes they were the initiative of the Court itself.

As with all Maori land legislation, restrictions were governed by a panoply of constantly changing laws and regulations. From 1865, the Court had the power to recommend to the Governor that restrictions be imposed on alienation of a block of land. If alienation was restricted, the block could neither be leased for a term of more than 21 years, nor sold. The Governor could also remove restrictions.[332] The Native Land Act 1873, apparently made restrictions tighter. It declared that no Maori land subject to a Memorial of Ownership could be sold or leased for more than 21 years unless all of the owners agreed. In reality, however, this was not as protective of collective rights as it appeared because if a majority of owners wished to, they could partition off their share and sell it. In 1880 it became the duty of the Court in every case to ascertain whether it was appropriate to place restrictions on it. From 1882, the Court could impose or remove restrictions on a block without the assent of the Governor when subdividing a block. From 1886 to 1888, all freehold titles were inalienable except by 21-year lease, unless express consent was given by the Governor. However, all the owners could apply to have restrictions removed as long as they could satisfy the Court that they had 'amply sufficient' lands elsewhere.[333]

[332] Williams, p. 276.
[333] Williams, pp. 278-9.

From 1888, the power of restrictions was progressively reduced. From this date, the consent of a simple majority of owners was needed to remove them. In 1892, restrictions could be removed unilaterally by the Governor for the purposes of sale to the Crown. From 1893, a majority of owners could sell land to the Crown, even if land did have restrictions, and this decision was binding on all owners. By 1894, restrictions could be removed if one-third of owners agreed and all owners retained sufficient land elsewhere.[334]

Because individualised land titles conferred by Court facilitated their alienation, restrictions were appropriate as a bulwark against alienations that might not have taken place under customary collective systems of tenure. Restrictions should have offered a way to preserve communal lands such as papakainga, urupa and cultivations. In Whanganui, lands were restricted for all of these purposes and this suggests that the intentions of Whanganui Maori in placing restrictions on lands, at least sometimes, was a desire to maintain some communal land under collective ownership in perpetuity.

An indication that retaining land in perpetuity was an intention of Whanganui Maori comes from a letter from Haimona Teaoterangi of 1873 where he described a hui which had been held at Koroniti to discuss the question of reserving land for descendants, 'to prevent someone surveying it and their ancestors selling it to Pakeha, and so it will be left for generations to come and live well with the Pakeha.'[335] In this case, Haimona sought to protect land by preventing it being brought before the Court. However, as the Native Land Court system made keeping land out of Court very difficult, Maori were forced to pursue the goal of reserving land through Court imposed restrictions. Because of this, the issue in relation to alienation restrictions can best be framed in terms of how Governments balanced the individual right to dispose of land under individual title against the right of communities to collectively manage them.[336]

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[334]Williams, appendix 7, pp. 279-87.
[335]Haimona Teaoterangi to Woon 19 September, 1873, MA-Wang 1/2, ANZ.
[336]Likewise in Tautarawhata, a witness at the title investigation, Reneti Tapa, cited cultivations and burial places in the block as the reason why the land was not sold to the Crown. Berghan, p. 930.

5.1.2 Restrictions on Alienation in Whanganui

Table 12 gives details of those blocks or subdivisions which have been identified as having restrictions imposed on them compiled from the reports of Berghan, Innes, Clayworth and Shoebridge, Oliver and Schuster.[337] They show that 24 blocks had some form of restrictions imposed upon them by the Court or the Governor between 1865 and 1900. The table and the analysis that follows, does not include the 1848 purchase reserves, which are addressed in a separate report by Heather Bassett and Richard Kay.[338]

Table 12: Blocks with Restrictions Placed on Alienation 1865-1900

Block Name	Year of TI	Area (acres)	Year of Restns	Nature of Restrictions	Year removed or first sale	Circumstances of Removal	Still in Maori hands 1900	Proportion remaining at 1900	Years between imposition and sale
Mangawhero East	1867	1151	1867	Restrictions at request of claimants	1886		0	0%	19
Mangawhero West	1867	594	1867	Restrictions at request of claimants	1914		594	100%	47
Kaiwaka	1868	708	1868	restrictions on alienation recommended	1876	All sold privately. Last part confirmed 1897 after protests by Aperahama that he hadn't known he was alienating a share to which he had succeeded failed	0	0%	8
Whataroa	1869	236	1869	Nature not clear	1872	All sold privately	0	0%	3
Kai Iwi	1869	11923	1869	Inalienable	1907	1907 First Alienation for a School. 1909 first private alienation. Land was leased much earlier.	11923	100%	38

[337]Berghan. Craig Innes, 'Whanganui Gap Filling Narratives', Waitangi Tribunal, June, 2004. Steven Oliver, Tim Shoebridge and Lecia Schuster, 'Ohura South Block History', draft, Waitangi Tribunal, 2004. Peter Clayworth, 'Located on Precipices and Pinnacles: Waimarino Reserves and Non-Seller Blocks', Waitangi Tribunal, 2004. Steven Oliver, 'Taumatamahoe Block Report', Waitangi Tribunal, August 2003.
[338]Heather Bassett and Richard Kay, 'Maori Reserves from the 1848 Crown Purchase of the Whanganui Block c. 1865-2002', draft, report commissioned byCFRT, 2002.

Block Name	Year of TI	Area (acres)	Year of Restns	Nature of Restrictions	Year removed or first sale	Circumstances of Removal	Still in Maori hands 1900	Proportion remaining at 1900	Years between imposition and sale
Pourewa	1869	44	1869		1872	All grantees had sold to Georgetti and declared that they had sufficient other lands.	0	0%	3
Ngaonui NR	1876	6	1876	Reserve from Paratieke		No known alienations	6	100%	
Mangamahu	1879	934	1879	Inalienable except through lease	1893	Leased then sold to Mortgagee. Five private purchases plus two takings for roads by 1900 total 927 acres. Some discrepancies between Innes Mitchell Data and Berghan.	8	1%	14
Mataihiwi	1879	124	1879	Inalienable except through lease	1894	Berghan records that Court approved a deed of conveyance in 1894 to a local farmer. No record of a title order. 124 or 0 for next column	124	100%	15
Puehurangi	1879	398	1879	Inalienable except through lease. But some dispute over whether or not to restrict it at the time.	1892	Owners showed that they had sufficient land elsewhere.	0	0%	13
Waipuna-Puharakeke	1879	1452	1879	Inalienable except through lease	1903		1452	100%	24
Pukenui	1879	1053	1879		1914		1053	100%	35
Arahaunui	1881	300	1881	Inalienable except through lease	1921	Private Sale through land board	300	100%	40
Ararewa	1881	300	1881	Inalienable except through lease	1921	Private Sale through land board	300	100%	40
Makowhai – purchase validated	1881	291	1881	Block established out of rehearing of Mangapapa. Inalienable except through 21	1891	212 Acres purchased privately. Owners testified that they sold willingly and had sufficient lands elsewhere.	79	27%	10

Block Name	Year of TI	Area (acres)	Year of Restns	Nature of Restrictions	Year removed or first sale	Circumstances of Removal	Still in Maori hands 1900	Proportion remaining at 1900	Years between imposition and sale
				year lease					
Maungakaretu 4B	1884	2273	1889	Inalienable by sale mortgage or lease	1894	Some leases in 1894 too and dispute over liens	1516	67%	5
Maungakaretu 5B	1884	1521	1889	Inalienable by sale mortgage or lease	1896	Crown Purchases. Restrictions on other subdivisions remain in 1901 (berg. 332) Removed 1909 (339)	787	52%	7
Koiro	1886	7000	1886	Inalienable except through lease	1911	In 1895. Wilkinson writes to note that several want to sell the block. Carroll replies that an agreement had been made with those residing on the block that the Government would not purchase. Land board was managing land at the time.	7000	100%	25
Maraekowhai	1886	54000	1886		1896	Big Crown purchases. Restrictions still in force for private purchasers as a request for their removal in 1911-12 indicates.	31471	58%	10
Urewera 1	1886	8286	1889	Restricted at request of claimants other than by lease	1905	First sale to saw millers 1905	8286	100%	16
Taumatamahoe	1886	146000	1886	Restrictions requested until subdivisions of various hapus' interests could	1886	Several subsequent protests and petitions over non-respect of request that land be restricted	31404	22%	0

Block Name	Year of TI	Area (acres)	Year of Restns	Nature of Restrictions	Year removed or first sale	Circumstances of Removal	Still in Maori hands 1900	Proportion remaining at 1900	Years between imposition and sale
				be negotiated					
Owhangaroa	1888	57	1888	Shares made 'absolutely inalienable'	1908		57	100%	20
Maraetaua	1896					Restrictions removed 1907 but no record of their imposition			
Morikau 1	1899		1899	At request of claimants land around Hiruhirama restricted		No known alienations			
Total		238801					96360	40%	
Average years not counting the 'never alienateds'									17.9

Sources: Paula Berghan, Block Research Narratives of the Whanganui District: 1865-2000, CFRT, July 2003. Craig Innes, Whanganui Gap Filling Narratives, Waitangi Tribunal, June, 2004. Steven Oliver, Tim Shoebridge and Lecia Schuster, Ohura South Block History, draft, Waitangi Tribunal, 2004. Peter Clayworth, Located on Precipices and Pinnacles: Waimarino Reserves and Non-Seller Blocks, Waitangi Tribunal, 2004. Steven Oliver, Taumatamahoe Block Report, Waitangi Tribunal, August 2003.

These 24 blocks collectively contain 238,651 acres of land of which 96,360 acres or 40.4 percent remained in Maori hands at 1900. This is only 2.2 percent higher than the 38.2 percent total average for all Whanganui lands at the same date and this provokes serious questions about the effectiveness of restrictions. A notable component of the total figure for the district as a whole was the Taumatamahoe block of 146,000 acres. Only 31,000 acres or 22 percent of Taumatamahoe remained in Maori hands at 1900.[339]

The case of the Waimarino block could also be considered one where land purchasing officers managed to circumvent restrictions on alienation. As Marr notes, when the Court gave its judgement on the ownership of the block it found that 'as soon as a proper survey of the land has been made'. The land was to be 'inalienable'.[340] A substantial portion of

[339]Restrictions in the Taumatamahoe case are discussed in detail in Steven Oliver's report on the block. Steven Oliver, 'Taumatamahoe', report commissioned for Waitangi Tribunal, 2003.
[340] MLC-Whanganui MB 9 p 290. cited in Marr, p. 270.

the land, what became the Waimarino 1 block of 417,000 acres was, however, alienated before this survey had been completed.

