WAI 48

Preliminary Historical Report

Wai 48 and related claims

Whanganui ki Maniapoto

Alan Ward

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Wai 48 and others: Whanganui ki Maniapoto Land Claims

Preliminary Historical Report to the Waitangi Tribunal

I THE NATURE OF THE CLAIMS AND GENERAL HISTORICAL BACKGROUND

1. The claims

(a) *This preliminary historical report was commissioned by the Waitangi Tribunal in October 1990 to provide a connected historical background and survey relating to a number of claims affecting the upper Whanganui, Murimoto-Rangipo, Tuhua, Waimarino, National Park and the King Country district north to Kawhia and the Puniu River. These claims are grouped as Wai-48 and related claims. The claims did not then include the 1848 Whanganui purchase by the New Zealand Company, though an amended statement of claim may refer to it and to other specific blocks.*

(b) *The claims as at October 1990 embraced two main areas of possible breach of the Treaty:*

(i) *The compulsory taking of Maori land by the Crown for various purposes such as the Main Trunk Railway, national parks and Native Townships, involving loss of land without consent and with inadequate or no compensation.*

(ii) *The acquisition by the Crown of vast areas of land through purchase of individual Maori interests, piecemeal, and frequently before the land had passed through the (then) Native Land Court, rather than through the 'free and intelligent consent' of Maori hapu or iwi, that this was in breach of the rangatiratanga guarantee of the Treaty generally and of the Rohe Potae agreements of 1883-4 specifically, and to the detriment of the Maori people affected.*

(iii) *A related issue is the cost to Maori of surveys and legal expenses involved in the Native Land Court process - the only process available to Maori to secure recognition of their titles by the received law. (For details see claims Wai 48, Wai 37, Wai 81, Wai 73, Wai 50, Wai 146 and Wai 151, together with amended particulars of claim under 'Wai 48 and others').*

2. *The preliminary report*

For the 260-300 hours of work commissioned this report cannot hope to involve exhaustive research of the many complex issues raised, affecting most of the central North Island and a very large proportion of the Maori people. It is intended rather to provide a connected historical framework against which the various particular claims can be viewed, and further researched in detail. In the time available, reliance has mainly had to be placed on published sources, but some unpublished documents have been used and further lines of research indicated. Main focus has been given to the operation of the Native Land Acts and the Native Land Court since it was through them that the Crown acquired most of the land the subject of these claims. The evidence read allows some fairly firm statements to be made - statements which generally support the claimants' position. These are nevertheless my preliminary opinions. My fully considered opinions must await a more exhaustive survey of the evidence.

3. *The iwi mainly affected*

(a) *It is not, I believe, primarily the province of a Pakeha, document-based historian, to describe the traditional Maori groups in relation to the land; that must come from the people themselves. But insofar as oral statements by the people themselves were recorded in nineteenth century letters, records, reports, petitions, and Native Land Court minutes, some general outlines appear from the documents.*

(b) *It should be noted at the outset that the English words 'tribe' and 'sub-tribe' do not fit at all well to the complex traditional Maori social structure and that Maori themselves used the terms 'iwi' and 'hapu' for lineages of various sizes and levels of inclusiveness. Most land court judgments include lists of many hapu (they do not mention whanau) usually within a larger 'tribe'. But Maori identified themselves individually by more than one hapu, and the flux of migration, shifts of local residence and inter-hapu marriage, together with the acceptance (or rejection) of the mana of senior non-resident chiefs, meant that the boundaries of hapu and hapu clusters, and hence the limits of their land, were not immutable. In her unpublished study of 'The Origins of the Ngatikahungunu', Ms Angela Ballara argues that the most important unit in Maori social structure was a cluster of hapu who recognised the mana of a senior chief. This complex and somewhat flexible structure makes the search for neat continuous boundaries and neat hierarchies of authority inappropriate. Nevertheless descent from founding ancestors imposed some shape and definition to the complexity, and whakapapa (history) established some sense of priority in claims, although claims of right of most groups seem to have interpenetrated and overlapped with others.*

(c) (i) According to the evidence of the esteemed elder, Mr Hikaia Amohia, the Whanganui River peoples divide themselves into the Hinengakau of the up-river area (north of Manganui-o-te-Ao), the Tamaupoko (from Matahiwi to Manganui-o-te-Ao) and the Tupoho (of the lower river, south of Matahiwi). The claims of the Hinengakau and Tamaupoko reach across the Waimarino and Tuhua districts to Murimotu and the slopes of Ruapehu. For example the mana and connections of the Turoa family of Te Aomarama (Tahana and Pehi, with Topia, nephew of Tahana) ran very wide, and Topia could say in 1872, 'I belong to Taupo as well as Whanganui' (Enclosure in S. Locke to Native Minister, 6 May 1872 AJHR, 1872, F-3A, p.10). Among other upper Whanganui groups the Native Land Court in 1876, awarded the Retaruke and Kirikau blocks to Topine te Mamaku and his people, under the iwi names of NgatiHaua and NgatiRongonui. The NLC judgment over Waimarino, challenged by the claimants, awarded the Waimarino block mostly to witnesses who traced descent from Tamakana. The conductor of the case, Te Rangihuatau, gave his hapu as Ngati Maringi.

(ii) In the Murimotu country, to the south and east of Ruapehu, the principal people were Ngati Rangi, with N'Tama and N'Whiti also claiming interests.

(iii) In the 1870s the Ngati Raukawa occupied the area north of Lake Taupo, east and west of the Waikato River, from Whakamaru to Te Waotu, including Titiraupenga and the Patetere plains. They contested Maungatautari with NgatiHaua. In the 1820s and 1830s large numbers - perhaps most - of N'Raukawa migrated south with NgatiToa to Otaki, but sections remained and kept their fires alight. (For much fuller treatment of this area see the Waitangi Tribunal report on the Pouakani claim).

(iv) In the area which came to be known as the King Country, south of the Puniu River and Maungatautari, the principal occupants were the NgatiManiapoto, with the related groups NgatiMatakore and NgatiWhakatere also being identified. All these trace descent from Turongo and thence to the Tainui canoe which made its final landfall in Kawhia harbour. At the Rohe Potae NLC hearing in 1886 N'Maniapoto and N'Raukawa strenuously resisted the claims of Waikato and N'Haua south of the Puniu and Maungatautari. (Those tribes had been involved as allies of N'Raukawa in the 1830s in the defeat of the invaders from the Thames tribes in a great battle at Taumatawiwi in 1831. (See Doc.1)

(v) *Claims to Kawhia Harbour were most complex. N'Maniapoto, N'Hikairo and N'Raukawa all asserted strong claims. Te Rauparaha and his N'Toa had also dwelt there but migrated south after 1819. Waikato claimants, including Wi Te Wheoro and King Tawhiao, were also very insistent on their rights in Kawhia in the 1870s and 1880s. The NLC in 1886 held that sections of Waikato had also acquired rights there, but that N'Maniapoto and N'Hikairo were the principal peoples of Kawhia.*

(vi) *N'Maniapoto rights extended south to the Mokau River and harbour. They had apparently driven out N'Tama, many of whom had migrated to the Chatham Islands. In the 1870s many returned and settled around Tongaporutu, but Wetere te Rerenga, supported by Rewi Maniapoto, maintained the dominance of N'Maniapoto. (See AJHR, 1871, F-6B, p.17; also Evelyn Stokes, 'Mokau; Maori Cultural and Historical Perspectives', University of Waikato, 1988).*

(vii) *N'Tuwharetoa possessed or claimed a huge central area surrounding Lake Taupo. To the north they bordered with N'Raukawa at Titiraupenga. Their north-western border was bitterly contested with N'Maniapoto at the Hurakia range. Whanganui (up to and including the present claim) contest N'Tuwharetoa's right to Mt Ruapehu (awarded them by the NLC in 1886). It should be noted that much of the territory awarded to N'Tuwharetoa lay within the original Rohe Potae and that N'Maniapoto leaders like Wahanui hoped that they would assert their rights to that territory as 'one people'. (There were, as usual among adjacent groups, intersecting ties of marriage and history, though in the 1886 hearing, N'Tuwharetoa ultimately claimed from Tuwharetoa while Taonui, for N'Maniapoto, claimed from Turongo.)*

NB This outline of traditional iwi interests is provisional and not intended either to be exact, or to encompass all interested groups.

4. *Early contacts with Europeans*

(a) *European contacts with the region before 1840 were slight. They involved mainly whalers and coastal traders calling in the harbours of Mokau and Kawhia to trade guns for flax. At Kawhia, one of the better west coast harbours, there were land transactions and traders taking up residence. In the intensifying musket wars of the 1830s, they were welcomed by the local Maori leaders. (See Stokes 'Mokau' pp. 85-101).*

(b) *Forms of Christianity were spread by Maori teachers down the Whanganui from Taupo before resident English missionaries arrived. (Janet Murray, 'A Missionary in Action' in The Feel of Truth, ed. Peter Munz, refers to 'a Taupo chief' who taught at Putiki from 1836 until well into the 1850s). In 1939 Henry Williams called at Whanganui; he installed the Rev. John Mason there in 1840, then the Rev. Richard Taylor in 1843. The Catholic mission reached the upper Whanganui in the 1850s and competed with the Anglicans. James Whiteley for the Wesleyan Mission Society came to Kawhia in 1835, departed the following year while Anglicans and Wesleyans sorted out their 'spheres of influence', and returned in 1839. The Weslayan Frederick Miller came to the upper Mokau in 1843 and Schnackenberg to Mokau Head the same year (Stokes, Mokau, pp. 103-19).*

(c) *The lower Whanganui settlement, a New Zealand Company settlement more or less an offshoot from Wellington, lies in the area outside the main focus of this report. It alone was the only substantial settlement in the whole region. Kawhia, with the mission station and resident traders was the only other significant point of settlement. Apart from the Weslayan mission station William Johnstone had made a number of land purchases in the Puketutu area and George Charlton had built a substantial homestead at Kawhia. He sold the house to John Cowell in 1846 and Cowell also claimed to have bought 20,000 acres from 'Kiwi', (Turton's Deeds, Old Land Claims, pp.369-76). A few settlers came into Ngati Maniapoto territory via Kawhia or up the Waipa Valley in the 1840s and 1850s, married local women of influence, and founded dynasties. These included Robert Ormsby, one of whose sons, John, figures largely in events to be described. Another was the Frenchman, Louis Hetet. These people lived harmoniously with their Maori kin during the wars of the 1860s. But the heartland of the North Island, though traversed occasionally by missionaries, and itinerant officials, was substantially untouched by European settlement up to 1870.*

5. *The Treaty of Waitangi*

(a) *Very few Maori from the central North Island signed the Treaty of Waitangi. It is well-known that Te Koroiko and Te Heuheu Iwikau of N'Tuwharetoa happened to be at Waitangi on 6 February 1840 and signed, but that, on their return to Taupo, Mananui Te Heuheu angrily repudiated his younger brother's action, and sent back the blankets they had been given. By Dr Claudia Orange's analysis, on 21 May 1840 the Rev. Whiteley at Kawhia obtained signatures to a copy of the Treaty from:*

Te Kanawa (Waikato (N'Mahuta))
Tariki (Waikato or N'Maniapoto, from Patupatu pa)

Te Waru (Waikato, A Ngati Apakura)

On 15 June 1840 Whiteley obtained the signatures of:

Taonui (Ngati Maniapoto from Patupatu pa)
Hone Waitere (Ngati Maniapoto perhaps from Aotea)
Te Matenga (from Te Wahapu?)

On 27 August 1840, at Kawhia, Ngamotu (Wiremu Hopihana?) for Ngati Maniapoto?

On 3 September 1840, at Kawhia, Wharekaua (Waikato for Whakatiwai?)

From late March or early April, at Waikato Heads, witnessed by the CMS missionaries Robert Mansell and Benjamin Ashwell, in addition to many Waikato signatures:

Te Ngoki, Ngati Maniapoto from Kawhia
Te Pakaru " " " "
Muriwenua, NgatiHaua from Aotea

(Claudia Orange, An Illustrated History of the Treaty of Waitangi, Allen & Unwin, 1990, pp.130-42.)

(b) *At Wanganui 10 chiefs signed on 23 May (witnessed by Henry Williams and Octavius Hadfield):*

Te Anaua (Hori Kingi)
Tawito (Tawhito?)
Te Mawae
Rere
Te Tauri
Turoa [Te Pehi?]
Taka
Kurawatiia
Te Rangiwakarurua

4 more signed on 31 May:
Uripo
Te Hiko
Takaterangi
Pakoro

(Ibid, pp.151-2)

This was the extent of the signing by central North Island chiefs, and it stands in marked contrast to the many signatures obtained from coastal chiefs.

6. *Early Land Acquisitions:*

(a) *In the 1850s the government under Donald McLean, Chief Land Purchase Officer, began to acquire land on the Mokau and Turton records;*

Deed 452 Awakino, 28 March 1854, 16,000 acres, £530, 70 sellers

Deed 453 Mokau, 1 May 1854, C.2,500 acres, £100, 68 sellers

Deed 454 Taumatamaire, 1 Jan 1855, 24,000 acres, £500, 48 sellers

Deed 455 Rauroa, 30 Jan 1857, 25,000 (estimate) £400, 30 sellers

With the involvement of N'Maniapoto in the Kingitaanga these purchases do not appear to have been followed up by settlement, until after 1882 when the Native Land Court began to hear claims to Mokau land. Before then, in 1878, Joshua Jones, an Australian mine manager negotiated a lease from Wetere Te Rerenga and 99 others of some 56,000 acres on the Mokau-Mohakatino, for the purpsoe of working the coal deposits there. (The nature of the agreement in fact proved extremely contentious, involving litigation and enquiry to 1911). (See Stokes, Mokau, pp. 140-8).