Table 13: Number of Years Between Imposition of Restrictions and First Alienation

Period	Number
0-10 years	8
11-20 years	6
21-30 years	2
31-40 years	4
41-50 years	1
Still entirely in Maori hands	2

Source: Table 12.

The number of years between the imposition of restrictions on a block and its first alienation also varied from a few months in the case of Taumatamahoe to the two blocks, Morikau 1 and Ngaonui Native Reserve which still remain entirely in Maori hands. The mean or average number of years between the imposition of restrictions and their removal (or the first date of alienation if the date of removal of restrictions could not be found, or land was alienated without the removal of restrictions) was 17.9 years. As Table 13 shows, in 14 out of the 23 cases, the first alienation from blocks occurred within 20 years of the imposition of restrictions. This suggests that in many cases, the Crown was successful in its goal both of preserving reserved sections for a significant period of time after initial alienations in order to ease Maori into 'modern' capitalist modes of production, but also that Richmond was correct in his assertion that the restrictions would not permanently prevent the alienation of land that he saw as necessary to the progress of the colony.

In most cases in Whanganui, restrictions were imposed at the request of owners, although it was the Governor on the recommendation of the Court, or the Court itself which decided whether or not to impose restrictions. The removal of restrictions was also usually done with the consent of many of the owners, although from 1894, the consent of no more than a third of owners was needed to remove them.

Removal of restrictions occurred at a sitting of the Native Land Court or by order of the Governor and consisted of declarations on the part of the owners applying for their removal that they had sufficient lands elsewhere and were willing to sell.[341] The definitions of 'sufficient land remaining' varied. From the Native Land Act 1873, it was defined as meaning 50 acres per man, woman and child. Other acts spoke more generally about 'land amply sufficient for future wants and maintenance of a tribe or hapu' until the definition of the Native Land Purchase and Acquisition Act 1893, defined sufficiency as meaning 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.[342]

In Mangamahu 2 block in 1894, however, where alienation of the shares of Eruini te Huiakapa and Mitu Tahina to private purchasers was confirmed by the Court, evidence was given that Eruini had 'a lease of 10 acres' in Mangamahu 1 block, and an interest of two acres in Kaitangiwhenua block and that Mitu Tahina had an 11 acre 3 rood interest in Tautaramata (possibly Tautarawhata) block. Despite the fact that these areas were significantly less than the statutory minimum considered 'sufficient', alienation was confirmed.[343]

One weakness of the reserve system was that, as was the case with other Maori lands, it still allowed both Crown and private purchasers to deal with owners individually to purchase their shares rather than dealing with owners collectively. Thus, a purchaser could acquire the necessary proportion of shares to alienate reserve land one by one over time and then assert their right to have the sum of their purchases formally recognised. To the extent that restricted lands were intended to be community property, this is analogous to a private purchaser being allowed to acquire shares in a public beach or botanical gardens from individual citizens and partitioning out this acquired interest for private ownership.

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[341] Williams pp. 275-83 summarises the relevant legislation.
[342] Williams, pp. 214-5, p. 271
[343] Berghan, pp. 195-6.

Many of the applications for removal of restrictions came at the behest of owners who had already received money for their shares from a purchaser. In these cases, it would have been very difficult for the Court to refuse to lift the restrictions. This was the case in Kaiwaka block where Mr McGregor had purchased the block before restrictions were removed, Pourewa block where Mr Georgetti had purchased interests, and Mataihiwi where the block was purchased by Archibald Mason.[344] This pattern was also repeated in some of the post 1900 alienations of lands reserved before 1900.

5.1.3 Crown Powers to Purchase Land Subject to Restrictions

In the 1890s, the Crown arrogated to itself powers to purchase land whether it had restricted status or not. In 1892, restrictions could be removed by order of the Governor for the purposes of sale to the Crown and from 1893, a majority of owners could sell land with restrictions to the Crown. The Crown purchased land this way in several cases in Whanganui. Crown purchases in Maungakaretu 5B, in 1896, were also made without the removal of the block's restrictions which remained in place until 1909 and in 1896, the Crown purchased reserved lands in Maraekowhai, while restrictions remained in place for private purchasers until 1911.[345] This Crown practice was not just another form of anti-competitive behaviour, but raises questions of the Crown's intention in imposing restrictions in the first place.

5.1.4 Confusion over the Nature of Restrictions on Alienation

The changing legislation over reserves and restricted lands may have led to confusion over lands called reserves, such as the 1848 purchase reserves, the Waimarino non-seller reserves, and reserves in Opatu which were lands set aside for those who had chosen not to sell their land, but had no formal restrictions on alienation. In some of these cases,

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[344] Matahiwi, however, only had 2 registered owners. Kaiwaka, Berghan, pp. 104-5, Pourewa, Berghan, p. 620. Mataihiwi, Berghan, pp. 292-3. In Mangamahu, there is no record of when restrictions were removed, but several purchases on this block before 1900 suggest that this form of alienation may also have occurred here. Berghan, pp. 194-6.
[345] Berghan, p. 339. Berghan, p. 249.

Maori probably accepted verbal assurances that land would be a 'reserve' without understanding that it had no legally restricted status.

In Heao block, not only was there confusion and dispute over the status of a reserve, but it was sold on behalf of an 'owner' against their will. At the title investigation of the Tautarawhata block in 1886, Mere Ngareta testified that the block was a reserve containing urupa and ancient cultivations that Wiremu Te Ratutomu had deliberately left out of the earlier negotiations over the neighbouring Heao block. It had been intended that the land be 'reserved' by deliberately not taking it to Court at the time of the Heao title investigation. Eruera Taika confirmed this, suggesting that the block was not cut out of Heao with any particular owner in mind. Hoani Maaka added that there had been some dispute about the location of land which was intended to be reserved for Wiremu Tawhiro at the time of the verbal negotiations over the Heao block with Land Purchase Officer James Booth.[346]

Hoani then described the sale of a supposed reserve from Heao block, 'I went to Wellington in 1878 and found there was no reserve in the Heao block as asked for by Wiremu Tawhiro. Tawhiro had, she testified, refused to accept purchase money on Heao, but that 'his friends sold his interests by disposing of the whole block'. She added that Aperahama Tipae had accepted all of the monies and some had eventually been given to Wiremu for his share.[347]

Confusion over the reserve status of land is equally evident in the case of Mangapukatea where Frederick Cribb wrote to the Land Purchase Department in 1886, on behalf of his wife Taiwiri to request the deed to a reserve in Mangapukatea block. He claimed to have helped surveyor F Sewell cut the lines for this reserve. The Land Purchase Department replied that there was no reserve. A lengthy correspondence ensured which concluded with the advice from Under Secretary Lewis that 'after reading Mr Booth's minute I

[346] Berghan, pp. 931-2.
[347] It is unclear why Wiremu was not included in the title, but the two grantees may have been intended as trustees for a broader community as in 1873 the 10-owner rule was still applied. Berghan, pp. 931-2.

consider it is not necessary to pursue the correspondence. It seems to me to be simply a "try-on".'[348] The earnest protestations of Cribb, detailed in Berghan's block narrative, suggest that in this case at very least, there was misunderstanding of the nature of the title to the land.[349]

No block in Whanganui was subject to as much debate about restrictions on alienation as Taumatamahoe. In 1886 at the time of title determination, the land was made inalienable except by 21-year lease. Topia Turoa and 126 others petitioned in 1889 that the block should have been restricted as per an agreement reached with Judge Puckey at the time of the title investigation hearing:

> when we passed this block through the court, we, the applicants, asked that it might be restricted so that no sale could be made until the court had subdivided the block to the Hapus included in the certificate, and this request was agreed to by Judge Puckey at the time and these restrictions (against an early sale) being approved of by the entire people were included by the applicants in the lists of names submitted to the Court. My people are deeply grieved therefore at the purchase being commenced at this time, especially because the different "hapus" have not yet had their respective shares or portions awarded them so that the Government may know exactly on what portions or shares to pay their money, or what portions to be had for the same.[350]

Te Rangihuatau wrote separately to Under Secretary Lewis protesting that the block had been intended as a reserve:

> I am very pouri. Had you informed me I would not have felt as I do, because Matewhitu and myself were the chiefs who effected the hearing of the Waimarino and Taumatamahoe blocks. I am very pouri to hear of this "mate". I was under the impression that we have had enough in Waimarino, as Taumatamahoe was given to be understood before the Court as land to be reserved for the benefit of the future Maori race.[351]

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[348] Lewis to Sheridan, 18 May 1886, MA/MLP1 1886/51, ANZ, cited in Berghan, p. 240.
[349] Berghan, p. 240.
[350] cited in Berghan, p. 894.
[351] Berghan, p. 893.

Land Purchase Department Official Patrick Sheridan advised the Minister that the Crown was on firm legal ground. He recommended to the Native Minister that the writer be informed that each individual has 'a perfect right to dispose of his interest.'[352] And despite the protests, purchasing continued until the Crown was ready to have its interests partitioned out in 1893.[353]

5.2 Native Land Court Appeals and Rehearings

The first legal recourse of Maori who were not satisfied with a decision of the Native Land Court was to file an application for a rehearing. During this period, these applications were considered by the Chief Judge of the Court. On occasions where applications were refused, appellants sometimes sought further recourse through petition to the Government. Rehearings against title orders, subdivisions and partitions were occasional occurrences in Whanganui among the 468 cases heard in relation to Whanganui blocks from 1865-1899, there were 14 rehearings.

Table 14 shows the results of rehearings identified from the Berghan and Innes narratives and index to the Native Land Court hearings.[354] This suggests that the Court was responsive to revisiting some details of its decisions, albeit within the framework of the rules of title and partition of the Native Land Court. The more important question of how many applications for rehearings were refused, which would place these successful cases in context, could not be attempted for this report due to time constraints.