(b) *Kawhia: McLean signed a deed of purchase with Waitere Pumipi and several other chiefs for 6,000 acres of land at Harihari, £200 being paid on 4 July 1854, and £200 on 10 August 1857.*

(c) *General developments to 1870*

The intensifying crisis in Maori-Pakeha relations in the 1840s and 1850s has been analysed in numerous published histories. Broadly speaking, officials, settlers and missionaries alike sought to establish their authority throughout the land, to open the interior to roads and (later) railways, and to acquire the freehold title to land. The interior Maori chiefs and people, more vigorously than most, sought to retain their mana, engage with the new order of things but to control the selectivity with which they did so. They seemed very quickly to see

the threat from the Europeans on the coast and to be vigorous in resisting it. Thus Topine Te Mamaku, of the Retaruke area, supported Te Rauparaha and Rangihaeata in their resistance to the NZ Company and Governor Grey in the Hutt Valley. Some N'Maniapoto also came down river to assist in a contemplated attack on Wanganui township (though this did not eventuate). The inter-connections between these great tribes (including the N'Toa and N'Raukawa who had migrated southward from Kawhia) is thus demonstrated. When the government's land hunger, in the 1850s, began to provoke conflict in Hawkes Bay and Taranaki, it was the interior tribes who became the backbone of the kingitanga. Their involvement in fighting in Taranaki in 1860-61 is well-known, as is the role of the volatile Rewi Maniapoto in 1863. The government's determination not merely to gain land in Taranaki but to assert control over the North Island heartland was evident in Grey's ordering of regiments up the Waikato and Waipa valleys in July 1863. The cessation of fighting saw not only King Tawhiao and the Lower Waikato leaders of the kingitanga but 'rebels' like Te Kooti, given refuge around Te Kuiti.

An ancient aukati which had apparently once regulated movement between Arawa and Waikato across the Patetere Plains (AJHR, 1873, G-1, p.15) was revived and extended to deny the government, settlement, and missionaries any access to the 'King Country'. THe Waikato confiscations did not extend south of the aukati but the Taranaki confiscation line abuts the Whanganui and Mokau districts.

The complex politics of the Whanganui River had increased in complexity during the wars with chiefs like Kemp (Kepa Te Rangihiwinui) and later Pehi Turoa, joining the struggle against Titokowaru.

7. *Underlying Settler Attitudes*

As the New Zealand wars began the settlers vented their frustration at being barred from opening the country to settlement. In a debate on the Public Works Land Bill, 1864 (which authorised the compulsory taking of land for roads and other public works) Frederick Weld, a future Premier stated:

> *...all history and experience showed that the civilization of a barbarous country mainly depended upon road-making, and that was the first means by which they could penetrate into the wildest country, and open it up to the influences of civilization. The Government ought to have the right to take roads through the country by buying the land, where that was practicable, from friends, whether Europeans or Natives; and when it*

came to the purchase of land, if they should be opposed, they should use force to repel force.

Mr. G. GRAHAM disliked the Bill, and trusted it would not be passed, as it would be an infringement of the Treaty of Waitangi. The Natives had pieces of land which were tapued for graveyards and other purposes, and it would be manifestly unjust to make roads through grounds of this character. [This honourable gentleman then narrated an adventure he had had with Natives in breaking down a fence of a grave to make a road.]

Mr. JOLLIE trusted the House would not flinch from the position it had taken, that lands should be confiscated; and, when the necessities of the State required, they must agree to dispense with those nice formalities which might be requisite in dealing with a more civilized nation than they had at present to deal with.

Mr. WELD said, as far as the Treaty of Waitangi went, in yielding sovereign rights it gave them the power of taking such land for roads, and even of taking a road through a graveyard. This was done in England, although certainly objectionable when it could be avoided. They had the right to take these roads; but the House might be satisfied that that right would be exercised with the greatest possible care.

Motion agreed to.

(PD 1864-66, p.154).

These were the sorts of attitudes which underlay 'te riri Pakeha' and the wars which raged through the 1860s.

In 1870 the colony turned energetically towards development, based on immigration, expanded communications and land acquisition and settlement. In the mood of the times there was little inclination to let Maori sensitivities stand in the way. The settlers considered that they had generously honoured Maori Treaty rights by recognising their customary land rights over uncultivated as well as cultivated land; they were not about interpreting such rights as holding against Crown prerogative or positive statute law. For the next century, therefore, Maori would be unable to resist surveys and land-taking more than temporarily. To what extent Maori would be allowed or encouraged to participate in the new developments remained to be seen.

8. *Government land purchase policy after 1865*

(a) *In 1865 the first operative Native Land Act was passed by a parliament in which Maori were not yet represented and without any consultation with Maori. This inaugurated the system of investigation of customary title by the Native Land Court (NLC) and the issuing to successful claimants of Crown grants which extinguished customary title. Unless subject to restrictions by the Court, or limited to leases in the case of land which came before the Court after the 1867 Amendment Act, these were fully negotiable titles. It is now notorious that Section 23 of the Act authorised the grant of title to only 10 persons (as joint tenants not tenants-in-common), who could then individually alienate the tribal patrimony. Private direct purchase was also lawful. Crown or government agents vied with one another to purchase the signatures of those awarded Crown grants, or paid them in advance and then supported their party in the contest in the Court. The great scramble for Maori land had begun. (See Report of the Waitangi Tribunal on the Orakei Claim (Wai -9) pp. 28-35; Ward, A Show of Justice, Chapters 1-14).*

(b) *Later legislation attempted to put some curb on the free trade in Maori land. Most notably the Maori Land Act, 1873 required that the name of every person considered an owner, under custom, be included in the Memorial of Ownership approved by the Court. However, in one sense this only made it easier to acquire individual interests. It soon became the standard practice of government and private agents alike to make advances of money to individuals, 'laying ground-bait' in preparation for the land being put through the NLC and transferred to the prior purchaser of the interests. Under the Native Land Acts such transactions were void as contracts, but not illegal. (See S.87 of the Native Land Act 1873). Indeed various provisions in the law facilitated piecemeal purchase and partition of the land. Thus S.107 of the 1873 Act provided that 'inchoate agreements' by government Land Purchase Commissioners could be legitimated by the Court:*

> *And whereas arrangements have at various times heretofore been made by officers duly authorized to obtain the cession of Native Land to Her Majesty with Natives owning or pretending to own Native land, and in some cases money has been paid on account of such arrangements, but no perfected agreements have been made nor possession acquired by Her Majesty of such lands: Be it enacted that it shall be lawful for the Court, either in the claim of any Native claiming to be interested in any such land or in the claim of the Governor, to investigate the title to and the interests in such land in the manner prescribed in this Act, and the court shall make such*

orders, either for the completion of the agreement upon such terms and conditions as the Court shall think fit, or for the apportionment of the land between the parties interested therein in such manner as the Court shall think equitable, or for the repayment by the Natives who shall be found to have received such money as aforesaid of the same or any part thereof to Her Majesty, or it may by such order declare that such land or any part thereof has been duly ceded to Her Majesty, and all such orders shall be good and effectual; and any order declaring that the land or any part thereof has been duly ceded to Her Majesty shall vest the same in Her Majesty and Her Successors absolutely as demesne lands of the Crown, freed and discharged from all Native titles customs or usages.

Section 6 of the 1877 Native Land Act Amendment Act continued this in respect of the Crown:

> *The Native Minister may at any time cause application to be made to the Native Land Court to ascertain and determine what interest in any block of land has been acquired by or on behalf of Her said Majesty, and the said Court shall hear such application, and generally shall have all such powers and authorities in respect of any such application as it would have in any matter in its ordinary jurisdiction; and after hearing all such evidence as shall be thought necessary, or may be produced by or on behalf of any person interested in any such application, the Court may grant such order as to it shall seem fit; and all lands declared in such order to be the property of, or to have been acquired by or on behalf of, Her said Majesty shall, from the date of such order, be deemed to be absolutely vested in Her said Majesty, her heirs and successors, for such estate or interest (if any) as in the said order may be declared.*

Section 11 of the 1878 Amendment Act appeared to extend the practice to private parties:

> *Notwithstanding anything to the contrary thereto in "The Native Land Act, 1873," or any amendments thereto, it shall be lawful for the Court in its discretion, on the application of any Native owner, or other person interested therein, to hear and determine the value or extent of any estate or interest in any land held by such applicant under memorial of ownership, or Crown grant, or award, or conveyance;*

> *and, if it shall deem fit, to make an order vesting any part or portion of such land in such applicant.*

It is a matter for most serious consideration as to whether these proceedings breach the rangatiratanga principle of the Treaty.

We must now turn to the application of these procedures in the Whanganui River valley and its environs, and the attempt by the leaders of the Rohe Potae to prevent the disintegration of the hapu basis of land ownership and the piecemeal alienation of the land.

II. WHANGANUI AND THE MURIMOTU

1. Divisions over land and attempts to contain them

(a) *Unlike the central North Island the Whanganui River valley and its environs had long seen settler and government influence, extending upwards from the town of Wanganui. Land purchasing had occurred in the lower Whanganui under the New Zealand Company and was also extending up the Rangitikei and Turakina valleys. In the early 1870s after Titokawaru's campaign had waned, Maori communities were deeply divided in approach to the land question. There were always those willing to sell but many favoured leasing only. The up-river chiefs, following the kingitanga policy, advocated no dealing at all, and no contact with the Native Land Court. Their position, as throughout New Zealand, was difficult to maintain because, in the event of competing traditional claims, if one group went to the NLC the others were virtually obliged to follow, to defend their claim, Chief Judge Fenton having refused to consider evidence not presented in court. Divisions over land questions did not necessarily follow the divisions between kupapa hapu and those who had fought the government in the 1860s.*

(b) *In the early 1870s there were many meetings to attempt to pull together a coherent policy for the length of the river.*

(i) *The Resident Magistrate, Richard Woon, reported that from 14 to 16 February 1872 there was a large meeting at Koroniti:*

> *The object of the meeting was to set apart a tract of country, some eighteen miles in length by twelve miles in breadth, situated between the Whanganui and Turakina Rivers, and extending from a point near Atene to the neighbourhood of Ranana (a strip of very*

rough and hilly country), as a reserve in perpetuity to their descendants.

The reason assigned for adopting such a course is an apprehension which exists amongst the Natives here (one founded on reason), that unless some steps are taken to check the wholesale alienation of land by the Natives, a danger exists of the owners thereof eventually disposing of the whole of their lands, thereby rendering themselves homeless and poverty stricken. The meeting seemed to be unanimous in the matter; and upon adjustment of the boundaries, which were somewhat disputed, intend forwarding me letters on the subject for transmission to the Government.

Should the Government approve of the action taken by the Natives in this matter, I would recommend that they be advised to have the land surveyed and mapped, with a view to having it brought under the operation of the Native Lands Acts, and more particularly under the provisions as contained in section 17 of the Act of 1867 [restricting alienation to lease for 21 years]; upon which being done, the Government could take such other steps as it might deem necessary to prevent the sale of the land at any time by the owners thereof.

I see nothing myself to cause one to disapprove in any way of this proceeding on the part of the Natives, and I believe that an expression of approval thereat on the part of the Native Minister would gratify the Natives, and increase their confidence in the Government.

(AJHR, 1872, Vol 2, F-3A, p.19)

This proposal does not seem to have been followed through, though whether beause of divisions among Maori, or from government inaction is not yet clear.

(ii) *A few months later Woon reported that a larger series of meetings had been held since January 1871, the first at Aomarama, the second at Taumaranui and the third and most recent (17 and 18 April 1872) at Putiki under Mete Kingi Paetahi's aegis. A chief also named Paetahi, said to be a cousin of Rewi Maniapoto, was*

present, together with Pehi and Tahana Turoa and Topine Te Mamaku. The meeting generally affirmed the policy of cessation of war, but apparently did not agree on the question of opening the country to settlement. Part of the problem was that Topine, the government's old enemy of the 1840s and 1860s, and his cousin Te Pikikotuku, were willing to let Captain W. McDonnell and some of his associates into their territory to prospect for gold; other chiefs of the Tuhua district were opposed as were Pehi Turoa, Mete, Kemp and Woon himself. (Woon to Native Minister, 15 March 1872, AJHR, 1872, Vol.2, F-3A, p.5 and 23 April 1872, ibid, p.1)

(c) *The Murimotu district was another source of controversy, being a region where Whanganui and N'Kahungunu interests and influence met. Settlers from inland Hawkes Bay, seeking to run sheep on the Murimotu grasslands, were fostering competing claims over the area. Kemp organised meetings with Renata Kawepo of N'Kuhungunu and tried to settle a boundary, but agreement was not easily secured. Woon supported him in urging that land claims and surveys not be pressed, and deplored the pushing on of a survey by Hemi Te Aro and Hori Mutumutu in 1872, which had led to physical resistance, with the women pulling out survey pegs and trying to seize the theodolite (ibid).*

2. <u>Sales proceed</u>

By the mid-1870s several NLC sittings had been held in Lower Whanganui, and considerable areas were sold to the government. Woon reported many younger chiefs living well, in weatherboard houses, running sheep, ploughing with draught horses and (Woon regretted) giving champagne parties and drinking too much. Flour mills were being built on the river settlements as far as Pipiriki. A road was also being built from Ranana to the Murimotu. (Woon to Under Secretary, 7 June 1873, AJHR, 1873, G-2, pp.16-17). In 1875 James Booth, the principal Land Purchase Officer at Wanganui, reported that in the past year he had completed the purchase of 17 blocks amounting to 46,248 acres at an average price of five shillings an acre for flat land and one shilling and six pence an acre for hilly land (Booth to Under-Secretary 22 July 1875, NLP 75/316 in MA-MLP N4). Booth was negotiating for a further 250,000 acres. He noted that Maori vendors acknowledged the advances made by various land purchase officers over 'a period of several years' and allowed these sums to be deducted from final payments. He reported that reserves had been made not less than 50 acres per man, woman and child, in accordance with the requirements of the 1873 Act. He

said that private speculators had sometimes offered prices much in advance of the government's prices but the reserves, plus provision of roads and bridges by the government before on-selling the land, generally led Maori vendors to prefer dealing with the government.