[352] Berghan, p. 894.
[353] Berghan, p. 897.
[354] Berghan. Innes.

Table 14: Results of Rehearings before the Native Land Court for Whanganui Blocks Heard 1865-1900

Block	Year	Result of Rehearing or Application
Pikopiko	1878	Rehearing granted then application withdrawn.
Mangapapa	1881	New blocks and reserves made.
Karewarewa	1881	Rehearing about TI dismissed.
Maramatotara	1881	Rehearing altered partition allocations.
Otamoa 2	1881	A name was removed from the title.
Puketotara	1881	Number of grantees increased.
Rangataua	1881	Groups admitted to the title changed.
Rawhitiroa	1885	Dismissed
Kai Iwi partition	1891	Discussions over who got what. Settled amicably
Murimotu	1892	Rehearing results in names being added to title.
Raketapauma	1894	Names added to ownership lists
Whitianga	1895	Allocation of shares changed
Puketarata	1897	Before Appellate Court names added to title
Kaiwaka	1898?	Rehearing re whether Aperahama had conveyed interests to which he had yet to succeed in 1876 sale. Unsuccessful.
Pukehika	1908	Appellant did not appear to pay fees of 20 pounds.
Rangipo Waiu		One name added to title.

Sources: Berghan and Innes Narratives.

5.3 Trust Commissioners

The system of Trust Commissioners was established under the 1870 Native Lands Fraud Prevention Act and remained in place until 1894.[355] The Commissioners were charged with ensuring that alienations of Maori land were not 'contrary to equity and good conscience', were not in contravention of any trusts or restrictions, were not paid for by the sale of arms or liquor, and would leave Maori with sufficient land for their support.[356] Deeds of sale, mortgage or lease were technically not valid until certified by a Trust Commissioner and Commissioners were instructed not to allow transactions which were

[355] Williams, p. 214.
[356] Williams, pp. 212-4. Bruce Stirling, 'Wairarapa Maori and the Crown', report commissioned by CFRT, v. 2, p. 358-9.

'so improvident on the part of the Natives, as to be likely to reduce them to a state of pauperism'. The Act gave the Commissioner the power to examine any alienation which went through the Native Land Court.[357]

A new act enacted in 1881 required the Trust Commissioners to inquire into every transaction. However, at the same time, it limited their powers by requiring that every decision of the Commissioners be endorsed by the Governor.[358] The Native Land Fraud Prevention Amendment Act 1888 then tightened some of the provisions, stipulating that deeds, even when written in Maori, had no effect unless accompanied by a plan of the land being alienated, and a declaration by a licensed interpreter that he had read and explained the deed to the Maori party.[359]

As J E Murray argues, the Crown's intention in establishing the Trust Commissioners was:

> to protect, but not with too much rigour. The opening section [of the 1870 Act] warned officers not to throw difficulties in the way of bona-fide transactions. They were told to file certificates as a matter of course unless there was reason to believe illegality was present. Their inquiries need not be, in ordinary cases, 'too minute'.[360]

Ward also cites one time Premier and Native Minister John Ballance as declaring that 'it is notorious that Fraud Commissioners in the past have performed their duties in a most perfunctory manner, and passed transactions where the consideration was a mere bagatelle'.[361] Bruce Stirling, in his recent report on Wairarapa Maori and the Crown, notes that Charles Heaphy, the Wellington Regional Trust Commissioner responsible for the Whanganui district from 1870 to 1879, took his role very seriously and sometimes

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[357] J E Murray, *Crown Policy on Maori Reserve Lands and Lands Restricted From Alienation 1865-1900,* Waitangi Tribunal Rangahaua Whanui Series, 1997, p. 34.
[358] Crown Forestry Rental Trust, *Native Land Legislation Database*, electronic resource
[359] The Act was amended again in 1889 but the changes in relation to the role of the Trust Commissioners were minor. Crown Forestry Rental Trust, *Native Land Legislation Database.*
[360] Murray, p. 34.
[361] cited in Alan Ward, *A Show of Justice: Racial Amalgamation in Nineteenth Century New Zealand,* Auckland University Press, Auckland, 1973, p. 252.

exceeded the letter of his powers in protecting Maori interests. This is borne out in the surviving records of Heaphy's investigations in Whanganui (Table 15).[362]

Despite Heaphy's personal zeal, the Trust Commissioners were severely under-resourced. There were initially five appointed for the whole of New Zealand. All held other public offices and were given virtually no staff or other resources to investigate thousands of leases, mortgages and sales covering huge areas of land.[363] As a result, in the year ending in May 1874, of 207 cases put before Heaphy, he examined 84 as 18 were held over and a further 105 were not processed.[364]

In administering the Native Land Fraud Prevention Act 1881, a printed form for Maori alienating land was produced. In this document, any Maori alienating land by lease or sale was required to declare the name of the block's owners, that they had had a translation of the deed read and explained to them by a licensed interpreter before they signed it, and that 'no spirituous liquors, arms or warlike stores formed the consideration or part of the consideration.' The purchase price was to be stated, and the vendors were required to declare that the land transferred was not held in trust and that they had sufficient land for occupation and support elsewhere.[365] The declaration was to be witnessed by a licensed interpreter. In other inquiries, receipts and copies of deeds and fees would accompany the application and, in the vast majority of cases, presentation of this dossier was considered sufficient evidence to ensure alienation.[366]

A complete set of data of the investigations of the Trust Commissioners for Whanganui has not been located.[367] Table 15, however, summarises those Trust Commissioner

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[362]Trust Commissioner Heaphy's Minute Book, MA 2/1, ANZ, compiled from Berghan.
[363] Bruce Stirling, 'Wairarapa Maori and the Crown', Crown Forestry Rental Trust (CFRT), December 2002, pp. 362-5. Williams, p. 213.
[364] Stirling, p. 358.
[365] James Mitchell, 'Land Alienations in the Wairarapa 1880-1900', report commissioned for Waitangi Tribunal, December 2002, p. 103
The Native Reserve Act of 1882 stipulated this to be 50 acres. Williams, p. 214.
[366] Mitchell, 'Land Alienation in Wairarapa', p. 114.
[367] Trust Commissioner Alienation Files were once housed at the Native Land Court in Whanganui. The Court then sent some archives to National Archives in Wellington, who sent some of them back. Nobody appears to now have them.

investigations for which details are known. Of the 24 investigations, 19 were approved. In one case, a Trust Commissioner investigation resulted in the price of a block being increased. There is no clear record of the Commissioners recommendation on the four other cases, but one appears to have resulted in a sale going ahead, and another appears to have resulted in a sale being abandoned.

In at least seven cases, the Trust Commissioner held hearings into Whanganui land transactions and in many others he asked for written advice as to the fairness of prices and the sufficiency of land remaining in Maori hands from local authorities such as Resident Magistrates Woon and Edwards. In these early cases, at least, investigation of these blocks appear to have been more than perfunctory.

Despite this, it is hard to draw conclusions about general patterns for the roughly 200 alienations which occurred in the Trust Commissioners era from this data because of the there is probably a bias in the sample in favour of blocks that were carefully examined by the Commissioners. This is because, in the absence of the Trust Commissioner alienation files, the cases where external agencies were called upon to take part in hearings are more likely to be ones for which records survive. Similarly, the majority of surviving records come from Judge Heaphy's minute book and Heaphy was, as observed earlier, noted as being a particularly conscientious Trust Commissioner.

As Crown historian Bob Hayes suggested in the Hauraki inquiry, the Trust Commissioners had little discretion. They 'had no power to refuse their certificate where the criteria were satisfied'.[368] Even if there was sometimes a careful investigation on the part of Trust Commissioners in Whanganui, their brief was so confined that as long as parties were willing to sell, had lands elsewhere, and declared that the land had not been paid for with guns, ammunition, or 'spirituous liquor', there was little that the Trust Commissioner could do to prevent alienation beyond objecting to the price offered.

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[368] Bob Hayes, 'Summary of Evidence on the Native Land Legislation Post 1865: The Operation of the Native Land Court in Hauraki', Hauraki inquiry Wai 686 , Q1, February 2001.

In one case in Whanganui for the 625 acre Omaru Block, Trust Commissioner Heaphy was successful in gaining a higher price for the Maori vendor by refusing to endorse the price agreed to of 4s per acre. After receiving advice from Resident Magistrate that this price was too low, Heaphy got the private purchaser to agree to pay 5s per acre.[369]

In the other case where the Trust Commissioner intervened, results were less convincing. In Ngaturi Native Reserve, in 1874-75, Trust Commissioner Heaphy took evidence from William Finnimore a land agent and valuer, George McCaul, a former land agent, and Henry Clayland Field, a surveyor, that value of the reserve lands was around the £300 that was being offered for them. Resident Magistrate Richard Woon however, opined that the land was worth considerably more. An impasse was reached and the sale fell through. The land was eventually sold to another purchaser 11 years later in 1886 for just £277.[370]

Table 15: Known Trust Commissioner Examinations in Whanganui

Block	Year	Transaction	Result	Notes
Pourewa	1872	Sale	Approved	Trust Commissioner received information from Resident Magistrate Edmonds to the effect that those Maori who had signed the deed had sufficient land for their future wants outside of that now sought to be alienated. The Trust Commissioner therefore endorsed the certificate and confirmed the transaction.' (Berghan, p. 620)
Whataroa	1872	Sale	Approved	TC asked Resident Magistrate Edmonds to confirm that vendors had sufficient land elsewhere.
Kai Iwi	1873	Lease	Approved	Advice from Mr Wray that the lessors were satisfied and deal equitable. Adjourned to seek this advice.
Kokomiko	1873	Sale	Approved	A declaration was submitted that no arms, ammunition, or spirits formed part of consideration, but that cash only had been paid. A further declaration was submitted by James Booth to the effect that the vendors had sufficient land elsewhere.' (Berghan, 531)
Upokongaro	1873	Sale/Mortgage	Approved	Hearing held. Extensive evidence from vendor about negotiations which involved alcohol and where one party was initially unclear as to what he was signing. [MA 2/1 TC minute book] Heaphy sought assurance from RM Edwards that the vendors had sufficient other lands for their support and approved transaction.

[369] Berghan, p. 507.
[370] Berghan, pp. 443-7.

Block	Year	Transaction	Result	Notes
Upokongaro 2nd Hearing	1873	Purchase of Mortgage	Approved	The purchase of the mortgage was effectively a reduction in the price of the block, as it was the block's purchaser who was borrowing the money from the lessor. Hearing held, landowners agreed.
Kai Iwi	1874	Lease	Approved	The lease dated from 4 years earlier. The Commissioner also received a certificate from the Resident Magistrate Woon who affirmed that the grantees had received goods amounting to £722.7.5 and that this consideration represented 'market prices of goods at time of sale and were fair and reasonable.' He also stated the accounts were admitted by the Maori owners. This suggests that the goods had been paid on account over several years. The Trust Commissioner endorsed the lease.
Otaika	1874	Sale	Approved	A declaration was submitted that no arms, ammunition, or spirits formed part of consideration, but that cash only had been paid. A further declaration was submitted by James Booth to the effect that the vendors had sufficient land elsewhere. The deed was therefore endorsed by the Trust Commissioner. (Berghan 168)
Mangaone	1874	Sale	Unclear but sold 5 years later	Woon advised TC Heaphy that Maori were satisfied with the price, that it was fair and that all but one had sufficient land elsewhere, the other had 'not much'.
Ngaturi	1874	Sale	No result but does not proceed	Hearing by TC Heaphy held. Conflicting evidence, but Woon argues that price is far too low. Heaphy adjourned to see if a higher price might be negotiated. Money had already been paid. Land was eventually conveyed to a different party in 1891 for less money than had been offered in 1874.
Omaru	1874	Lease with Sale option	Price altered	Heaphy objected to price of purchase clause of 4s per acre. Advice from Woon, price increased to 5s per acre.
Heao	1875	Crown Purchase	Approved	Advice sought from Woon
Parihouhou	1876	Sale	Approved	
Te Rimu-Mangawhero	1877	Mortgage	Approved	Heaphy was TC. Interest was 12 percent.
Mangaporau	1878	Sale	Approved	
Mangaere	1881	Alienation	Approved	
Matatara and Makirikiri	1890	Sale	Approved	
Mataihiwi	1892	Sale	Approved	
Mangamahu 4 (part)	1894	Sale	Approved	Declaration by vendor's husband that she was happy with the sale and had other land for her support.
Raketapauma	1894	Lease	Approved	Hearing held. Receipts for payments produced as evidence.
Rangitatau 1C1	1894	Alienation	Approved	

Block	Year	Transaction	Result	Notes
Ruanui 2B1, 2B5, 2B7, 3C	1894	Leases	No record. Presumed approved	Leases to Studholme. Hearings held. Evidence from interpreter and one lessor.
Upokongaro 2	1870, 1873	Lease	Unknown	Woon was asked for details
Otamoa	1881 and 1893	Sale	Approved	Not endorsed by TC until 1895. Reason for delay unclear. Supporting Papers, Vol.14, pp.7950-7952

Sources: Berghan Narrative and document bank.

One case, the Upokongaro alienation, already discussed in this report, stands out as one where the Trust Commissioner might have acted to prevent alienation, but did not. The block was purchased with a down payment of £350 cash with an agreement that the buyer would make a final payment eight years later of £500 to be secured by the purchaser mortgaging the land back to the vendor interest free. In inquiring into this deal, it was revealed, not just that the agreement to the terms had been accepted by the vendor while drinking with the purchaser, but that the vendor had not understood the terms when he agreed to them, although he had later signed a document consenting to them. When a second transaction on the block, the sale of the £500 mortgage for £200, was presented to the Commissioner the following year, he succeeded in having it increased to £300, but did not stop what seems to be the sale of a block of land worth £850 for £650.[371]

There is, overall, too little data to draw firm conclusions about the effectiveness of the Trust Commissioners in Whanganui district. The impression that can be gained from the documents available is one of conscientious Trust Commissioners especially Charles Heaphy, whose actions, due to the limited scope of their brief and limited resources generally had little impact on the nature of the transactions that came before them.

[371] Berghan, pp. 1003-7.

5.4 Petitions to the Government and Parliament

A last recourse of Maori with grievances relating to the title or the alienation of their lands was to petition Parliament. In 1872, the Native Affairs (select) Committee was constituted and petitions relating to Maori lands and other matters were referred to it for comment. The Committee routinely consisted of the four Maori Members of Parliament, plus opposition members with a Government majority. Ward observes that the Committee gave some favourable decisions to Maori on smaller matters, but that it would not overturn decisions of the Native Land Court and chose instead to confine its recommendations to consideration of appeals for rehearings or the correction of faulty surveys. Sometimes, Ward adds dryly, the Government even acted on its recommendations.[372]

While they were much less common than letters to the Minister or to Native Ministry Officials, of which there were hundreds, petitions to Parliament or the Committee were not uncommon in relation to Whanganui lands. There were at least 18 between 1872 and 1900, most of which had been signed by a number of people.[373] Common subjects of petitions included calls for rehearings, protest that land had been sold by people impersonating the owners, the sale or investigation of lands without the knowledge or consent of purported owners, the distribution of purchase monies and the inclusion or non-inclusion of names on Certificates of Title or Memorials of Ownership.

The petitions which have been collected from the *Appendices to the Journal of the House of Representatives* are summarised in Table 16. They do not include petitions after 1901, in relation to purchases that occurred before that time and given that a petition was often the last recourse for those unhappy with decisions of the Native Land Court, it is possible that some petitions relevant to nineteenth century issues have not been located, they do, at least give a sample of the issues and how they were examined.

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[372] Ward, *A Show of Justice,* p. 265.

Table 16: Petitions Relating to Whanganui Lands and Their Results

Year	Petitioner	Issue	Result-Finding	Subsequent Actions
1877	Hone Kiwa and Others	Topine Te Mamuku sold Retaruke on behalf of the people, but did not distribute the monies.	Referred to Government	
1877	Rihari Uruteangina and Others	Rihari belonged to Nga Rauru. He claimed that his interest in Mangaturuturu had been ignored and that two other members of his hapu had accepted advances on the land while he was away fighting for the Kingites. He had ancestors buried on the land. It consisted of 1800 acres that had been left out of 8800 acres of Mangaturuturu. Title had been determined for the rest.	A hearing was held and the Committee questioned both the petitioner and Te Keepa Te Rangihiwinui.	The Committee considered it a matter which could and should still be examined by a court with the resources to examine it fully.
1878	Arapata Te Rangiirunga and Others	Protested that at the Native Land Court Hearing of Murimotu in 1873, names had been included in the title that did not belong there.	The Committee considered that there was still a legal remedy open to the petitioners and refused to rule.	
1883	Te Keepa Te Rangihiwinui and 278 others	Protesting that the Costs of Lawyers before the Native Land Court were 'swallowing-up' the costs of several blocks	The Committee noted that a bill before Parliament dealt with the issue.	
1885	Karaitiana Te Rango and Others of Ngati Tama Whiti	The petitioners submitted that the partition of the Rangipo-Waiu block had been done unfairly.	Details of deliberations not found.	Not known.
1885	Wiremu Kauika and Others	Kauika protested that in Mangapapa 2 block, the land was left with Messrs McDonnell and Bryce to manage, but as soon as they got the grant, they sold it.	Details of deliberations not found.	Not known.
1885	Tawhiri Te Wheteke	Claimed Rawhitiroa block had been awarded to the wrong people. Called for a rehearing	The Committee found that the petitioner had a legal remedy and refused to rule.	
1886	Hoani Rupe and Others	Claimed that no notice of the title hearing on the Tauwhare Block was gazetted.	Committee found that the hearing had been gazetted and the Court had awarded title unopposed.	No recommendation.
1886	Winiata te Puahaki on behalf of Rangituhi	Called for a rehearing on the ground that the Native Assessor was an interested party and there had been improper conduct on the part of the interpreter which meant that the Native Land Court had granted the Te Kapua block to	The Committee heard extensive evidence from a wide variety of sources, but accepted the Chief Judge's explanation that there were not sufficient grounds for a rehearing. A serious blow to the case of the petitioners was that evidence relating to the title of	No firm conclusion reached. NAC refused to hear evidence on whether or not the Court had reached the

[373] List compiled from the AJHR lists of petitions; of these 17 petitions, three were from Nga Rauru relating to lands shared with the Whanganui district.

Year	Petitioner	Issue	Result-Finding	Subsequent Actions
		the wrong people.	the block was not admitted by the Committee.	wrong judgment, but focused on how robust the processes of the Court and the Chief Judge had been in refusing a rehearing. No rehearing called.
1886	Karaitiana Te Rango and Others of Ngati Tama and Ngati Rohiti	Second petition about subdivision of Rangipo Waiu Block	Hearing postponed and further details not found.	
1886	Arapeta Haeretuturangi	Leasing issues in Murimotu	Hearing postponed and further details not found.	
1888	Henare Tahau and 20 others	Asked for an inquiry into the Okirae reserve where the land had been sold without some owners consent.	The Committee recommended an inquiry.	
1888	Te Kere Ngataierua and others	Interests in Waimarino were sold without their consent.	The Committee examined documents from the Land Purchase Department.	No recommendation made.
1888	Rangitutatangata	Rangitutatangata claimed that he was an owner in Waimarino and that he never signed the deed of sale nor received money, but that his share was sold.	Committee found that his signature was on the deed and he had not presented sufficient evidence in support of his contention. No recommendation made.	
1891	Hone Peti and others	In Puketotara, the block also known as Te Mata was wrongfully taken by the Government	Details of deliberations not found.	Committee referred the petition to the Government.
1894	Wiremu Kauika and Others	Interpreter and Native Agent William Williams defrauded land sellers in the purchase of Kaitangiwhenua of a large sum of money. A royal commission had been held and Williams found to be culpable and was stripped of his office. Kauika now claimed that he had expended 700 pounds in pursuing the matter.	The Committee recommended to the Government that some contribution should be made to Kauika's costs.	
1896	Te Hurinui Tukapua	Names struck off the Waimarino title.		No recommendation made.
1896	Katarina Maihi and 18 others on behalf of Ngati Hekeawai	Names left off title to Waimarino.	The Chief Judge of the Native Land Court advised 'I have already reported on this block in connection with the petition of Te Hurinui Takapua. I can only add that on looking through the lists of names, I find no such hapu as Ngatihekeawai … In any case, I have already stated, the major portion of the Waimarino block has been acquired by the Government and it is too late to	No recommendation made.