3. <u>Murimotu</u>

(a) *The Murimotu negotiations, however, show that Booth was not always right. In this case James Buller, in 1873, had acted as agent for the runholders Morrin and Studholme in pursuit of a lease of 46,000 acres in Murimotu, onto which they were already pushing sheep. Buller had approached the aging chief Hori Kingi, who approved the leasehold concept and gave Buller letters of introduction to the principal owners. Buller, having made certain payments, set about getting the land put through the court. But the various runholders were planning much larger purchases in the area - up to 300,000 acres - with a view to forming a land company in England. (Buller to McLean, 11 September 1874, NLP 74/354, Col. St John to McLean, 28 January 1874, NLP 74/52 MA13/50A). Consequently Booth, Land Purchase Commissioner, wrote to the Superintendent of Wellington Province (William Fitzherbert) suggesting that because the Murimotu was 'a key to the interior' he thought the Province should acquire it. (NLP 73/207 in MA13/50A). Booth, acting for the Province, then competed with Buller, acting for Morrison and Studholme. Payments 'on account' were apparently made to Topia Turoa among others. Negotiations at one point apparently took place for a lease for 21 years of a 25,000 acre block, payment (in Booth's final offer) being £500 a year for the first seven years, £520 a year for the next seven and £630 a year for the last seven. Buller surrendered his interests.*

(b) *(The following account is summarised from file MA30/50A, National Archives). McLean, probably concurring with Booth's and Fitzherbert's view of the importance of the area, and influenced also by Woon's reports of potential conflict among Maori claimants, proposed that negotiations cease till the land had been through the Court. He proposed to buy out Morrin and Studholme's interests, paying them what they had paid the Maori claimants; the government would retain 25% of the block and rent the balance to the private company for 14 years. He also proposed to buy out the interests of another group of capitalists, 'the N'Raukawa company' in the Murimotu. Major Kemp was influential in the negotiations but he, like many others, was distrustful of leasing through the government; direct leasing gave the Maori more control of the terms. On 8 September 1874, at a meeting in Wellington, an agreement was hammered out in respect of 46,000 acres. Present were McLean,*

Kemp, Moorhouse (for Morrison and Studholme), Winiata te Puahi (or Puhaki), Nehenera Tekahu, Aropeta Heretuterangi, Aperahama Tahumiarangi. The government would lease from the Maori for 21 years and on-lease most of the block for the same term. Rent to the Maori was £10 per 1000 acres for 14 years and £11 per hundred acres for the remaining seven. (Kemp had tried for 6 pence in acre with a rent review every 5 years.) A survey of the land was first to be made. (See AJHR, 1874, C-6, pp.2-3).

(c) *It was not so easy, however, as Renata Kawepo (for N'Kahungunu) objected, and various parties continued to negotiate for various blocks in the Murimotu, several of which (according to Booth) were for sale. McLean got all the leading chiefs together in his office in 1875. Topia was angry that Moorhouse had made arrangements with Renata to push the sheep through Hawkes Bay - there were 15,000 sheep on the land by 1875. The Native Office generally supported the Whanganui claimants. Another 21 years lease of Rangipo was attempted by Moorhouse from Topia Turoa in 1877 (for £13 per thousand acres) but Renata and Kemp both stopped the survey. (MA 13/50A)*

(d) *In 1877, land in the Murimotu area began to go through the Court. The very big Te Ruanui block was awarded by Judge Heale at Whanganui on 10 August 1877 to 4 hapu of the N'Rangituhia (N'Rangi?) tribe. An application for rehearing was brought in 1878 by Winita Te Puaki on the part of Patahipa (?) and others, since only those named on the Certificates of Title were receiving the rents. The question of the 46,000 acres of 'Murimotu proper' however remained unresolved. Native Minister John Sheehan in 1877, agreed to legislate to give effect to McLean's 1874 agreement but a prior survey was still required. John Bryce repeated the promise in 1879 but not till May 1882 did the survey proceed and the land go through the Court, in favour of various branches of N'Rangi. In May 1881 the Rangipo block had also gone through the court. 26,000 acres were awarded to N'Waewae and 72,000 acres to N'Rangituhia and N'Tama. Topia had already concluded a lease of part of this land with the Crown. The private agent, Charles Nelson, had also acquired interests. A rehearing of Rangipo in May 1882 adjusted the list of owners considerably (Nelson to Richard Gill, Native Office, August 1882, MA 13/50). Lands in both Murimotu and Rangipo were then made subject to the legislation promised by Sheehan and Bryce (<u>The Murimotu-Rangipo Validation Act</u> 1882; see below Part III, Section 6).*

4. Strong trading in land?

(a) *Meanwhile Booth was steadily acquiring more interests in the Upper Whanganui. In 1875 he reported:*

Lands offered for Sale in this district during the past year are

1st Kirikau (Survey completed) contained 17,900 acres price agreed to 2/6 per acre Govt to pay Survey and Court expenses. Survey expenses are estimated at about Sixpence per acre. This land is mostly Bush Soil of good quality

2nd Retaruke surveyed acreage 21,600 acres price and conditions same as for Kirikau

3rd Kauautahi about 5000 acres conditions as for above Blocks

4th Te Kopanga acreage not estimated

5th Hauhungatahi(?). Very large Block acreage not yet estimated, situated to the West of Tongariro contains good sheep Country.

6th Maungaporau; Survey now going on, land mostly Bush, rough, soil of good quality

7th Ngarakauwhakaaraara, Survey now going on.

(Booth to Under-Secretary, 22 July 1875, NLP 75/316, MA-MLP 1/4)

(b) *By 1875-6 Topine Te Mamaku was eager to push on with surveys and proposing to sell in the Tuhua district. He had great mana and was difficult to resist. Between 13 and 15 March 1876 the Retaruke and Kirikau blocks were put through the NLC. Retaruke was awarded to Te Mamaku and 176 others of N'Haua and Kirikau to Hoani Paiaka and 56 others of the same tribe. The save hapu names, N'Tama, N'Onga and Ngai Tahu appear in both lists, but there are also some differences. On 15 March a subdivision of Retaruke was put through, the entire block being purchased by the Crown, save for two reserves for the vendors, one fo 500 acres at Ngamoturiki and one of 185 acres at Mangapuwhero. Hoani Paiaka also said that he had sold the whole of Kirikau to the government. These sales, pre-purchased by Booth before the NLC hearings, were a forerunner of the larger Waimarino purchase later.*

5. *Dealings over Murimotu-Rangipo*

Woon, the Resident Magistrate, reported a slowing of land selling or leasing in the mid-1870s as Henare Matua, founder of the 'Repudiation' movement in Hawkes Bay, visited Wanganui and his influence spread. But it had waned again by 1876 and in 1879 Booth reported:

With regard to the large extent of new country taken up during the last year, I beg to state for your information, that it was an instruction to me from the Hon The Native Minister in the beginning of September 1878 to acquire as much land as possible in this district for a Public estate. At this particular period there was a large number of private land-speculators in the district, and they having secured several blocks and desirous of getting more, determined to place every possible opposition in the way of the government. Up to this time the Land Purchase officer had been laboring under a considerable disadvantage inasmuch as he was prevented by his instructions from making advances on any new blocks of land until they had passed through the Native Lands Court, where on the other hand the speculators accepted the risk of not getting a title and advanced money freely on Lands which had neither been surveyed or passed the ordeal of the Native Lands Court, in addition to this these speculators were largely supported by reputed owners of land, Interpreters and a number of native chiefs who were one and all retained by the speculators at regular salaries.

This being so it became absolutely necessary to meet this class of people on their own ground and for that purpose the Hon The Native Minis. directed that money payments should be made on lands, the claimants to which should prove their claim in open meeting, this action made the speculators more energetic in acquiring native blocks, and they declared that they would advance their price on whatever the Government offered, it was now essentially important that to get these lands an increase of price would have to be given to the native owners and in cases where the lands were of a rich description and the position valuable, more than the usual price would have to be given, but it was not until repeated trials had been made fruitlessly that I had to raise the price to 7/6 an acre and in a few instances to 10/- an acre, this was owing to the high prices offered to the native owner by the speculators, this action of the Government in raising the price has to a great extent driven the speculators out of this district and so made the Land purchasing not nearly as troublesome.

The land now began to be offered as quickly as it could be taken. I may here state that in every application by the natives to sell a block of land, the following was the method of proceeding, 'Application to

sell a block of land must be in writing, giving the name of the block, estimated area, and boundaries of the block offered for sale, upon receiving the written offer, I called an open meeting of all natives interested at which I read the written offer the natives then discussed the ownership, if those that offered the land made good their claim I entered into treaty with them, on the other hand if the claim was not sustained the application was destroyed, in this matter very valuable service as been rendered in these land purchase operations by Mete Kingi Paetahi, who gave most loyal and efficient aid in all the preliminary enquiries, which have been made, as to the evidences of the claims put forward.

The result of these operations have been to bring a very large extent of country into the hands of the Government.

Booth had completed purchase of 9,540 acres in the previous year. He was negotiating for 26 other blocks which had passed the court, and 61 others which had not, but more surveys, and many cases, were under way. (Booth to Under-Secretary, 5 July 1879, NLP 79/193 in MA-MLP 1/4). These blocks included Owhango, between the eastern back of the Whanganui and Mt Ruapehu, estimated to contain half a million acres. Topine proposed to sell it: though at the first of the meetings convened 'considerable opposition to the sale was evinced but at subsequent gatherings this opposition was almost wholly withdrawn'. (Booth memo, 12 May 1879, NLP 79/82, MA-MLP 1/4).

The validity of these proceedings in Treaty terms, as involving willing and witting consent, deserves closer scrutiny. Booth's account omits mention of payments in advance, or how, exactly, the opposition to selling was overcome.

6. *Further attempts to limit land selling*

It is clear that, notwithstanding opposition and hesitation from many rightholders, numbers of leading men were keen to sell and assisted the trade. Not inconsiderable sums of money were being offered by Crown and private agents in competition, often for high grassland and forest which were not the main areas of settlement or food-gathering. Once some began to sell others were virtually obliged by the Land Court processes to participate, or lose out altogether. In this process the initial preference for leasehold began to be overtaken.

The gathering momentum of land-selling appears to have been a response to the collapse of efforts to prevent just such a thing

happening. In 1878 Woon reported that following the opening of a big whare runanga at Putiki:

> *At the first meeting in August, an effort was made to "tapu" several large tracts of country, and to forbid their being surveyed 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 land for the tribes, publicly, at last meeting, gave up their charge of same, and announced to the assembled Natives that for the future the Native landowners must use their own discretion, and hold or sell as they thought proper; that they were free to exercise their own right in the matter. The result has been an openly-manifested desire on the part of the Natives here to deal with their land, and numerous fresh surveys of blocks are being undertaken in all directions.*

Woon regarded the loss of control that followed to be a kind of irrationality:

> *During the next four years the Natives will be quite absorbed in the business of dealing with their surplus lands, and their minds will be quite unhinged, and I am afraid demoralized, thereby. (Ibid)*

The remedy he believed (as did most Pakeha) was the individualisation and partition of the land so that industrious and thrifty individuals could retain and farm their land. Otherwise, the improvident and reckless, and those who believed 'Let us eat and drink for tomorrow we die' would prevail. He did not appreciate, nor did many Pakeha, that the land law itself promoted and assisted the land-sellers and he was slow to realise that the law would need to be changed, if the efforts of those trying to retain land were to become effective. He tended, like most, to accept the offers of 'surplus' land, but to recommend, belatedly and paternalistically, that the government would have to 'step in' to prevent them selling 'every inch of soil, and thus becoming paupers and a burden on the country'. (Woon to Under-Secretary, 24 May 1879, AJHR, 1879, Sess I, Vol.2, p.9.). It is akin to opening the stable doors, slapping the horse on the rump and then trying to hobble it after it has bolted.

7. Kemp's Trust

(a) *Major Kemp (Kepa Te Rangihiwinui) played an ambivalent role in all these proceedings. He favoured leasing, rather than sale, as we have seen, but he also assisted the government in acquiring land and was himself employed as a land purchase officer in the Waitotara district. In February 1880, however, the veteran soldier took up arms again in defence of what he considered his interests in the Murimotu. Basically the row seems to have stemmed from the long-standing rivalry of Kemp and the lower Whanganui people and the Turoa family up-river. The government was putting trig. surveys into the area and also hoping to survey for the Murimotu-Rangipo lease agreement with Moorhouse, Morrin and Studholme. Kemp seems to have supported only a survey to establish a tribal boundary. About 16 or 17 February 1880 he took 70 armed men and built a pa on the disputed land. He sent a long letter to Woon saying that Mair [W.G. Mair of Alexandra?] had misled him as to the purpose of the survey. His daughter, Wikitoria (a woman of considerable personality, who acted as hostess at Putiki assemblies) was considerably distressed and went to Murimotu to persuade her father to come back. Bryce (Native Minister) also telegrammed to Kemp as a government officer, ordering him to return to Putiki. He had instructed Kemp to go to Rangipo, he said, to assist the survey for the Native Land Court, instead 'you are resisting it at the head of armed men' (Bryce to Kemp, 18 February 1880, Le 1, 1880, 151). Kemp replied that when in Wellington, Bryce told him to assist the survey he wasn't told that it was 'on account of Moorhouse's sheep'. He thought it was a tribal boundary survey. He concluded 'You survey the sky, I'll look after the land forever' (Kemp to Bryce, 25 February 1880, ibid.) With some difficulty the government stopped Hohepa Tamamutu and N'Tuwharetoa from attacking Kemp's pa. (Topia Turoa also refrained, probably because he did not want to advantage his N'Kahunugunu allies). Te Heuheu and Hitiri Te Paerata mediated. Kemp eventually returned to Putiki but not before being dismissed as an Assessor in the R.M.'s court and as a Land Purchase Officer. (See papers, Le 1, 1880, 151).*

(b) *For the next year or so Kemp and a Council of Whanganui leaders, attempted to set up a 'Trust' to hold the land for sale. Posts were set up to mark the boundaries. The wool clips of Morrin and Studholme and other run-holders were held in the complex bargaining over the distribution of lease revenues. This was, in effect, an attempt to form a Rohe along the lines of the Kingitanga, to control the actions of land-selling chiefs, and engage, on more favourable terms, with the processes of settlement. At the same time Kemp became one of the active leaders to try to have the land-laws changed, so that such efforts as his Trust could become more stable*

and effective. But the traditional divisions on the Whanganui remained strong. Without a major change in the land laws, and while the purchase of individual interests in land went on, it was impossible for organisations attempting to straddle tribal lines to retain control for long. The same processes that eventually eroded Kemp's Trust were, in the very same period, eroding the kingitanga's influence south of the Puniu River.