Year	Petitioner	Issue	Result-Finding	Subsequent Actions
			raise questions of ownership'.	
1901[374]	Te Wharawhara	The subdivion of Maraekowhai 2 block in 1896 had not been gazetted. The claimants asserted that the land upon which their kainga stood had been wrongly granted to Te Rangiwhakateka and his followers. It appears that the subdivision of Maraekowhai had been made under an old application for subdivision of the parent block Maraekowhai.	the partition was annulled and a rehearing called.	

Source: AJHR's 1872-1900 Native Affairs Committee, LE1 series, ANZ.

The Committee gave careful considerations to most of the petitions and in at least three cases, those of Hoani Rupe in relation to Tauwhare block, Winiata te Puahaki in relation to Te Kapua block, and Rihari Uruteangina in relation to Mangaturuturu, hearings were held with witnesses questioned. In many other cases, written submissions were taken from a variety of witnesses.

A serious criticism that can be levelled against the Native Affairs Committee is the scope of its powers of investigation and recommendation. One aspect of this is illustrated by the case of Hoani Rupe who claimed that the title hearing of the Tauwhare block had not been properly gazetted. The Committee found, correctly that the hearing had been gazetted, but missed the opportunity to examine on behalf of the Government, the broader question of how effective the distribution of the gazette notice to outlying communities of Maori had been.

Other cases where the scope of the inquiries of the Committee might be questioned include Winiata's petition over Te Kapua, and Rihari's petition over Mangaturuturu, where the Committee refused to consider taking evidence on whether or not errors had been made in the granting of title, but confined itself to commenting on the processes adopted by the Court during the hearings in question. For the petitioners in these cases, one of the keys to their establishing that the process had been faulty was the fact that the title had been awarded in a manner contrary to their tikanga.

Te Kapua block is just south of Ngaurukehu outside the boundary of the inquiry district, but it is one where there were significant Ngati Rangituhia issues. The original Te Kapua case before the Native Land Court had taken up 40 days of hearings in 1884. Hone Tumango had been the successful claimant. Appeals for a Native Land Court rehearing had then been refused. Winiata's Ngati Rangituhia chose to pursue the matter through petition to Parliament.

The Te Kapua petition took the Native Affairs Committee several days to hear in two sessions in 1886. About 10 witnesses were examined. The petitioners claimed that the assessor was 'a cousin' of the winning party and that they had objected in writing to his sitting in the case before the hearing. The Judge who had heard the case, Alexander MacKay had no record of this. They asserted that important evidence was not heard and that the interpreter McDonald, who was also acting as a native agent, had an undeclared interest and had harried their witnesses into making mistakes. However, the fact that the two Judges in the original case were both Maori speakers must have counted against this argument. Another argument advanced was that one of the witnesses had been drunk while giving evidence. The petitioners' main argument, however, was that false statements had been made in Court and that, as a result, the title had not been fairly awarded. They also alleged that the successful claimant had changed ancestors mid-case to further his claim.[375]

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[374] This case has been included because, despite taking place in 1901 it relates to events which happened in 1896 and illustrates well one of the ways in which the committee worked.
[375] Native Affairs Committee Petition No 254/85, Petition of Winiata Te Puhaki, LE1/1886/18, ANZ.

Mr Bruce MHR gave evidence that he believed the judges had misinterpreted Maori tikanga. Rangituhia, he argued, were currently living on the land and a right of conquest by Tumango's ancestors had not been validated according to custom because they had retired after their military victory. The Native Affairs Committee, however, refused to rule on issues of title. The issue thus became confined to the accuracy of the Court record, which had been presented to the Chief Judge as part of the application for rehearing and on this issue the Committee accepted the argument of the Native Land Court Chief Judge that a sufficient case had not been put for a rehearing on these grounds.[376]

It would be wrong to suggest that the Native Affairs Committee should have filled the role of an appellate Court for the Native Land Court. However, the Committee was unsuited to the role of an appellate body for judicial cases as it refused to revisit issues of title.[377] This suggests that some appellate body with these powers would have better served Maori. This situation appears to have been remedied through the Native Land Court Act 1894 by the establishment of an appellate court.[378]

The Committee's investigations reveal that the Native Land Court and the Native Affairs Department both considered the fact that a block had already been sold to be a legitimate reason, to not investigate an alleged injustice. This was the case with the Waimarino petition of Katarina Maihi where the Chief Judge gave evidence that 'I have already stated, the major portion of the Waimarino block has been acquired by the Government and it is too late to raise questions of ownership'. A similar set of circumstances occurred in Mangaporau block where title was awarded in 1877. In 1938, after the issue had festered for sixty years, two petitions were filed on behalf of Nga Rauru claimants who felt that their ancestors had been absent from the title hearing and had not been awarded

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[376] Native Affairs Committee Petition No 254/85, Petition of Winiata Te Puhaki, LE1/1886/18, ANZ.
[377] Research by Michael Belgrave and Grant Young on Maori land issues brought before the superior courts makes a similar point in that the superior courts were very reluctant to revisit issues relating to title. Michael Belgrave and Grant Young 'Native and Maori Land Legislation in the Superior Courts, 1840-1980' draft paper, used with permission of the author.

their due share in the block. A third petition drew the response from the Committee that 'the block was sold in 1878 and it does not seem that anything can be done'. This argument was apparently accepted by the Committee.[379]

5.4.1 The Rawhitiroa Case

The enormity and complexity of the legal and political bureaucracy that confronted Maori in attempting to overturn an award is indicated in the case of the Rawhitiroa block. Whanganui Maori were particularly upset about the finding in the Rawhitiroa title investigation case, which came before the Court in 1884. They were left off the title which had been awarded principally to the Nga Rauru claimants headed by Wiremu Kauika. Three applications to the Chief Judge of the Native Land Court for a rehearing, made by Te Keepa, Taiwiri te Wheteke and Te Kaiaroto Hamuera were all refused in 1885.[380]

Tawhiri Te Wheteke then petitioned Parliament on the matter.

> PETITIONER states that a block of land called Rawhitiroa, in the Wanganui District, was heard by the Native Land Court without being properly gazetted, in consequence of which she was unable to be present. She also complains that the Interpreter performed his duty improperly, and that the Judges did not give their judgement in the proper and ordinary way. She prays for a rehearing, or for such compensation as may seem just.[381]

As Craig Innes states in his block narrative, in 1885, the Committee reported that it 'regrets that the time at its disposal has not been sufficient to enable it to make such inquiries as would justify it in reporting an opinion on the subject matter of this petition'.[382] The petition was considered again in 1886.[383] On this occasion, the response was given that the Native Land Court Bill before Parliament would offer the petitioners a

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[378] Alan Ward, *An Unsettled History,* Bridged Williams Books, Wellington, 1999, p. 152.
[379] Berghan, p. 234.
[380] Innes, p. 61.
[381] AJHR 1885, I2, No. 350, p. 33, cited in Innes, p. 62.
[382] Ibid.

legal recourse. This turned out not to be the case as there was no new provision in the Native Land Court Act 1886 which applied to this set of circumstances.[384]

In 1887, the Crown applied to have the interests it had acquired in the block from Nga Rauru grantees ascertained and partitioned out. Still awaiting resolution to the Whanganui petition, Poari Kuramate and Hohepa Te Riri appeared in Court and objected to the partition being made. The Judge refused their plea, but suggested that the objectors could petition Parliament if they were unhappy with the decision.

Keepa Tahukumutea also argued that he had been advised by the Native Minister to file a petition, which he had done and that he objected to an order being made for the Crown before the petition had received a response. The Court overruled this objection and ordered that the substantial portion of the block be vested in the Crown. Whanganui Maori filed a further unsuccessful objection to the deposited partition plan.[385] The Crown was thus awarded 35,300 acres of the block and 66 non-selling grantees retained 1500 acres.[386]

A last effort was made to put the case for Whanganui interests in the block in a clumsily translated petition of 1890 from Ihakara Rangiahua Tarakapi and others, which declared that Nga Rauru had 'thievishly' sold the Whakaihuwaka, Rawhitiroa and other blocks of which Whanganui were owners, to the Crown. It asked that the Crown not sell them on to Europeans. The petitioners asked, once again for consideration of the Whanganui case. The petition concluded with an affirmation of hope in the possibility of a legal remedy.

> When the cause of ones illness is discovered the proper cure is administered and the illness is cured. If therefore the land is "mate" the proper cure must be applied and that cure is the law. It is for that

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[383] AJHR 1886, I2, No.350, p. 11, cited in Innes, p. 62.
[384] Innes, p. 62.
[385] Innes, p. 72.
[386] Innes, p. 61.

> law to inquire into the nature of the complaint and see whether it is curable or not.[387]

In response, Sheridan noted to Lewis that the land had passed through the Native Land Court and 'sold long ago some to Europeans, some to the Government.'[388] Once again no favourable response was given to the petitioners. Lewis minuted the Native Minister that he recommended the writer be informed that the 'titles were settled by the Native Land Court according to law and that the matter cannot now be reopened.'[389]

A month later Rangiahua Tarakapi wrote again contending that the reason that Whanganui had not been present at the title hearings for the blocks in question was that Nga Rauru had brought them forward to Court under different names from those with which Whanganui were familiar.

> they were thievishly put through by Ngarauru, inasmuch as they gave the said blocks other names. The following are the names given by the ancestors to these blocks and are therefore their proper names. Mangapapa No.2 is Rakautihitihi and Rawhitiroa Nos 1 and 2 and Rawhitiroa Whakauahi No.2 are really Kaharoa, Ruangarahu and Mangamaire. The name Rawhitiroa was intended to blind the Whanganui tribe lest their fraud should be discovered.[390]

He continued to appeal that the matter should be reopened:

> Friends, Mr Lewis and Mr Mitchellson, your last word in your letter is to the effect that this question of Rawhitiroa and other blocks cannot now be reopened. Why cannot this be done and why cannot the law deal with a person who has committed a fraud? My decided word is, it can be done and that it is a matter which can easily be dealt with. Let not the Government trample this matter under their feet…[391]

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[387] cited in Berghan, p. 215. Spelling errors in transcription corrected.
[388] Sheridan to Lewis, 8 July 1890, MA/MLP 1890/283, ANZ. cited in Berghan p. 219.
[389] Cite in Innes, p. 75.
[390] cited in Innes, p. 75.
[391] cited in Innes, p. 75.

Lewis's recommendation to the Native Minister at this stage was: 'I do not see anything to be gained by continuing this correspondence.'[392]

To summarise, having been refused in three attempts to seek a rehearing through the Courts, Whanganui Maori had petitioned Parliament. The first time, the Committee was too busy to hear their petition. The following year they had been told that new legislation would give them a legal recourse and on returning to Court, but this was incorrect. The Native Land Court now refused to entertain their plea and had sent them back to Parliament. The Crown then sold the block and the next time that a petition was sent in relation to the block, officials reported that nothing could be done because the block had been sold.

5.5 Conclusions

Restrictions on alienation at first glance, appear to have offered a means for the Crown and Whanganui Maori through the Native Land Court processes, to agree on which lands should be set aside and protected for the future of communities. The system of individualised tenure of restricted lands, however, undermined this. Where land was set aside through restrictions as communal lands, the Crown or private purchasers could still purchase the shares of individuals one by one until they had acquired the shares of a sufficient number of owners to alienate. As a result, restricted lands were continually alienated throughout the Native Land Court period.

Restrictions were misunderstood and became progressively easier to remove through the late 1880s and 1890s, which is arguably when the Maori land base was dwindling to a point where reserves were most needed. The ease with which restrictions could be removed became almost absurd in 1893 when the Crown, which was responsible for 94 percent of purchases in the 1890s, granted itself formal exemption from complying with restrictions on land alienation. It is little wonder that the proportion of blocks which had been restricted remaining in Maori hands at 1900 was little higher than the proportion of unrestricted lands.

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[392] cited in Innes, p. 76.

Whanganui Maori protests over land alienation issues took a number of forms. Applications for rehearings appear to have sometimes offered Whanganui Maori an opportunity to have some errors made in Court hearings corrected, although the absence before 1894 of an independent judicial appeal court for Maori land matters other than the Native Land Court itself left Maori little recourse if re-hearings were refused by the Court's Chief Judge.

Data about the effectiveness of the Trust Commissioners is incomplete. What is apparent, however, is that despite the diligence of Commissioner Heaphy, a narrow brief and sparse resources undermined the ability of these men to effectively act in a protective role for Whanganui Maori in Nineteenth Century Whanganui.

Petitions to Government and Parliament offered a last resort for Maori of the Whanganui district aggrieved over land transactions. Petitions were generally carefully and diligently considered by the Committee and sometimes resulted in recommendations in their favour being made to Government. However, petitions were considered within very limited parameters. Like the Trust Commissioners, the Native Affairs Committee appeared to be constrained in the terms in which it could consider matters which had been before the Court. As a result, they referred many matters back to the judiciary or refused to take evidence on crucial aspects of cases such as those relating to title. The Committee appears to have accepted the fact that land had already been sold as a reason not to pursue matters was another failing of the process that the Land Purchase Department exploited on more than one occasion.

In sum, each of the measures which were in place to protect the interests of Maori in land dealings offered at least some degree of protection, but limits to the jurisdiction and powers of each of them, combined with under-resourcing and complicated procedures meant that none of them was entirely effective. J E Murray's conclusion that the Trust Commissioners were expected to 'protect, but not with too much rigour' could equally

well apply to the restrictions on alienation and the investigations of the Native Affairs Committee. In sum, each of the Crown's safety nets had holes in it.

Conclusions

Between 1865 and 1900, the Maori land base in the Whanganui district fell from 2.17 million acres to 851,000 acres. In the space of a little over a generation, Whanganui Maori had lost around 61 percent of their total land holdings. Of the 1.40 million acres purchased, 86 percent passed into the hands of the Crown. For this reason alone, careful consideration is required of the role of the Crown in this massive land loss.

The Crown's role in land loss in this period cannot be fully understood without an appreciation of four key aspects of the land alienation system. These are; the laws governing the Native Land Court and its operations; the policies and practices of the Crown's 'Native' land purchase officers; the relationship between the Crown and private individuals purchasing Maori land and; the effectiveness of the mechanisms which the Crown enacted to protect Maori in their land dealings and respond to their complaints.

The Native Land Court system consisted of a panoply of ever changing laws and regulations. The most important aspects of the Court's operations which contributed to land loss in Whanganui were that it created forms of title for Maori land that made it easier for Crown and private purchasers to alienate it. One of these was the 'ten owner rule', effectively in force from 1865 to 1873. This practice of the Court, which applied while 21 land blocks had title determined, restricted the number of names which could be placed on the title to a block of land and effectively excluded some of the people who would be considered owners of the land according to tikanga from its new legal title. This smaller number of grantees could and did make it easier for Crown purchasers to alienate the land.

From 1873, the Court's system of conferring a title to descendants of the people it adjudged to be the ancestors of a block, also created a form of title that facilitated alienation. It did this by apportioning alienable title to blocks over large numbers of individuals, none of whom had a defined share of land on the ground, but any of who could alienate their share without reference to the broader community of owners. The fragmentation of titles created by unworkable succession laws, further reduced the ability of communities of Maori to manage blocks of land collectively.

At the same time, the Native land laws allowed any owner or small group of owners, no matter how small their stake in a block to apply to bring it before the Court for title investigation and this made it almost impossible for Maori communities which did not wish to accept the radically different form of land title that the Court conferred, to retain their land under customary authority.

Despite the fact that they might not be willingly appearing in Court, all owners in blocks of land which appeared before the Native Land Court were forced to bear the often substantial costs of survey and court fees. Added to these direct costs of the process were the very large financial, social and economic costs of travelling to towns to attend sittings of the Court. Travel, accommodation and food in town were relatively expensive for communities of Maori, and the sometimes prolonged sittings of the Court which stretched in some years to 200 days, and totalled at least 1548 days from 1866-1900, exacerbated the burden of these costs to a point where they must have amounted to tens, or more likely hundreds of thousands of pounds.

During court sittings, which were usually held in Wanganui town, Maori were often forced to live in cramped and sometimes unhygienic conditions which contributed to disease and even deaths. At the same time, prolonged absences from normal economic activities, such as farming, caused further economic hardship and debt and contributed to a retardation of development of Maori agriculture in the district. There can be little doubt, therefore, that the costs associated with attending the Court as well as the new system of title that the Court conferred contributed to the alienation of lands in the late nineteenth century.

The Government's land purchasing officers took full advantage of the forms of title and the costs associated with the Court system. Purchasing of Maori land on behalf of the Crown in Whanganui was carried out by government land purchase officers and commissioned agents at various times. The tactics of these men in securing Whanganui lands were many and varied. In the period from 1866 to 1880, the widespread payment of pre-title-investigation advances which committed land to sale before it had formally been awarded to anyone occurred in relation to at least 28 blocks in Whanganui. The advances recorded against each of these blocks would have consisted of many, sometimes dozens of payments to individuals or small groups of individuals.

The payment of advances encouraged a climate of rivalry, jealousy and fear in which Maori came to see accepting advances as a first step to gaining an award of title. Advances allowed the Crown to deal, if it wished, in secret and with individuals rather than communities or community leaders and this undermined the possibility of collective management of blocks once title had eventually been awarded. It also allowed the Crown to negotiate prices with small groups of willing sellers, and in the partial Crown monopoly conditions which existed over many blocks in the district, this made it difficult for later sellers to negotiate increased prices.

As the Native Land Court process evolved, Crown purchase tactics evolved with it. In the period after 1880, as Crown policy turned away from advances, the Crown moved more frequently towards the practice of serial purchasing of the interests of individuals and partition. This also facilitated sales and often effectively undermined any attempt at collective management of blocks. Crown agents' payments to influential Maori for services in securing the signatures of their people on deeds of transfer, the exploitation of debt and collusion with private creditors to secure lands are other questionable practices on the part Crown purchasing agents.

While initially welcoming private purchasing of Maori land, the Crown through the 1870s, 1880s and 1890s, guarded its role as a land purchaser against competition from private parties with increasing vigour. The restrictions it imposed on private alienations of Maori land took a number of forms. They consisted of either restrictions specific to individual blocks or to large areas. The Native Land Purchases Act 1877 forbade private parties from dealing in areas of land which the Crown had declared that it was negotiating to purchase, and vast areas of land in Whanganui were alienated while this legislation was in force.

The Native Land Laws Amendment Act 1883, then made it illegal for private parties to negotiate the purchase of Maori land before or for 40 days after it had been before the Native Land Court for investigation of title. This measure could been misinterpreted as an effort to protect the interests of Maori. However, the Crown, by far the largest purchaser of Maori land at the time, was exempted from this restriction. This suggests that these laws were more effective at deterring competition with Crown purchasers and

preventing Whanganui Maori from being able to raise capital from their lands other than by selling to the Crown than they were as a protective mechanism for Maori.

The most significant restriction on private purchasing in Whanganui was the Native Land Alienation Restriction Act 1884. This Act granted the Crown a statutory monopoly over the purchase of more than one million acres of Maori land in the upper Whanganui district for the 16 years it was effectively in force. As well as suppressing competition for lands made valuable by the impending arrival of the railway, the Act prevented Maori from being able to raise money from their lands through leasing them or selling timber. This, in turn, probably contributed to sales of land to the Government. In cases where the Government refused requests to lease Upper Whanganui lands privately, this was followed rapidly by sales to the Government. The loss of a high proportion of the Whanganui lands around the railway line by the time it opened reduced any benefit that Maori would have subsequently derived from the increase in the value of lands within the railway exclusion zone.