III THE KING COUNTRY

1. Increasing contacts with government

(a) *There have been many published accounts and theses about the political negotiations between the government and the Kingitanga in the 1870s and 1880s. A recent summary has been provided in Mr P.T. Harman's 'Preliminary Report on the Pouakani claim, Wai 33'. Other accounts are in my A Show of Justice, chapters 16-20 and Keith Sinclair's recent short book Kinds of Peace (Auckland University Press, 1991). I do not propose to traverse all these developments again, but to focus on key matters concerning land, which underlay all the politics and which are often overlooked in the published accounts. It was long known that there were tensions between N'Maniapoto, and the Waikato and other peoples living among them after the British invasion of the Waikato. Despite this, in 1880 the Kingitanga was still a strong and cohesive force. Attempts by Grey and Sheehan in 1878-79 to negotiate the opening of the district had broken down ignominiously. The determination of the Kingitanga to maintain the aukati was demonstrated by the killing of Moffat - a sleazy, gun-running, womanising, land and gold-seeker - near Taumaranui in 1880.*

(b) *Nevertheless, the following year the government agents reported a changing attitude towards the land, for a variety of complex reasons. Thus in May 1881 W.G. Mair reported from Alexandra:*

> *The annual meeting of the Waikato tribes (which lapsed last year) was held during the present month at Hikurangi. The assemblage was not so great as upon former occasions, for there were very few people from North of Auckland; besides which the more thoughtfully inclined are beginning to tire of these affairs, which they say have no definite result beyond an enormous waste of food and a succeeding season of semi-starvation. But without these meetings the Maori King's importance would soon decline, and his own people, stimulated by his example, work heartily to procure food for the occasion. Viewed socially, these gatherings are very pernicious, for they*

foster the Maori love of extravagant display, and they generate disease from the over-crowding and over-feeding, and the poverty which follows. But, politically, there is something to be said in favour of them, for of late years the principal object of Tawhiao's meetings has been to devise some means by which the land could be preserved and the people saved from becoming paupers. Many of those chiefs who upon the setting-up of the first Maori King surrendered the tribal lands to him have, as is well known, sold all, or nearly all, these lands to Europeans, and now would encroach upon the possessions of others. The extreme Kingite party, on the other hand, have not sold any land; but there is reason for believing that they are not so averse to leasing. At the late meeting there was a general expression of opinion that land-selling should cease; and most of the chiefs present signed an agreement to make over all their lands to Tawhiao. I do not think that this means the locking-up of what is called the King-country, but rather that, as soon as Tawhiao feels that he has the absolute control of the estate of his people, he will throw it open for lease to Europeans for long periods. It is probably with such a scheme in his mind that he has been trying to get his people to locate themselves at Hikurangi, as the country would then be clear for his operations. [My emphasis]

There was a very lengthy sitting of the Native Land Court at Cambridge during the summer and autumn. Very large areas of land belonging to the Ngatiraukawa, Taupo, Rotorua, and Tauranga tribes were passed through, and certificates of title issued. This land is rapidly passing into European hands, and will, I am informed, be cut up into suitable lots for runs, farms, &c. Its acquisition by industrious settlers will, of course, be an excellent thing; but it is very evident that, as the competition for it enhances its value, and the temptation to sell increases, steps will have to be adopted to prevent the Native owners from completely denuding themselves of their land. I endeavoured, both officially and privately, to get reserves set apart and made inalienable, especially in those instances where the entire possessions of a hapu or section of a tribe had passed through the Court; but I met with opposition from both Europeans and Natives, for many of the latter who are interested are Rangitikei and Otaki people, who do not care about reserves in the North, but are willing to sell every acre if the price suits. I succeeded in getting some of the Natives to promise that they would retain sufficient land for their requirements; but, generally, this will be found simply to mean holding on for a better price.

One event of considerable importance, as showing that the "Native difficulty" is gradually wearing away, occurred during the year. I allude to the occupation of the Horahora Block, in what is called the King-country. It was passed through the Native Land Court some thirteen or fourteen years ago, and, after changing hands several times, came into the possession of Messrs. McLean and Co., but the Kingite Natives claimed it and resisted any attempts at occupation. In August last the proprietors threw a bridge across the Waikato to give access to the block; the Natives assembled in considerable numbers and forcibly opposed the work, but by employing a large body of workmen Mr. McLean completed the bridge. Some months afterwards an attempt was made to remove some of McLean and Co.'s people who were living on the land. Upon receiving instructions from the Hon. the Native Minister, Colonel Lyon and myself proceeded to Horahora with a few unarmed constables, and, accompanied by Messrs. McLean and Baily, interviewed the obstructionists at Maungatautari. I assured them that the proprietors of the land would be maintained in their determination to occupy it, and that any one breaking the law would be arrested and tried for his offence. The Natives said that the appearance of the guardians of the law upon the scene was a new feature in affairs of this kind, for which they were unprepared; and, though for a time they threatened further interference, they have not since opposed McLean and Co.'s operations.

Another disputed block of land beyond the confiscated line at Orakau, which was purchased by Mr. Tole many years since, has also been successfully occupied. The proprietor got the well-known chief Rewi and his people to support him, and, after considerable opposition on the part of another section of Natives, got possession; and, although threats have been uttered, it is not likely that there will be any further trouble in the matter.

The Hikurangi meeting concluded with a renewed resolution not to sell more land; it was Wahanui who proposed the resolution and threatened punishment of those who broke his pledge. (Mair to Under-Secretary, 27 and 28 May 1881, AJHR, 1881, Vol.II G-8, pp.4-6). Government negotiations with Rewi had, however, been more fruitful and the N'Maniapoto leader had accepted the deeds of a house in Kihihiki, and met with government officers in that town.

(c) *On 7 June 1891 Tawhiao and many of his followers made a friendly visit to Mair at Alexandra. William Rolleston, who had temporarily replaced John Bryce as Native Minister, urged Mair to sound him out*

on the question of opening the King Country, admitting the railway, and the vexed question of 'harbouring of malefactors' against Pakeha justice. In July Tawhiao and the Kingitanga leadership returned, with some 500 or 600 followers, laid guns before Mair in pledge of peace and then made a tour of the Waikato settlements. (Rolleston to Mair, 8 June 1881, N.O. 81/1869, MA-MLP 1/4).

2. *The Rotorua model*

The very important prelude to the opening of the King Country was the change which took place in relation to Rotorua in 1880-81. In 1880 the whole Rotorua district was still Maori customary land. The Native Land Court had not sat there; it was strenuously resisted by the Ngati Whakaue, who controlled the region largely though their great Komiti at Ohinemutu, an institution which had existed since the 1850s. But in 1880, F.D. Fenton, Chief Judge of the Native Land Court, negotiated an agreement with the Ohinemutu chiefs to have the land surveyed by the Chief Surveyor and adjudicated, to have a township marked out and to have the town sections leased by public auction, not sold. The agreement was followed by the Thermal Springs Districts Act, 1881 which debarred some 600,000 acres of land in the volcanic plateau (not just Rotorua) to private purchase. (See R.P. Boast, 'The legal framework for geothermal resources: a historical study', report to the Waitangi Tribunal, 1991, pp.3-24).

This was essentially the model that was to be followed in the Rohe Potae - a model initially attractive to the Maori because of the high prices paid at the first auction of Rotorua leases in Auckland. John Bryce, Native Minister in the Atkinson government, 1881-1883, had seen the Thermal Springs Act through parliament. At a meeting in Kihikihi in early 1882, he urged the N'Maniapoto to consider the attractions of leasing. He also offered Wahanui a pension and a seat in parliament - too blatant a bribe for the chief to accept.

3. *Whatiwhatihoe, May 1882: origins of the Rohe Potae concept*

(a) *At a large meeting (c.2,500 attending) began at Whatiwhatihoe on 1 May 1982 to hear Tawhiao and the kingitanga leaders. On the first day a reporter for the New Zealand Times felt that the aukati had gone, but that people were confused as to how to deal with the Pakeha in the immediate future. 'No-one can see the end' Wahanui was reported as saying, 'We shall have to get our lands made over to ourselves in self-defence'. The Rotorua model and Bryce's speech were being discussed. (New Zealand Times, 1 May 1882, enclosed in N.O. 82/1267, MA 23/4(b)).*

(b) A leasing system was clearly attractive, but an effort was still made to keep the region under Tawhiao's control. The essence of Tawhiao's proposals, as discussed, accepted by the meeting and eventually conveyed to parliament were:

> *Let the work of surveys, let leasing, let sales, let the making of roads, and the Native Land Court in the district which belongs to me and the people of my tribes, be stopped for the present. Shortly they may be commenced, when the Parliament and the chiefs of our people have agreed upon some mutual basis of settlement between the Europeans and those people who, under me, are called the King party.*
>
> *Secondly, I say let a Parliament meet in Auckland, so that when they assemble for their work they may be close to us, and that we may enter that Parliament ourselves and quietly discuss all matters in difference between us and the Europeans.*
>
> *Thirdly, these words are mine. I deliver them to Te Wheoro, who is now present, for him to take to the Assembly on behalf of both races.*
>
> *And these words of Tawhiao's were agreed to by all the chiefs and the people at the meeting.*
>
> *(AJHR, 1882, Vol.II, G-4, 12)*

In the end, of course, the parliament did not go to Auckland. Te Wheoro, one of the most principled men in New Zealand, did eventually quit the parliament and assist Tawhiao in his missions to England to secure recognition under Clause 71 of the Constitution Act. What persisted was the policy of seeking government and parliamentary recognition of arrangements for the King Country.

(c) Tawhiao had also referred in his speeches to the tendency for government authority to encroach in Kawhia and Mokau. Wahanui, explaining Tawhiao's words, said that the Maori King wanted leasing stopped 'until he is in a position to join with them'. Consideration would be given to the Europeans (Charlton, Nathan) returning to their lands at Kawhia, but only on Tawhiao's permission. (Wahanui, AJHR 1882, Vol II, G-4A p.7). In other words, an engagement with settlement was envisaged, but under the careful control of Tawhiao as heir to Potatau's mana. (Tawhiao himself had given permission for settlers to occupy land at Maungatautari, Pekekuna, and Puahue - vacant since Sullivan's death in 1873 - and for Topia Turoa to lease land to a Mr Walker in the Taupo area.) But doubts as to whether

such a system could hold, against the wishes of individual rightholders were clearly expressed. Rewi and Wetere Te Rerenga said that they must persist with the Land Court at Mokau because Ngati Tama was taking money from the government for that land, and the only way the government suggested for them to secure their own claims was to go to the NLC. (Te Rerenga, Rewi, ibid., p.2 and 9-10). Te Wheoro spoke bluntly:

> *... if I am to proceed to Parliament and place before the Assembly the points in question, it is clear if you go on with your leasing and land-selling and holding of Land Courts and executing surveys during my absence that no attention whatever will be paid to what you have said, and my measure will become null and void.*
>
> *(Te Wheoro, ibid, p.8)*

Bush felt that his hope was futile, because of the claims of marginal claimants on the land of the real rightholders, the latter (even though they were previously kingitanga supporters) were under great pressure to secure their claims and secure for themselves the benefits of the land. Tawhiao, in turn, could not resist their pressure. As Bush put it:

> *There is a great probability of many of the hitherto friendly Natives, who have parted with the lands they obtained through the Land Court and also their compensation awards, joining with Tawhiao in the hope, no doubt, that they may be permitted to participate in what is left. It appears to me that it will be impossible for Tawhiao and his Kingite people to keep the lands locked up but for a very short time; the real owners of the soil will bring so much pressure to bear on them that they will be forced to give way, if they desire to be recognized and consulted by the bulk of the people.*
>
> *There is no doubt that the King movement, as an opposing power, is played out, and Tawhiao will have to be more careful in the management of matters if he desires to possess the confidence of the people, who I am inclined to think are tired with the past state of affairs. They are one and all anxiously looking forward to derive some benefit from their long locked-up lands, and unless something is done very speedily Tawhiao will lose all control over his people.*
>
> *(Ibid, p.4)*

This, not all the political negotiation, was the real reason for the opening of the King Country. The difficulty for the Maori leadership was how to manage the opening so as to retain the ownership and control of the lands. That was what the Whatiwhatihoe assembly was about. That was also what the eventual Rohe Potae was about.