While collectively these measures never entirely stopped private purchasing in Whanganui, they severely restricted its scope, reduced competition and the possibility of marked driven higher prices for those Maori willing to sell their lands. At the same time they reduced the possibility of Maori raising capital from their lands by other means, channeling them towards alienating them.

Protests over land alienation issues from Whanganui Maori and attempts to prevent land alienation, outside of the political arena, took the form of attempts to boycott the Court, letters of complaint, and engagement with Government officials at hui. When these failed, the obstruction of survey provided a means of action which slowed, rather than stopped alienations which hapu and iwi disagreed with.

There were also ‘official’ channels established to prevent and provide a means of protest over land alienations. These included seeking to have restrictions placed on their land to control or prevent alienations. Whanganui Maori also had a right to appeal decisions before the Court and apply for a rehearing. Trust Commissioners, under the Native Land Fraud Prevention Act 1870, were appointed for the express purpose of preventing unjust alienations of Maori land and Maori had the right to petition Parliament in relation to land issues.

A small number of Whanganui Maori were able to effect changes to awards which they were unsatisfied with through the mechanism of Native Land Court rehearings, but the lack of a Native Land Appeal Court before 1894 reduced the options for those refused a rehearing by the Court itself.

Restrictions on alienation were largely ineffective, and lands which had been restricted had a rate of alienation that was scarcely lower than that of other Maori lands. Sixty percent of restricted land was alienated before 1900. One reason for this high rate of alienation is that, throughout the Native Land Court period, restrictions were never absolute and the Crown made it progressively easier to get around them. Indeed, in 1894, it exempted itself completely from complying with alienation restrictions.

There were at least 19 petitions referred to Parliament's Native Affairs Committee relating to Whanganui Maori land matters from 1865-1901. The Native Affairs Committee did make some recommendations to the Government in favour of Whanganui Maori appellants, but it was also constrained in its protective role by limits to its jurisdiction. Information about Trust Commissioners and their investigations is patchy, but there is evidence that, while they made at least one decision that benefited Whanganui Maori, they too were restricted by severe limits on resources and limits to their jurisdiction.

While each of these protection mechanisms could sometimes serve Maori in land dealings, none of these bodies was entirely sufficient to protect Maori from injustices relating to the alienation of their lands.

Individually, the Native Land Court, the actions of the Native Land Purchasing Department, the regulation of private purchasing and flaws in the Crown's protection mechanisms for Maori in their land dealings, all contributed individually to the alienation of Maori land in late nineteenth century Whanganui. Their effect can only be fully understood, however, when they are considered cumulatively as a system. If the form of title that the Court created alone was harmful to Maori landowners, when it was mixed with rapacious land purchasing agents, excessive and sometimes unfair costs of the court process, debt, atomizing laws governing succession, anti-competitive

legislation and ineffective protection mechanisms, the effect on Maori communities and Maori landholdings in Whanganui district was devastating.

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Appendix A: Methodology for calculating the number of days on which the Maori Land Court held hearings.

To calculate the number of days on which the Maori Land Court held hearings concerning blocks of land within the Whanganui district, every date recorded in the Maori Land Court Minute Books that are included in Paula Berghan's document bank has been recorded. The difficulty with this approach is that a number of Maori Land Court hearings have not been completely covered or have been omitted entirely in Berghan's copies of the Minute Books. Considering the limited time-frame for the completion of this research, it was not possible to access all the Minute Book records that do not feature in Berghan's document bank. Therefore, I chose to access only the records of those hearings which are likely to have taken place over a relatively large number of days. Where a hearing has been recorded in the Auckland University's Maori Land Court Minute Book Database and the total number of pages is equal to or exceeds twenty pages and provided it has not already been substantially covered by Berghan[393], I have attempted to access copies of the Minute Books. Upon accessing the Minute Books, I have noted all the dates (prior to 1 January 1910) on which relevant hearings have taken place. Since a number of Minute Book records have not been accessed, the figure provided for the total number of days on which the Maori Land Court held hearings is likely to be very conservative.

[393] Substantially is taken to mean that half of the pages of the minute book taken up with the Court hearing have been covered.

Appendix B: Table of Court Costs Estimated for Each Block in the Whanganui District and Methodology

Block Name	Notes	No. of Maori Land Court hearings (prior to 1910) from MLC database	No. of hearings covered by Paula Berghan	Court costs covered by Paula Berghan	No. of court hearings covered by Craig Innes	Court costs covered by Craig Innes	No. of hearings covered in available Maori Land Court Minute Books	Court Costs covered in available Maori Land Court Minute Books	Court costs covered in MLIS	Assumed costs for other hearings*	Estimated (or known) total costs			Total Costs (decimal £)	No. of kaikorero
Ahuahu		9	2	£7. 2/						£7	14	2		14.1	10
Arahaunui (Omaunu)		4	1	£3						£3	6			6	8
Aramoho		12	0	N/A						£18	18			18	17
Ararewa		?	N/A	N/A					£3. 13/	N/A	3	13		3.65	?
Aratawa		1	1	£4. 2/						N/A	4	2		4.1	1
Aratowaka		4	4	£5						£1	6			6	9
Aratowaka no. 2	See Aratowaka													0	
Atuahae		1	1	£6						N/A	6			6	2
Heao		1	1	£6. 1/						N/A	6	1		6.05	7
Huiakama	See Mangaotuku													0	
Huikumu		1	1	£1. 3/						N/A	1	3		1.15	3
Kahakaha		6	4	£22. 18/						£2	24	18		24.9	17

Kai Iwi		69	33	£95. 13/ 6						£43	138	13	6	138.675	113
Kaikai-Ohakune		1	1	£3						N/A	3			3	3
Kaitangata		11	3	£21. 12/						£10	31	12		31.6	37
Kaitangiwhenua		2	N/A	N/A			2	£4		N/A	4			4	28
Kaiwaka		6	5	£14. 15/						£1	15	15		15.75	32
Kaiwhaiki		12	7	£47. 11/						£5	52	11		52.55	66
Kaiwhatu & Kaotanui		1	1	£3						N/A	3			3	3
Kaninihi														0	
Karewarewa 1 & 2		4	4	£8. 4/						N/A	8	4		8.2	13
Kauaeroa		1	0	N/A						£3	3			3	13
Kauarapaoa		1	1	£2						N/A	2			2	1
Ketetahi		?	N/A	N/A					£1. 4/	N/A	1	4		1.2	?
Kirikau		3	3	£4						N/A	4			4	5
Koiro		3	3	£10. 3/						N/A	10	3		10.15	1
Kokomiko		4	4	£9						N/A	9			9	13
Kuamoa														0	
Mahuia		2	N/A	N/A			2	£2. 2/		N/A	2	2		2.1	1
Mairehau		3	3	£14. 12/ 6						N/A	14	12	6	14.625	8
Mairekura		6	0	N/A						£8	8			8	9
Makirikiri		14	3	£7						£25	32			32	63
Makirikiri 2	See Makirikiri													0	
Makowhai		5	5	£4. 9/						N/A	4	9		4.45	3
Makuao		1	1	£3						N/A	3			3	2
Mangaere		1	N/A	N/A			1	£2		N/A	2			2	1
Mangamahu		4	4	£2						N/A	2			2	6
Manganuiotahu		2	2	0						N/A	0			0	16
Mangaone		3	2	£5. 12/						£1	6	12		6.6	10

Mangaotuku		4	N/A	N/A			4	0		N/A	4			4	3
Mangapapa 1		14	14	£11. 2/						N/A	11	2		11.1	34
Mangaporou		1	1	£8						N/A	8			8	11
Mangapukatea		2	2	£3						N/A	3			3	1
Mangawhero East		23	8	£23. 1/						£19	42	1		42.05	53
Mangawhero West	See Mangawhero East													0	
Maraekowhai		13	13	£10. 8/						£6	16	8		16.4	13
Maraetaua		16	0	N/A						£31	31			31	65
Maramaratotara		3	0	N/A						£9	9			9	10
Mataihiwi		3	3	£5						N/A	5			5	6
Mataimoana														0	
Matatara and Makirikiri	See Makirikiri													0	
Matataranui		2	2	£6. 2/						N/A	6	2		6.1	4
Matawhitia		1	1	£8. 6/						N/A	8	6		8.3	5
Maungakaretu		29	15	£8. 3/						£16	24	3		24.15	49
Morikau		7	2	£9. 15/ 6						£5	14	15	6	14.775	43
Motuhou		7	4	£3. 6/						£5	8	6		8.3	17
Motuopuhi														0	
Murimotu		28	N/A	N/A			28	£49. 9/ 8		N/A	49	9	8	49.48333	69
Ngaonui														0	
Ngapakihi		5	2	£4. 16/						£7	11	16		11.8	25
Ngaporo		3	1	£4. 8/						£6	10	8		10.4	6
Ngapukewhakapu		21	4	£2. 6/						£19	21	6		21.3	22
Ngapuna		3	N/A	N/A			3	2/		N/A		2		0.1	4
Ngarakauwhakarara		11	2	£2						£13	15			15	26

Ngaturi		3	2	£4						£1	5			5	8
Ngaurukehu		35	18	£22. 6/						£23	45	6		45.3	36
Oahurangi		3	1	0						£2	2			2	13
Ohineiti		1	1	£2						N/A	2			2	1
Ohotu		24	9	£46. 3/						£14	60	3		60.15	140
Ohoutahi		2	2	£4						N/A	4			4	1
Ohuanga North		13	N/A	N/A			12	£2. 6/		£1	3	6		3.3	8
Ohuanga South	See Ohunga North													0	
Ohura South		2	N/A	N/A			2	£1. 5/		N/A	1	5		1.25	2
Okahukura		18	14	£38. 6/						£12	50	6		50.3	26
Okehu		6	N/A	N/A			6	£7. 15/		N/A	7	15		7.75	6
Okirae		5	5	£1						N/A	1			1	4
Omaru		3	3	£6. 12/						N/A	6	12		6.6	15
Opatu		2	2	£4. 9/						N/A	4	9		4.45	3
Oruaanga		6	6	£9. 13/						N/A	9	13		9.65	5
Otaika		3	0	N/A						£9	9			9	9
Otamoa No. 2		8	7	£3. 2/						£1	4	2		4.1	20
Otamoa No.1	See Otamoa													0	
Otaranoho		1	1	£2. 4/						N/A	2	4		2.2	3
Otaupari		1	1	£5						N/A	5			5	1
Otiranui		15	3	£28. 14/						£19	47	14		47.7	35
Otuangiangi		1	1	£4						N/A	4			4	6
Otumauma		7	0	N/A						£18	18			18	33
Owhangaroa		3	3	£7. 6/						N/A	7	6		7.3	3
Paetawa		4	0	N/A						£10	10			10	5
Pahautuhia		8	N/A	N/A			8	£11. 2/		N/A	11	2		11.1	8
Papakai		1	N/A	N/A			1	£4		N/A	4			4	0
Parapara		18	7	£34						£13	47			47	30
Parapara No.2	See Parapara													0	