4. *Government policy*

The government in 1882 was no more inclined than it was in 1858, 1862 or the 1870s to recognise any kind of semi-autonomous governmental authority in the kingitanga. It had achieved its purposes very well in the 1870s by dealing separately, with individual chiefs or tribes and extending the authority of the Native land Court. This policy continued in 1882, with increasing government attention to Wahanui and the N'Maniapoto as such. In October Bryce rejected a request by Tawhiao to recognise his authority in the King Country. In turn Tawhiao rejected Bryce's obvious effort to buy him off (a pension, a house, a seat in the Legislative Council). Tawhiao and his advisers now resolved to try to deal directly with the Crown in England. Meanwhile, many in the region were now plainly interested in accepting the Main Trunk railway through their territory - indeed there was some competition for it.

5. *Legislative preparations*

To assist their negotiations the Atkinson government passed certain measures through parliament:

(a) *An Act of Amnesty, authorising the Governor in Council to give full pardon to those considered to have killed Pakeha in circumstances of war or for political reasons. Those eventually pardoned included Te Kooti, Wetere Te Rerenga (implicated in the murder of the missionary Whiteley in 1869) and Ngatai, the NgaiHaua who had killed Moffat. (The contrast with the treatment of Te Whiti and the execution of Hiroki who had killed the cook of a survey party advancing on Parihaka is every evident).*

(b) *The North Island Maori Trunk Railway Loan Bill, 1882 was introduced in tandem with the New Zealand Loan Bill, 1882. The latter, the main bill, authorised the borrowing of £4m. for the construction of the line (not land purchase). In the debate on that Bill the government acknowledged that the route for the railway was not yet clear; it might go via Whanganui, via Napier, via the eastern side of Lake Taupo, or via the route it eventually did take - Taumaranui and the Murimotu. Any route west of Lake Taupo, however, depended upon successful negotiations with the central North Island - upon 'settling the native difficulty' as one member put it. Hone Mohi Tawhai, MHR*

for Northern Maori, spoke against any borrowing from England for public works. All such borrowing, he argued, victimised the Maori people because it involved the loss to Maori of their land, and the taxing of Maori land. A Mr Fergus also spoke of the devastating effect upon Maori of land purchases. Nevertheless the Bill passed with Messrs Tawhai, Tomoana and Taiaroa voting against the government. (PD, 1882, vol.43, pp.165, 207, 251-77, 309)

6. *The Murimotu legislation*

(a) *Meanwhile the processes of the Native Land Court were encroaching further on the territory of the King Country. In May 1882 the Murimotu blocks went through the Court and were awarded in four portions, to various sections of NgatiRangi. (See judgment of Judge G. O'Brien, 16 May 1882, MA13/50). This was the outcome of the private and government purchase of interests in Murimotu in the early 1870s and the agreement of 1874 negotiated by Donald McLean (and reaffirmed in 1879) to regulate the conflict of interest between government and private buyers and between both of them and competing Maori claimants (see above). What specific influences finally produced the decision to go to the Court in 1882, are not yet clear, but the intensifying debate among the central North Island tribes about their respective interests, as a consequence of the railway negotiations, was no doubt an important factor. It is possible that the Thermal Springs model was also influential, because the government was to lease much of Murimotu, as well as purchase it.*

(b) *As a result of the Murimotu decisions Bryce was able to introduce in the 1882 parliament the Rangipo-Murimotu Agreement Validation Bill. The short bill validated the lease to private parties (Morrin and Studholme) of the land the Crown acquired from Maori owners by lease or purchase.*

(c) *The debate on the bill revealed a number of significant points:*

(i) *Theoretically, under the Native Land Act, 1873 all private acquisitions of Maori land which had not received a title under a Native Land Court award, were null and void. However the government involved in the agreement of 1874, and the government and many of the legislature involved on the Bill of 1882, overlooked this - as usual - sympathising instead with the purchasers who had paid money to the Maori rightholders. Other members however, did not sympathise with the speculators who spent their money that way, to the detriment of small settlers and Maori alike. The legislature was beginning, hesitantly, to move against private purchase of Maori land.*

(ii) *Part of the 1874 agreement had involved the government leasing the land from the Maori for 21 years in order to sub-lease 75% of it to Morrin and Studholme. In the course of debate Bryce, the Native Minister, revealed his opposition to the government leasing from Maori owners. This is interesting because at the same time Bryce was encouraging Maori leaders both in the Rotorua area and the King Country to lease their land. Apparently he meant lease to private parties, on the Rotorua model, through government agency.*

(iii) *Te Wheoro, MHR for Western Maori, said he was unsure of the facts and noted that some of the "Ngati Tama" (of Rangipo) and some of 'Mete Kingi's people' of Murimotu, were opposed to selling, but Te Wheoro appeared reassured when Bryce referred to possible subdivision of the block.*

(d) *By 1888, in fact, the government had leased Murimotu 2, 4 and 5 and part of Murimotu 3 (some 40,000 acres in all) for rent totalling £2,732 (AJHR 1888, G-2, p.3) Presumably they had sub-leased to Morrin and Studholme's agents or successors, in terms of the Rangipo-Murimotu Agreement Validation Act. They had also been given, by the Maori owners, 19,000 acres of Rangipo North, in settlement of an £1,800 survey debt, owed to Elizabeth Fraser and apparently taken over by the government. (A rate of approximately 100 acres for each £1 of survey debt). (Ibid, p.6). Government had also made part-payment for the freehold of a further 49,000 acres of Rangipo North, 70,000 acres of Rangipo-Waiau and 47,000 acres of Murimotu (ibid, p.5). The question of Mrs Fraser's survey and the charges against Rangipo North in fact became very complicated and were the subject of a question in the House in 1887 (PD, Vol. 57, 4 May 1887, p.64, Doc. 3). The fate of Rangipo North is indicative of the rate at which land was being acquired for surveys which the Native Land Court processes required.*

7. *The Mokau-Mohakatino*

(a) *A serious pressure on Ngati Maniapoto, in particular, came from the Mokau area, where the returning Ngati Tama were seeking to recontrol the territory they had partly vacated in the 1830s. When Ngati Tama had lodged claims on the Native Land Court in March 1882 Rewi and Wetere Te Rerenga overcame his long-standing opposition to recognising the Court, and urged his Mokau kinsmen to attend and resist Ngati Tama (see Paul Harman, op.cit., pp.35-6 and his Doc A27 Appendix D).*

(b) *On 23 June 1882 title to the Mokau - Mohakatina block was given in favour of Wetere Te Rerenga and 99 others. Within the block Joshua*

Jones had acquired a lease for 56 years (with right to mine coal) of about 28,000 acres. The precise terms and boundary of the lease were contested. Later, in 1885, the northern boundary of the block formed the boundary of the Rohe Potae. Jones was still collecting signatures to his lease (he had signatures from 81 of the 100 owners) when the Native Land Alienation Restriction Act, 1884 (which reserved the area to Crown acquisition) caused him to stop collecting signatures. A Royal Commission of 1888 found in favour of Jones' lease, though some witnesses, both Maori and Pakeha, contested it. (AJHR, 1888, Vol.2, G-4c).

8. *Maungatautari*

In the opposite, NE, corner of the King Country further inroads were made when NgatiHaua applied for the Maungatautari block. Their claim was bitterly contested by Ngati Raukawa but the decision went to NgatiHaua, on the probably wrong principle that, though still resident there, N'Raukawa had been defeated and the mana-whenua had passed to N'Haua. The recent analysis of N'Kahungunu lands by Angela Ballara (unpublished Victoria University thesis, 'The Origins of the NgatiKahungunu') argues that though mana claims were certainly valid no-one still resident on the land had entirely lost their rights. These relationships, and the respective proportions of interest, do not translate easily into concepts of landownership under the received law.

9. *Native Committees, 1883*

As part of his overall strategy Bryce conceded something to Maori wishes in passing the Native Committees Act, 1883. The real purpose of the committees, in the settlers' view, was to assist the processes of the Native Land Court. The committee could advise the Chief Judge of the names of owners of any block of land going through the court, the successors to deceased owners and the boundaries of disputed land. The committees' only other power was to act as arbitrator in disputes of up to £20 in value, where the parties agreed to accept a committee as arbitrator. In the event the committees proved disappointing to Maori, because the districts they covered were so vast that Maori communities in particular localities could place no confidence at all in them. However, the committee concept had been given an airing and was to be the focus of intense discussion for the next two decades.

10. *The Rohe Potae concept develops*

(a) *During 1882 many King Country leaders, especially N'Maniapoto, resolved to attempt a controlled opening of their lands, by first*

establishing an external boundary around them, recognised by the government. NgatiRaukawa, Whanganui and N'Tuwharetoa began to join them. Carved posts were set up around parts of the boundary, in much the same way as in Kemps Trust two years earlier.

(b) *Though Bryce secured agreement from many of the chiefs for a preliminary survey for the railway route, there was still much disagreement and doubt about surveys. Thus Rochfort, working his way up the Whanganui towards Waimarino and Tuhua received the support of Pehi Turoa, but he was periodically stopped by others. Even more dramatically, in early 1883, Hursthouse, conducting a trigonometrical survey and exploration for a railway route through the Mokau valley, was seized by Te Mahuki and a Tekau-ma-rua of Waikato and N'Maniapoto who had been at Parihaka when that community was dispersed. Wetere Te Rerenga, however, protected them from harm and Wahanui and Te Kooti secured their subsequent release. The Hursthouse incident led George Wilkinson, Native Officer at Alexandra, to discuss with Wahanui and others the nature of trigonometrical surveys and railway explorations, as distinct from surveys for land court proceedings or land selling. Although Wahanui was perfectly content to let trigonometrical surveys through there was so much suspicion among the communities of surveys generally that it was still unwise for government to proceed with any of them, in the absence of clear agreements that would reassure the communities that their engagement with the government was not going to get out of control and lead to huge loss of land.*

11. *The 1883 petition*

The step taken was to petition parliament to recognise and confirm the Rohe Potae boundary. The petition, signed by Wahanui, Taonui, Rewi Maniapoto and 412 others, expressed the wishes of N'Maniapoto, N'Raukawa, N'Tuwharetoa and the Whanganui tribes. It was a masterly and eloquent document. It began with reference to their rights to their lands under the Treaty; it proclaimed their utter distrust of the proceedings of the Native Land Court; it condemned the way their inexperience was taken advantage of by the lawyers and the Horo-Whenua (land-swallowers or speculators) with their outrageous practices and temptations to decoy the Maori 'into the nets of the companies'. Yet the only remedy, they had been told, was the Court itself! 'We are not oblivious' they wrote, 'to the advantages to be derived from roads, railways and other desirable works of the Europeans ... but we could not live without our lands ... our lands are preferable to them all'.

They had erected posts round the boundaries of their land and requested the House to give effect to the following:

1. It is our wish that we may be relieved from the entanglements incidental to employing the Native Land Court to determine our titles to the land, also to prevent fraud, drunkenness, demoralization, and all other objectionable results attending sittings of the Land Court.

2. That Parliament will pass a law to secure our lands to us and our descendants for ever, making them absolutely inalienable by sale.

3. That we may ourselves be allowed to fix the boundaries of the four tribes before mentioned, the hapu boundaries in each tribe, and the proportionate claim of each individual within the boundaries set forth in this petition, which are as follows:-

Commencing at Kawhia, from thence to Whitiura, thence over Pirongia to Pukehoua, thence to the mouth of the Mangauika, following up Waipa to the mouth of the Puniu, along the Puniu to the mouth of Wairaka, along Wairaka to Mangakaretu, from thence to Mangere, thence to the Waikato, following the Waikato to the mouth of Mangakino, thence still following the Waikato to Waipapa, thence to Parakiri, thence to Whangamata, thence to Taporaroa, thence to Lake Taupo, following the course of Waikato in the centre of Lake Taupo to Motu-o-Apa, thence to Tokakopuru, thence to Ngutunui, thence to Kopiha, thence to Whakamoenga, thence to Riaka, thence to Matau, thence to Te Hirihiri, thence to Tauranga, following up etc.

(AJHR, 1883, vol.3, J-I. See Doc.2)

Among the features of the petition was the intention to proceed from tribal and hapu boundaries to 'the proportionate claim of each individual'. But this was to be done by the people themselves, not the Native Land Court. Alienation by lease was also apparently considered.

There was a counter-petition from the Waikato members of the Kingitanga, and some N'Maniapoto, signed by Manuhiri and 480 others, disapproving of Wahanui's initiative, and asserting the authority (te tika) of Tawhiao over the land. The Kingitanga leadership was still resisting the opening of the district, unless its authority was recognised, but the government could now virtually ignore it.

12. The external boundary survey

Following the petition Bryce had further discussions with the N'Maniapoto leaders and others in the Rohe Potae, culminating in a large meeting at Kihikihi on 19 December 1883. T.W. Lewis, permanent Under-Secretary of the Native Department (increasingly influential in this period) was present and S. Percy Smith, the Surveyor-General. Bryce suggested that each tribe send a separate application to the NLC, each claiming the whole area 'Unless each tribe did this he could not stop the minor surveys. We discussed this and finally agreed to send in one application for the whole block'. Details of the intended boundary were further discussed, as was the inclusion of Ngatai (Moffat's 'executioner'), in the political amnesty (AJHR, 1886, G-9). N'Hikairo, of Kawhia, were now proposing a similar course of action as N'Maniapoto; following the Kihikihi meeting N'Maniapoto messengers, and Bryce, went to Kawhia and secured their participation in the Rohe Potae project. (See statement of John Ormsby in extract from 'the Boundary Case', Native Land Court, 1889, p.41, Doc. 4).

The Kihikihi meeting was followed by a letter of 17 December 1883 to Percy Smith from Wahanui, Taonui, Rewi, Ngahuru te Rangikawhanui, Te Herekiekie and Te Pikikotuku which confirmed their consent for an accurate survey of 'our block' (to matou poraka) for a cost not to exceed £1600. They requested, and Smith's reply of the same date confirmed that 'it is agreed to as a definite word that neither the government nor any other Government can make any other arrangement on the future'. The agreement was to apply to 'the external boundaries only ' (ki te rohe porotaka anake) - all internal subdivision surveys were to cease. (AJHR, 1885, G-9, p.2, Doc. 3)

It was stated by N'Maniapoto in 1889 that they expected that when the external boundary was surveyed there would be <u>one</u> Court hearing to settle the ownership of the whole of the Rohe Potae. 'This agreement was made by us and the Government in good faith and in weight and authority was equal to a treaty' (notes 'Re Maraeroa and Hurakaia', in extract from 'The Boundary Case', NLC 1889, Doc. 4).

Later, when N'Tuwharetoa began to break from the agreement, Te Heuheu claimed that he had not been adequately consulted and that half of his lands had been left out of the proposed boundary. (It ran through Lake Taupo, as Maori envisage the Waikato River flowing and left the eastern Tuwharetoa land outside the Rohe Potae). The N'Maniapoto leaders pointed out that leading N'Tuwharetoa, Te Herekiekie and Haimona, had participated in the Kihikihi meetings and had signed the letter to Percy Smith. N'Tuwharetoa had representatives at all meetings. There had been no objections when

N'Tuwharetoa were first informed. (See notes on 'The Boundary Case, pp.44-46 and 70-71, Doc. 4).

The actual survey was commenced on 8 January 1884, by Messrs Edgecumbe and Spencer and was completed by 30 July 1884, except for the portion which formed a common boundary with the eastern end of the Mokau-Mohakatino block (Joshua Jones's lease) which was disputed by the Maori owners (AJHR, 1888, G-4C).

A copy of the Lands and Survey map, 5851, duly signed by Edgecumbe and Spencer, is now available and forms the basis of the sketch map appended to this report. It carries a fine line following exactly the description given in the 1883 petition. But it also bears dotted lines - presumably added in 1886 - indicating a huge eastern area marked 'adjudicated upon by the NL Court held at Taupo recently.' The northern part of the Waimarino, from Taumaranui southward as far as Kirikau and Retaruke, had also been included in the 1883 boundary description, but has also been marked off by a dotted line. The map is entitled 'Aotea Block (King Country)' and embraces 1,636,000 acres. This map, with the Taupo lands and the north of the Waimarino excluded, was the one presented to the NLC for the Crown grant of the Rohe Potae (King Country) in 1886.

(See maps 1 to 4 appended).

13. <u>Confusion and hesitation</u>

Meanwhile, in the second half of 1883, letters had come in to the government from Topine Te Mamaku encouraging the railway survey through the Mokau valley route, and from Hoani Paiaka encouraging the Tuhua route (Topine Te Mamaku to Paiaka, 29 July 1803, MA 13/43, pp.197-200 and R. Ward to Lewis, 4 August 1883, MA 13/43, pp.193-6). King Tawhiao also wrote reserving the right to say what lands would be opened to the railway and settlement: 'Ka tona e ia te iho o Tongariro ki te wai' (I shall bury the peak of Tangariro in the waters') (Ward to Lewis, 1 September 1893, MA 13/43, pp.211-12).

The surveyor Rochfort, pushed on by Bryce too quickly to survey for the railway along the central route, was stopped several times, including an occasion at Taumaranui, under the orders of Wahanui himself. The chief was irritated at Bryce's precipitation, which put Wahanui in a false position with his people. However the N'Maniapoto leaders were in fact strongly supportive of the railway. Rewi wrote in January 1884 hoping that it would be constructed within 5 years (Rewi Maniapoto to Bryce, 7 January 1884, MA 13/43, p.159). The survey went ahead steadily during 1884. But

divisions between the Maori communities were never far below the surface. In May 1884 Rangituatea and others of Waipa wrote to Bryce making it plain that they wished to retain control of their own land; they were clearly anxious about the possible implications of the external boundary survey. Price to be paid for the railway land was still to be discussed. (Rangituatea to Bryce, 20 May 1884, MA 13/43, pp.124-7.)

In 1884 David McBeth, a settler deeply concerned about the effects of land-selling on Maori society, and Hirini Taiwhanga, the radical Ngapuhi leader, visited the King Country to persuade Tawhiao and Te Wheoro to visit England and plead that the King Country, before being opened to the railway, be made a self-governing Native District under clause 71 of the 1852 Constitution Act. Tawhiao and Te Wheoro concurred in the proposal, seeing it as a chance to save the King movement. Tawhiao wrote to Bryce, 'You grant the Maoris local self-government and control of their own lands and we will grant you a railway and also throw open the greater portion of our lands under the leasing system. (MA 13/93, No.84/359, cited Ward, A Show of Justice, p.287). The letter was probably drafted by McBeth or Taiwhanga but it nevertheless asserted no more than the chiefs had asserted at the Treaty of Waitangi and subsequently through the King movement and other organisations - namely, a willingness to engage with the Pakeha order provided they could maintain the mana of their lands and people.

The characteristically volatile Rewi supported the new move. Swayed by oratory to the effect that in agreeing to Bryce's survey he had 'left the canoe', he sprang to his feet and amidst applause announced that he would rejoin it. He wrote to Bryce withdrawing from their agreement for the railway and rather shamefacedly told Wilkinson, the new Native Officer at Alexandra, to call him henceforth 'kopikopiko' - 'backwards and forwards' (MA 13/93, N.O. 84/304, cited Ward, p. 287).

But the British government referred Tawhiao back to Wellington. The settlers were confident that they no longer had any need to recognise a Maori province. Moreover Rewi's mood soon changed again. Basically N'Maniapoto too were not interested in a proposal which would see Waikato authority confirmed over their territory.

Nevertheless the situation was still somewhat confused and in late 1884 Wahanui went to Wellington to establish more clearly with the government the people's thinking and to learn more clearly the government's intentions.

Clarification was all the more necessary because in September 1884 the Atkinson government had been defeated in a general election and a new government headed by Stout and Vogel formed, with John Ballance as Native Minister. Wahanui arrived in time to assist in new legislation which Ballance drafted in relation to Maori land purchase generally and the Rohe Potae in particular.

14. *The Native Land Alienation Restriction Act, 1884*

The Native Lands Settlement Bill, which subsequently became the Native Land Alienation Restriction Bill, proposed to debar to private purchase a district within boundaries approximating those of Wahanui's 1883 petition (including the Taupo lands and the north of the Waimarino) plus the Mokau-Mokahatino block - an area of about 4½ million acres.

Meanwhile the island-wide meetings of Maori leaders, which had begun in the late 1870s (e.g. Paora Tuhaere's parliament, 1879) were gathering strength. A deputation led by Major Kemp (Kepa Rangihiwinui) had also assembled in Wellington to lobby for better land laws; they requested the authorities to allow Wahanui to speak at the bar of the parliament in relation to his district. The request was granted. After discussions with Ballance, he addressed the House of Representatives on 1 November 1884, and the Legislative Council on 6 November. The core of his demand to the House was that 'we should have the administration of those lands' (their ancestral lands). He thought that there were some sharp teeth in Ballance's bill and a sting in its tail. He had suggested some amendments to the Native Minister. He also requested that the sale of spirits within his people's district be stopped absolutely. (PD, 1884, Vol.50, Appendix, See Doc. 5). In speaking with the Council he was more explicit, requesting that the NLC not be given jurisdiction over the King Country lands 'at present'. He went on:

> *I do not say always, but for the present, so that we may have time to consult with the Government and to make satisfactory arrangements; and, when the law is agreed to, then we can discuss the prospects for the future. ... Secondly, I should wish that my Committee - that is, the Native Committee - should be empowered, so that all dealings and transactions within that proclaimed district should be left in the hands of that Committee.*
>
> *(PD, 1884, Vol.50, p.427, Doc. 5)*

Wahanui later stated to a meeting at Kihikihi (with Ballance present) that he had spoken with Ballance:

1. *With regard to the external boundary-line;*
2. *To leave us to sanction the making of the railway-line;*
3. *That the gold should not be worked by Europeans without our authority;*
4. *With regard to giving power to the Maori Committees to conduct matters for the Maori people;*
5. *That no liquor licenses should be granted within certain boundaries;*
6. *That the Native Land Court should not try any of our lands without our first sanctioning it, and that the Europeans should refrain from interfering with the Maori lands, but leave the Natives to manage them themselves.*

(AJHR, 1885, Vol.II, G-1, p.14)

In introducing his bill Ballance referred sympathetically to the movement going on among the Maori people to secure greater power for Native Committees and greater control of their own property. As far as the railway was concerned, Ballance explained:

> *It was the intention, <u>in the first instance</u> [my emphasis], to take land within a certain distance of the railway-line; but gradually our views became expanded, and we thought that--if we were to do justice to the colony, and, at the same time, to the Native people--we should take in at any rate that extent of country which would be served by the railway. We then thought that the best boundaries we could make would be the boundaries enclosing the watershed in connection with the North Island Railway, and I took a map and traced a line in order to give to the railway that land which seemed to be benefited by it. I had an interview with Wahanui, and his inclination seemed to be to take in and reserve from private dealings not only the land which was likely to be benefited by the railway, but the whole of the Waikato, including his lands. I believe I interpret his views very fully when I say that I think the wish of Wahanui is to include the land the boundaries of which are marked off on the map which is now before the House. So that we have made an important advance in getting his assent to the prohibition of private dealings in Native land in this country. We have therefore prohibited private dealings in land within those boundaries. [This map has not yet been located, but might be the map of the Rohe Potae boundary surveyed earlier that year.]*
>
> *(PD, 1884, Vol.50,pp.312-3)*

The bill also provided that other land could be brought under its operations, with the consent of the Maori owners, the government acting as agents for them in its alienation. This principle had been proposed in the Native Land Sales Bill 1880 but had then been strongly opposed. Bryce had instituted it in part, in the Thermal Springs Act, 1881. Ballance also foreshadowed that the government would, in the next session, introduce a bill to allow the Native Land Court to award title to a tribe, a hapu or an individual, as they wished. The land would be administered through a board including Maori assessors, but Ballance foreshadowed, after hearing Wahanui's speech, that the Maori would want more extensive powers in administration of land, and in election of members to the board. The foreshadowed bill also provided that half the proceeds of the land, in sale money or rent, would pass to the owners and that 'not more than half' would be retained for roads, surveys and administrative expenses. This seemed to the Maori a very large proportion, Ballance acknowledged, but the value of the reserved land would be greatly increased by the roads and surveys. He was not prepared to admit that Native Land Court should be abolished, but it could be improved upon, the Native Committees could be given some powers, as a court of first instance, but could not replace the Native Land Court. (Ibid.)

In the event the government (in 1884) held over these wider measures, and proceeded only with the clauses relating to the Rohe Potae, the land affected by the schedule to the bill. The area totalled over 4.6 million acres and comprised, according to Ballance:

	Acres.
Lands sold by Natives to Europeans	*11,166*
Lands proclaimed under negotiation of purchase by the Government	*730,628*
Lands still held by the Natives	*10,000*
Lands leased by the Government	*129,148*
Crown lands	*131,072*
Lakes	*96,256*
Lands held by Natives over which the Native title has not been investigated by the Native Land Court	*3,519,915*
Total area within schedule	*4,628,185*
Area within belt 2 chains wide along central route	*3,360*

(PD, 1884, vol.50, p.316)

Ballance expressed the hope that the 3,360 acres required for the actual railway track would be given by the Maori owners free of charge, as Wahanui and some Whanganui leaders had indicated.

In debate, the newly-elected member for Eastern Maori, Mr Wi Pere, made a strong speech in favour of the Maori maintaining authority over their own land, rather than the Crown obtaining that authority, and against the excessive powers of the Native Land Court. John Bryce, on the other hand, said that he and other members were disappointed that the government did not propose to take more control over the land near the railway. He stated:

> *... it is not an unreasonable thing that, if land belonging either to the Maoris or to Europeans is to have its value so largely enhanced by public works executed at the general expense of the colony, that land should contribute something towards the cost of those works; and I do hope the Native Minister will endeavour to make some arrangement with the Maoris of that nature.*

He then added, alluding to the very strong pressure building up among settlers to enter the central North Island:

> *One thing we must acknowledge, that it is desirable to utilize the land of the Maoris: I do not say utilize it by sale, or even by lease; but it is necessary, in the interests of the colony, that these large areas of land should be utilized in some way. If they are not, the interests of the colony will suffer; the Maoris themselves will suffer; and you may take this as an undoubted fact: that, unless provision is made for utilizing them in some far and reasonable way, they will be got at in some unfair and unreasonable way. You will be utterly unable to prevent that, unless you deal with the question very shortly.*
>
> *(PD, Vol.50, p.321)*

He supported total prohibition of private dealings in Maori land which had not been through the Court, but he favoured individualisation of title after it had been adjudicated.

Ballance's bill was then forced through the committee stage and third reading with little more debate. Some amendments proposed in committee by Wi Pere, were not accepted.

In the Legislative Council five days later it was further debated, under its new title of Native Lands Alienation Restriction Bill, Wahanui's speech opening the debate. Members such as W.P. Reeves strongly

condemned purchase by landsharks and wanted to extend the bill to the whole country. Walter Mantell, on the other hand, was extremely cynical about government purchases. 'The very lifeblood of the Government', he said 'is ... the getting of the largest amount of land for the least possible price', and thought the government ought to state more clearly its intentions as regards the land in the schedule. His words were to prove appropriate and prophetic. J.C. Richmond made a vigorous denunciation of the Native Land Court, 'that frankenstein power created by the State ... which, blinded by its own fanaticism and vanity, proceeded remorselessly through thick and thin; and which insisted on finding what never existed - a Native land law - and insisted upon manufacturing it if it did not find it'. He put the blame obliquely on Chief Judge Fenton.