Paratieke		1	1	£2						N/A	2			2	9
Parihouhou		1	1	£3						N/A	3			3	6
Parikawau		3	1	£2. 14/						£4	6	14		6.7	11
Parikino		5	3	£17. 11/						£2	19	11		19.55	14
Pariroa		4	N/A	N/A			4	£20. 15/		N/A	20	15		20.75	19
Patupa		3	3	£2						N/A	2			2	15
Pikopiko 1		3	3	£10						N/A	10			10	3
Pikopiko 2	See Pikopiko 1													0	
Pikopiko 3	See Pikopiko 1													0	
Pipiriki Township		3	1	£7. 3/						£2	9	3		9.15	13
Pohokura		1	N/A	N/A			1	£2. 2/		N/A	2	2		2.1	2
Pohonuiatane		18	12	£39. 13/						£6	45	13		45.65	32
Pohuehue		1	1	£3						N/A	3			3	2
Popotea		3	2	£5. 12/						£1	6	12		6.6	7
Porewa		1	1	£3						N/A	3			3	3
Poronui		1	1	£2						N/A	2			2	8
Poutahi		1	0	N/A			1	£16			16			16	?
Poutama		4	2	£2						£6	8			8	6
Puehurarangi		6	4	£4						£2	6			6	28
Pukehika		2	0	N/A						£6	6			6	10
Pukekowhai		3	3	£15						£1	16			16	23
Pukenui		13	2	£2						£21	23			23	34
Pukeotara		36	4	£10. 14/						£40	54	14		54.7	91
Puketarata		17	7	£19. 11/						£23	42	11		42.55	74
Pukewhakapu		14	N/A	N/A			14	£23. 14/ 1		N/A	23	14	1	23.70417	22
Pukohu		3	3	£3						N/A	3			3	5
Pungarehu		5	2	£3						£5	8			8	11
Pungataua		2	2	£2. 2/						N/A	2	2		2.1	1
Raetihi		17	8	£31. 13/						£9	40	13		40.65	53

Rakato		2	1	0						£1	1			1	6
Raketapauma		33	14	£54. 13/ 6						£24	68	13	6	68.675	33
Ramahiku		4	4	£9. 16/						N/A	9	16		9.8	23
Ranana		14	6	£11. 2/ 9						£8	19	2	9	19.1375	60
Rangataua		21	7	£10. 14/						£20	30	14		30.7	47
Rangipo North		13	N/A	N/A			13	£4. 9/		N/A	4	9		4.45	4
Rangipo Waiau (Rangipo Waiu)		26	N/A	N/A			25	£51		£5	56			56	47
Rangitatau		28	10	£30. 4/						£18	48	4		48.2	49
Rangitatau-Waitotara	See Rangitatau													0	
Rangiwaea		47	16	£59. 6/						£32	91	6		91.3	54
Rangiwaea-Otaroro	See Rangiwaea													0	
Rangiwaea-Tarere	See Rangiwaea													0	
Raoraomouku		3	2	£7						£3	10			10	2
Raoraomouku No.2	See Raoraomouku													0	
Rawhitiroa		7	N/A	N/A			7	£11. 16/		N/A	11	16		11.8	7
Retaruke		7	7	£16. 2/						N/A	16	2		16.1	12
Ruahine		3	2	£6						£3	9			9	14
Ruapehu		4	N/A	N/A			4	£1		N/A	1			1	0
Takahuri		5	5	£8						N/A	8			8	8
Taku	*All hearings post-1909													0	
Taonui		66	2	£73. 8/						£66	139	8		139.4	121
Taoroa		2	2	£4. 16/						N/A	4	16		4.8	3
Tataramoa		4	0	N/A						£6	6			6	2
Tauakira		23	5	£34. 6/						£18	52	6		52.3	34
Tauangatutu		4	4	£8. 2/						N/A	8	2		8.1	4

Taumatamahoe		14	4	£26						£7	33			33	24
Taurewa		5	5	£27. 8/						N/A	27	8		27.4	37
Tautarawhata		2	2	£7. 4/						N/A	7	4		7.2	5
Tauwhare		3	2	0						£1	1			1	2
Tawhai North		2	N/A	N/A			2	0		N/A				0	0
Tawhai South	See Tawhai North													0	
Tawhitinui		7	0	N/A						£15	15			15	46
Tawhitoariki		1	1	£4						N/A	4			4	2
Te Iringa		1	N/A	N/A			1	0		N/A				0	1
Te Korito		1	1	£3						N/A	3			3	4
Te Maire		6	5	£7. 9/						£1	8	9		8.45	22
Te Rimu		6	4	£4						£2	6			6	20
Te Ruanui		22	11	£35. 8/						£16	51	8		51.4	54
Te Tuhi		14	12	£14. 11/						£4	18	11		18.55	68
Tokaanu		7	N/A	N/A			7	£12. 7/		N/A	12	7		12.35	13
Tokomaru		2	1	£2						£5	7			7	4
Tokorangi		3	3	£27. 3/						N/A	27	3		27.15	21
Tongariro		3	N/A	N/A			3	£6		N/A	6			6	0
Tunuhaere		1	1	£6						N/A	6			6	3
Tunuhaere No. 2	See Tunuhaere													0	
Tupapanui		7	4	£10. 19/						£5	15	19		15.95	23
Umumore		?			3	£3. 19/				N/A	3	14		3.7	3?
Upokongaro		3	2	£4						£1	5			5	7
Upokongaro No.2	See Upokongaro													0	
Urewera		11	1	£12. 12/						£13	25	12		25.6	19
Waharangi		10	6	£34. 15/ 6						£6	40	15		40.75	57
Waiakake		1	1	£7. 15/						N/A	7		6	7.025	2
Waimanu		5	N/A	N/A			5	£4. 13/		N/A	4	13		4.65	6
Waimarino		33	N/A	N/A			32	£99. 12/ 6		£5	104	12	6	104.625	75

Waimato		1	1	£4						N/A	4			4	2
Waipakura		6	5	15. 16/						£1	16	16		16.8	22
Waipapa		5	N/A	N/A			5	£2		N/A	2			2	
Waipuna		15	6	£9						£11	20			20	31
Waipuna-Puharakeke	See Waipuna													0	
Waitotara		2		N/A			N/A	£2		N/A	2			2	14
Whakahuruawaka		4	N/A	N/A			4	7. 10/		N/A	7	10		7.5	9
Whakaihuwaka		16	7	£36. 16/						£13	49	16		49.8	62
Wharepu		11	0	N/A						£17	17			17	52
Whataroa		2	1	£3			1	£1		N/A	4			4	21
Whataroa No. 2	See Whataroa													0	
Whitianga		11	6	£20. 14/						£13	33	14		33.7	52
TOTALS		**1317**	**506**											**2700.825**	**3220**

Methodology for calculating the costs directly related to the Maori Land Court

Paula Berghan's document bank does not contain records for a number of Maori Land Court hearings relating to blocks of land within the Whanganui district. A simple comparison of the records (by district) contained in the Maori Land Court Minute Books database with the records contained in Paula Berghan's document bank, reveals a number of discrepancies. Where there is record of Maori Land Court hearings having taken place and they have not been covered in Paula Berghan's document bank, certain assumptions have been made about the costs incurred by Maori during these hearings. The assumed costs according to the type of hearings are as follows:

- For a 'title investigation' hearing there is an assumed minimum cost of £3 (£1 for the Court Investigation, £1 for the issuing of certificate of title and £1 for the issue of a Crown Grant). These figures are derived from Paul Goldstone's study of court costs in the Wairarapa district (1866-1882) and are consistent with the findings of Bruce Stirling.[394]
- For a 'Succession' hearing there is an assumed minimum cost of £1. According to Goldstone in all succession hearings prior to 1880, £1 was charged for each order and this was increased to £1.2 for each order from 1882 onwards. Preliminary investigations of the Maori Land Court Minute Books for the Whanganui district suggest that £1 per order remained the standard fee in this area at least up until 1909, which is the final year of this survey.
- For a 'Partition' hearing there is an assumed minimum cost of £1 per subdivision. Preliminary investigations of the Maori Land Court Minute Books for the Whanganui district suggest that £1 was the standard cost for each subdivision. Therefore, where more than one land block is recorded in a reference to a 'Partition' hearing, contained in the Maori Land Court Minute Books database, the cost of £1 has been assumed for each.
- For an 'Appeal Partition' hearing or a 'Rehearing' there is an assumed minimum cost of £5. This figure is based on preliminary investigation of the Maori Land Court Minute Books and is supported by the findings of Bruce Stirling.[395]

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[394] Paul Goldstone, 'The Native Land Court in the Wairarapa', Crown Law Office, 2004, p. 96. Bruce Stirling, 'Wairarapa Maori and the Crown', p. 311.
[395] Stirling, p. 312.

- For all other types of hearing there is an assumed minimum cost of £1. According to the Native Lands Act 1865, £1 was required 'on investigation of any claim or trial of any matter'.

All of the assumed costs are based on estimates and therefore, are only approximate figures. These estimates are conservative and the actual costs for Maori, directly related to the Courts, are likely to be greater than is reflected in the table.

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Nau te rourou, naku te rourou ka ora te manuhiri. Ka nui te mihi ki a koutou katoa.