> *It [the Court] ... might have been a powerful means of solving difficulties, but, headed as it was by a gentleman of great ability and enormous obstinacy, unwilling to listen to advice or to hear criticism, it was fated from the first to fail, and to fail in consequence of that fact which has been referred to by Mr. Mantell this evening, that it is not the individuals but the hapus who are the owners, and because it insisted, in the business of the Court, in shutting out all who did not appear, using the old cynical maxim of lawyers, De non apparentibus et non existentibus eadem est ratio. The cause of the failure of the Land Act was the want of wisdom in the administration, and not in the principle itself.*
>
> *(Ibid, p.436)*

There is much substance in what he said. It was Fenton's high-handed attitude and practices which made the effects of the Native Land Acts so vicious. But the law itself, the drive towards individualisation of title in the 1865 and 1873 Acts was also fundamentally responsible for the distortion of the hapu basis of Maori land-ownership. (See A. Ward, A Show of Justice, pp.185-263) Members had various views on whether government purchasers or private purchasers were more predatory upon the Maori, but behind this loomed also the ruthless paternalism of James Williamson, of Auckland:

> *I think that the sooner the Natives of New Zealand are relieved of their surplus land fairly, the better for them. I think that people are not happy who live without regular employment; and the sooner the Natives are brought to such a position that they have to attend to their own affairs, and become workers in the community, the better it will be for the Natives themselves.*

(Ibid, p.438)

Europeans, it seemed, could be capitalists and rentiers but not Maori.

The Council passed the bill but with amendments reserving it for Her Majesty's assent (a most unusual provision in New Zealand by then) and also adopting the proposal which Wi Pere had tried for in the House, of giving Native Committees, rather than the Native Land Court, the power of determining title and administering the land.

The bill then moved back to the House where Robert Stout stated a number of reasons why the Council's amendments should not be agreed to. They included:

> *... there is a reason to suppose that Native Committees have not yet attained the position which would justify the Legislature in placing them as arbiters between the owners of land and the representatives of the Crown.*

Sir George Grey spoke in favour of the Committees. Wi Pere made an impassioned speech in their favour, denouncing the government for the low price it paid for Maori land; he spoke in favour of subdivision surveys and sale of small blocks to the highest bidder, under the aegis of block committees elected for each block. Te Puke Te Ao (Western Maori) supported him. Ihaka Hakuene (Northern Maori) referred to the 1883 Native Committees Act and the confusion of ideas about committees; he favoured some kind of arrangement to prevent abuses by either the government or the Native Committees:

> *Last year this House passed a measure giving certain powers to Native Committees. Those powers were not given to Committees by the act of any outside people, but by this House. Now, the Native members in this House do not know there are any Native Committees behind us other than those already appointed. But, according to the amendments proposed by the Upper House, it appears that there are to be Native Committees other than those of the Maoris interested. Therefore we consent to that. I quite approve of preventing outside Europeans from having any dealings with the Native lands, but I do think it is only right that the Native Committees should assist the Government in dealing with the land. I think that there should be Committees to assist the Government. I think this is all the more necessary, because the proposal to make the railway comes from the Government, and the Natives, of course, are the owners of the land. If the land belonged to the Europeans it would be a different thing. I have no desire whatever to oppose the Government, or to take away*

any authority from the Government. All I ask is that the Government and the Natives generally should manage affairs relating to the Maori land. If the Government take all the power themselves, and give the Natives none, then the Natives will be very suspicious. If the Government had all the power in their hands they might be arbitrary. They would say to the owners, "We want this particular piece of land: go you elsewhere." I believe, on the other hand, that if the whole power were placed in the hands of the Native Committees there would be abuses of that power also. It might be that there would be trouble between the persons employed to make the railway and the Native Committees. It seems to me to be necessary for the Government and the Natives generally to carry out all the arrangements.

(Ibid p.485)

Stout angrily berated the Maori members for the 'obstructive' behaviour and defended the exclusion of private purchases from the RohePotae.

Back in the Legislative Council the members debated the reasons given by the House for rejecting their amendments. Daniel Pollen (Auckland) feared the emergence of another 'land league' and believed that Wahanui's requests should be granted; allowing the Ngati Maniapoto a large share of management of their land, would enable land sales to go ahead. George McLean (Otago) asserted that the Maori ought to <u>give</u> a large block of land for the railway because of the added value the railway would give to the rest of the land. John Johnston (Wellington) said that he believed Wahanui's idea of a Native Committee to be very different from that of the 1883 Act. Wi Tako Ngatata (Wellington) had the last word. He stated:

I received a note from the chief Wahanui, explaining to me the nature of the amendments made in the Bill, and he asked me to support those amendments when any necessity arose for doing so in this Council. The main reason he had for saying so was that he wished the dealing with the land to be left in his own hands; and, when the Government desire to purchase lands from him, it should be made public to all the Natives having an interest in that part of the district, and when the Government desire to make a purchase it should interview the tribes of that district, and also make the matter known to the Committee of the district. It is not that he desires to retain permanent possession of that land, but he wishes to wait until the mode is made clear by which dealings can be undertaken, and then will be the time to open such negotiations. He has no

fears about a railway passing through that district. They are quite clear on that point, and willing to allow it so to pass; but what they desire is that Native lands which have not been adjudicated upon, or for which the title has not been issued, should not be dealt with until some public arrangement has been come to. He also wishes that the system of advancing money to individual Natives should be put a stop to, and they wish that, in all purchases in these blocks, there should be only one mode, and that should be publicly made known to all those interested. These are the wishes of the Natives, and for that reason I will support the amendments made by the Council in this Bill.

But when the motion was put 'That the amendments be insisted on' it was lost, by 18 votes to 12, Ngatata and Mokena Kohere voting with the minority. The government was not prepared to relinquish as much control to the Native Committees as Wahanui and his parliamentary supporters would have wished. (PD, Vol.50, p.489)

A few days later, a Railways Authorisation Act listing the North Island Main Trunk line among others in its schedule, was passed with almost no debate. It appeared only to confirm the general authority taken in 1882 but defined the route as running 'from a point at or near Marton to Te Awamutu via Murimotu, Taumaranui and the Ongaruhe River Valley'. The central route was now adopted in law.

15. *Further Negotiations: the role of Committees*

By December 1884, therefore, the railway project was moving steadily ahead. Ballance issued a notice in the Kahiti formally advising that the central route had been chosen. John Ormsby, Chairman of the Native Committee at Kawhia visited Wellington; he and the Kawhia Committee (which actually met at Otorohanga) began to emerge as major actors in the unfolding process. (Wilkinson to Under Secretary, 18 December 1884, MA 13/43, pp.99)

Native Office correspondence and minutes also disclose some very important features of government policy. T.W. Lewis, the Under-Secretary, began to refer to the 'taking' of land for actual railway purposes - the track, the plate-layers' cottages etc. When Henare Tikini and others wrote asking, 'Will compensation be paid for it now or later on?' Lewis recommended that 'the writers be informed that the Government intend to pay the natives found to be owners for all the land taken for the Trunk Railway - The payment cannot of course be made until the ownership is decided'. Ballance wrote: 'Approved'. (Tikini to Native Minister, 9 December 1884, and minutes thereon of Lewis, 23 December 1884 and Ballance 24

December 1884, MA 13/43, p.91). Thus an imperative to proceed beyond the external boundary survey was established early on.

On 7 January 1885 Ballance met the Whanganui tribes at Ranana. Important exchanges took place. Major Kemp wanted subdivision of the lands, "and the title of each person ascertained". He wanted close settlement, not purchase by speculating companies. His views, at that moment, appear to be close to those of Ballance and the policy soon to be identified with the Liberal government which Ballance headed in 1891. Kemp drew a distinction between clandestine surveys, proposed by an individual (which caused him to take up arms and occupy Murimotu in 1880) and public dealings conducted by a tribal committee (AJHR, 1885, G-1, pp.1 and 7)

Paori Kuramate, who was Chairman of the Whanganui Native Committee under the 1883 Act, referred to boundaries of the Whanganui people's land laid down by "the Committee" in 1880 (Kemp's Trust perhaps?). He wanted a committee confined to the Whanganui district only, to handle all matters regarding the railway, a steamer on the river and surveys sales and leases of land. He also appeared to favour survey of individual interests along the line. (Ibid pp.2 and 6). Whakaheirangi made it clear that he wanted "the land owned by me", [ie, his hapu] surveyed, within the external boundary. He could not wait for the appointment of a Committee "because things might happen in the meantime, my land might be stolen". (Ibid p.7). This was the familiar anxiety fostered by the very existence of the Land Court, which caused Maori all over New Zealand to pursue surveys and Land Court awards, lest others do so in respect of their land. Winiata, of Manganui-a-te-Ao, favoured the railway and referred to minority opposition; he says "we will discuss it with our people and let you know our reply", he said (Ibid p.7).

Ballance supported the concept of smaller committees and undertook to revise the boundaries of the Wanganui Committee district (a huge one had been declared under the 1883 Act). But the question of the powers to be given to the committees were "a very large one" he said. He saw their main role in assisting in the ascertainment of title to land. But, he also saw a continued role for the Native Land Court, as a body of appeal against decisions of the Committees, in case of their possible bias. He foreshadowed legislation (eventually the 1886 Native Land Administration Act) to give an important role to block committees, elected by all owners, with terms of office of 2 years. Central dealings with the land were to be through a Board of three with Maori representation but chaired by a Commissioner appointed by the government, and covering a much larger area. He favoured lease, rather than sale of the land, pointing to the rents currently flowing to Te Whiti's people from the West Coast Settlement

Reserves. He spoke of the committees advising where townships should be (Ibid, pp.2-4 and 8.)

With respect to actual payments for the railway line Ballance encouraged the people to give the land, (two chains or three or four chains wide), though he always acknowledged a right of compensation. "The land will be taken under the Act [the Public Works Act] and, when the title is ascertained [my emphasis] the value of the land will be found out by arbitration; and the money paid to the owners' (Ibid, p.4) From the outset then, Ballance made it clear that no money would be paid until the ownership was determined; in his view that meant by the Native Land Court, assisted by Native Committees.

He held out the prospect of contract work, but he also made the misleading suggestion that, "Land which is now worth not more than five shillings an acre will be worth five pounds an acre when the railway runs through the land" (Ibid p.4). It was a very long time - the 1920s - before Maori vendors got five pounds an acre for their land.

Ballance then held a meeting in Ngati Maniapoto territory, at Kihikihi on 14 February 1885. Wahanui gave a summary of what had happened thus far:

> *When Mr Bryce took office he made a compact with me, which was signed, that a search for the railway was to be made, and, if a suitable line were found, he was to return and let me know. There were five of the NgatiManiapoto present when this contract was made, but they are not here now. I spoke to the five who were there, and I said, "How shall we do in the absence of the majority of the people?" They said, "It cannot be helped, we must act for them as they are not here." They said, "We will agree to what Mr Bryce asks." It was then agreed, on the understanding that it was only to be an investigation to find out the best route for the railway, and after it was found they were to return and let the Maoris know before doing anything else. I then said to Mr Bryce, "What you wish for has been agreed to; now I want you to agree to my request." Mr Bryce asked me, "What do you want?" I then said "I am going to send a petition to the House, and I want you and your cabinet to back it up." I went on with the petition at once, but you know yourselves what it is. We were not consulted with regard to the erection of trig. stations; the consequence of this was that the Maoris got unsettled seeing what was being done, as one brother could not advise the other or tell the other anything about it, and I was sent to*

Wellington by the people. When I got to Wellington I spoke to Mr Ballance, and he will remember what I said to him: (1) With regard to the external boundary-line; (2) To leave us to sanction the making of the railway line; (3) That the gold should not be worked by Europeans without our authority; (4) With regard to giving power to the Maori Committees to conduct matters for the Maori people; (5) That no liquor licenses should be granted within certain boundaries; (6) That the Native Land Court should not try any of our lands without our first sanctioning it, and that the Europeans should refrain from interfering with the Maori lands, but leave the Natives to manage themselves. I spoke to Mr Ballance at Wellington about all these matters. I am mentioning these matters that you - Mr Wilkinson - and your people, the Ngatimaniapoto, may hear. I referred to all these matters in my speech at the House, and I now say to you, the people who are here, that whatever you have to say to Mr Ballance, be clear. If you are satisfied to allow the railway to go on, say so; if not, be clear to say so; lay your matters fully before the Minister. The reason I went to Wellington was that I might lay these matters before both Houses. I will now leave the matter for Mr Wilkinson and his people to talk to Mr Ballance about.

(Ibid. p.13)

John Ormsby spoke to similar effect. He particularly attacked the provisions in the Crown and Native Land Rating Act which enabled the government to proclaim land which had not been through the Land Court, liable for rates. This constituted a pressure to put land through the Court, when the Court itself was the occasion for "evil acts".

In accordance with the present procedure of the Native Land Court, anybody can go in and lay a claim to a block of land whether he has a right to it or not; and, should he be strong, and press his fictitious claim, the Court will give judgment in his favour. Another fault that I have to find in connection with the Native Land Court is that there are others backing up those that appear before the Court. Those are the Government and the companies. They back up people who put claims in to the Court. The reason why I associated the Government with companies is because the Government is a purchaser of land the same as the companies are. One says, "I am the person to buy;" another says, "I am the proper person to buy." The fact of them having paid money to Native on account of land strengthens the claim of those people when they are in Court, and I have found out that a Court is merely a machine by which the lands are transferred by the

Native owners to either the companies or the Government say that these Acts were made with the intention of bringing about evil.

The people had sought to maintain control of the land through the system of Committees:

> *But with regard to the forming of the Native Committees, that was not carried to such an extent as we wished. It was only a shadow when we came to take hold of it to work it - it was not substantial. I now ask that the Committees shall have some power given to enable them to force disputants to bring their cases before the Committee, and that the Committee should be placed in the position of the Native Land Court. What the Europeans desire is that the land should be granted individually, but I consider that it would not be proper to individualize the titles; that they should be given in favour of hapus, because from the time that our ancestors first settled on this land it was always divided amongst hapus; nothing was known about individualizing titles; then each hapu can appoint its own Committee, and then the committee representing each hapu could manage or decide whether their land should be rented or sold.*
>
> *(Ibid, pp.14-15)*

Immediately after Ormsby, however, came Te Hoti Tamehana and Hopa Te Rangianini who spoke in favour of the Court and Court orders. Others spoke against it, and against the pushing on of the railway. (Ibid, p.16)

Ballance claimed that the legislation affecting the railway had taken account of Wahanui's requests. He defended a role for the Native Land Court but proposed new powers for the Native Committees which would remove the abuses. He promised also to amend the Rating Act. (Ibid, pp.16-18) Ormsby partly concurred. On the Native Committees he said:

> *I say that the Committee that was appointed would be the proper body to deal with the land. I will admit that the Committee itself is not properly constituted just now. I was very pleased indeed to hear what Mr Ballance said about increasing the powers of the Committee; and if those extra powers are given to the Committee, then I would suggest that the present Committee be broken up and a new one elected, and then each one would strive to elect his representative. On the election of the new Committee it would most likely be found that each hapu and tribe had its representative. Mr*

> *Ballance was right in his statement that some chiefs, owners of the land, had already sent applications in to the Native Land Court for hearing. The reason those applications were sent in at that time was that there was no other course open to them [my emphasis]; but, after the Native Committees were elected, then it was considered that those applications should be recalled, and the matters left to the Native Committees to deal with.*

He debated the possible role of the Committees, or a Maori magistrate, to deal with petty crime. (Ibid., pp.19-20) Ballance agreed that more time should be given to the chiefs and people to discuss the railway. He thought that the three weeks before the engineers were ready to call for tenders would be "ample time" (!?) He reiterated his policy of paying for the railway line itself, and land for stations "When the owners are found and the title determined ... When the payment is made will entirely depend upon yourselves - that it to say, when you are prepared to go and prove your title to the land". (Ibid. pp.22-3)

Other speakers requested compensation for loss of eel swamps, and the fruit and timber of forest trees. Ballance tended to turn this aside: "Something has been said about eating berries from trees, and so on; but let me tell you that the money that will come to the people through the construction of this railway will be worth all the berries in the world, and the eels too. [Laughter]" (Ibid, p.24)

In early February 1885 the representatives of N'Maniapoto, N'Raukawa and Whanganui, plus N'Hikairo but minus N'Tuwharetoa, meet at Kihikihi and finally agreed on their terms for the railway: it was to be of one chain's width, paid for (not gifted, though Wahanui implied that he would not seek payment) and fenced both sides. (Wilkinson to Under-Secretary (telegrams) 27 and 28 February 1885, MA 13/43 pp.30-33 and Wahanui to Ballance, 4 March 1885, MA 13/43, p.6). But although they had agreed on the external boundary survey it was already becoming clear that each tribal community's preference to manage its own lands was likely to defeat any hopes that Wahanui and others might have entertained of continued management of the land by an over-arching regional committee or a series of regional meetings. For example Te Rangituatea wrote to Ballance reporting the Kihikihi meeting of the five tribes but claiming for himself and his hapu (plural) 'the right of dealing with our own land without interference from other persons or tribes ... I have now to ask you not to pay compensation for land taken for the railway to anyone until the ownership of the land has been decided'. Lewis was happy to recommend agreement: no payment until land has passed the Court. Ballance initialled Lewis's minute but added 'or until the

owners are agreed'. Perhaps he was himself partly sympathetic to the wish of Wahanui's and the Maori parliament movement, to have the court take more of a back seat to the Committees. (Te Rangituatea to Ballance, 28 February 1885, Lewis and Ballance minutes, 7 March 1885 - MA 13/43, pp.14-17)

The principles were further clarified when Paiaka te Pikikotuku and Paori Kuramate of the Tuhua district wrote to Ballance objecting to 'that system of sale' ('taua hoko') introduced by Wahanui and the Kihikihi meeting. Lewis stated that there was no question of sale of lands for the actual railway track - the government would however pay compensation for land taken for the railway itself, once the owners were ascertained by the NLC. Ballance approved. (Paiaka etc to Ballance, 7 March 1885 and minutes of Lewis, and Ballance 1 March 1885 - MA 13/43 pp.19-21.)

16. *Railway construction commences*

By April 1885 the government considered the time was ripe officially to proclaim the railway route. A series of 3 Orders-in-Council of 2 April gazetted on 9 April, under section 8 of the Railways Authorisation Act 1884 and sections 129 and 130 of the Public Works Act, 1882 proclaimed and declared a 29 mile length of the middle line of the railway 'from a point at or near Marton to Te Awamutu, via Murimotu, Taumararui and the Ongaruhe Valley'. This was in effect, a compulsory taking of the land for the route, confirming the definition in the 1884 Railways Authorisation Act and the consent given by the recent Kihikihi meeting. Henceforth resistance to the construction would be illegal. The Public Works Act also provided for compensation. Section 26 provided:

(a) *Where the Native title has not been extinguished, the Minister may cause application to be made to the Native Land Court to ascertain what amount of compensation ought to be paid to the person interested in such land, and who are the persons entitled to be paid such compensation,and what land is affected by the Order in Council issued under the powers herein contained: And after hearing such evidence as may be produced before it or may be thought necessary, the Court may make such order or orders as to it shall seem fit.*

(b) *All lands declared in such order to have been taken for such Government work shall, as from the date of the Order in Council, be deemed to have vested absolutely in Her Majesty.*

(c) *The Court shall have all such authority and jurisdiction in respect of any such application as it would have in any matter within its ordinary*

jurisdiction, and in addition thereto shall have all the powers and authority of a Compensation Court under Par III. of this Act.

(d) The compensation decided by the Court to be payable to the owners or occupiers of the land taken shall be paid to them as soon as practicable after the making of the order of Court, and interest shall be payable on the sum awarded at a rate not exceeding seven per centum from the date of such order.

In fact the government sought to determine a rate of compensation with the Rohe Potae leaders by negotiation and agreement.

On 15 April 1885 the ceremony of turning the first sod was performed by the Premier, Robert Stout, assisted by Wahanui and Rewi, on the south bank of the Puniu River two miles from Te Awamutu. A huge crowd of Maori and settlers attended. John Ormsby acted as a master of ceremonies. The speeches emphasised peace and cooperation. A Kingitanga spokesman said that Tawhiao had not given his consent and the ceremony should be postponed. Taunui and the N'Maniapoto firmly rejected that view. Wahanui mentioned important matters:

> *... I shall not make a very long speech, after what Mr. Stout has said. The part of his speech I took particular notice of is that referring to the restrictions on spiritous liquors in this district. I consider we could not have a better boundary with which to keep back the liquor than this stream of fresh water running down below us [pointing to the Puniu]. I have seen, in one map that has been published, a certain boundary defining this licensing district; but that I did not agree to. I myself consider the proper boundary by which to keep back the liquor is a river of fresh water like the Puniu. There is one other suggestion I would like to make, and that is that we should give this railway a name; and the name I give it is "Turongo" [Rewi, who was standing beside Wahanui, also called out "Turongo"]; and I wish that name to apply only to the chain width of land that belongs to the railway. It does not affect the land on either side of the chain wide, because each persons knows the name of his own piece. The person of rank has his own portion, and so has the person of low degree, and it is not a proper thing for a person who is of rank to contest a person of low degree with regard to the title to his land.*
>
> *(AJHR, 1885, D-6, p.4, Doc. 6)*

Turongo was the name of a founding N'Maniapoto tipuna; Wahanui said that, the two races now being joined, they might now be

regarded as descendants of Turongo. In the end the first engine that ran on the line, not the line itself, was called Turongo.

Taonui referred to some unfinished business which he would reserve till he could speak with Ballance (who was not present):

> *I have something to say to him - about the matter - with regard to what is below the surface, and with regard to what is on the other side. I shall have something to say with regard to the position of the stations.*
>
> *(Ibid, p.5, Doc. 6)*

So the work on the Main Trunk railway began in the RohePotae and Maori communities were engaged in the contracts along the route.

17. <u>Land purchase outside the railway track itself</u>

Meanwhile, further south-east towards Ruapehu, there were signs of differing Maori opinions about opening the land. In April 1885 Inspector Scannell of Taupo reported that the Tokaanu Maori had offered land for a township site, but the people of Poutu, near Lake Rotoaira had temporarily stopped the Taupo-Murimotu road, demanding £2 per chain for the land. (AJRR, 1885, G-2, p.12). In September Scannell reported that a Kingitanga meeting had been convened at Poutu by Topia Turoa, who was at that time opposed to roads in the RohePotae and strongly supporting the Kingitanga. There were proposals to passively obstruct the railway by not offering labour and demanding excessive prices for timber. Present at the meeting was Te Kere, said to be founder of a 'new religion' called 'Paetiuihou'. He was seen as Tawhiao's delegate to the meeting. There were apparently divisions about the boundaries between N'Maniapoto and what was called 'the Rohepotae of Tuwharetoa' - presumably that huge portion of the original RohePotae which was in 1886 to be put through the NLC and became the Tauponuiatia block. (AJHR, 1886, G-3, pp.2-6)

Meanwhile the Stout-Vogel government was being hounded in parliament and in the settler press to acquire the land along the Main Trunk Line, and constantly accused of being tardy. In 1885 Ballance stated in the House:

> *Reference has been made to the North Island Trunk Railway, and it has been asserted that pledges were given with regard to the acquiring of land along that line of railway. Now, I recognize as much as any honourable member in this House that we are called upon to provide for settlement of population*

along the course of that line; but I maintain that no person having the slightest knowledge of Native affairs will assert that during the short time we have been in a position to do so we could possibly have more than we have done to acquire land for settlement along the line of that railway. The merest tyro in the House well knows that the land cannot be acquired for settlement until it has been passed through the native Land Court; and it ill becomes those honourable gentlemen, who, during a five years' tenure of power, got none of that land passed through the Court, to come down here and say that in a few months' time we should have got all those great Waikato chiefs to bring all their land into Court to determine its ownership. The first step to induce the Natives to bring that land into Court is to establish a feeling of confidence in their minds; and unless that confidence is established it may be years before there will be any possibility of acquiring any quantity of land for settlement along the course of that line of railway ... Of this four and a half million acres [reserved for Crown purchase under the Native Land Alienation Restriction Act] there is now an application from Natives at Taupo to bring something like 450,000 acres into the Court. What did we do last session? We did this: We said, "We will bring in a Bill reserving the land along the line of railway, so that no private individual shall deal with it;" and we passed a Bill excluding four and a half million acres from the operations of private individuals. Not a single private individual can now touch that land. We have the absolute right to deal it. What are we doing? In the first place we have received applications from the Wanganui tribes to survey 1,200,000 acres in order to pass it through the Court; and that is with the consent of nearly all the Wanganui tribes. Since last session we have acquired seven-eighths of a block of 63,000 acres, and we are now negotiating for several smaller blocks; and it depends entirely upon the money appropriated by the House how fast we shall go on with the railway. I say we have done a great deal to acquire the land; but we have done more. There is a block of land which was acquired, and we have now 30,000 acres of it surveyed for small-farm settlements, and in six months' time we shall have small farmers settled there, on an average of one man for every hundred acres. ... I say we have not lost sight of this question. I challenge any one to say that I have broken a single pledge. I told the House last session, and I do so again, that there is only one safe way of getting land from the natives along the line, and that is by purchase. The idea that has been started of taking the land and then awarding compensation is an insane idea, and, if carried out, would in all probability bring about disaster. At any rate, I feel

confident that if anything in the shape of force were used the cost to the colony would be infinitely greater than even purchasing the land at a high price. But I am perfectly certain that the Natives are disposed to part with the land at a reasonable rate. I know that from conversation with them. I know that a large number of Natives are prepared to sell sufficient land to the colony for the purposes of settlement, and that we can get as much as we want. The honourable member for Egmont, in his resolutions, says that 500,000 acres should be obtained for settlement before any further operations are carried on. I think that is a very modest amount. My idea is this: that, before the railway is completed, in successive stages from time to time we ought to have acquired along that line of railway nearly two million acres for the purpose of settlement; and I believe that can easily be done. But if you say that the railway shall not go on until we have acquired 500,000 acres my belief is that you will create suspicion in the minds of the Natives, and they will refuse to sell any land at all. Wahanui's answer was perfectly clear. The first thing you have to do is to satisfy them that you mean honestly and fairly by them, and then you can get land for the purpose of settlement. I am perfectly certain that the railway will open a vast country, and that the Natives are in a state of mind at the present time to meet the colony fairly and handsomely.

(PD, 1885, Vol.53, pp.354-5)

This amounts to an admission by Ballance that he was being less than frank with the Rohe Potae chiefs. True, Wahanui himself, and others, had indicated some willingness to sell as well as lease, but Wahanui did not envisage selling to a government monopoly. In his statement to parliament Ballance quoted from the minutes of the Native Affairs Committee of 1885, at which Wahanui appeared. Asked by Ballance what he understood by 'the pre-emptive right' the chief replied: 'I understand it is thus: I shall sell my land to the highest bidder - to the man who shall give me the most money'. Ballance read further from the minutes a question by Ormond and Wahanui's reply:

Mr. Ormond. Will you inform this Committee if the Natives are willing to treat with the Government for the cession of the land along that railway for settlement?--I have already had conversation with Mr. Ballance. I have explained to him that the Maoris are a very tractable people; that they are easy to deal with, and will not drive hard bargains. If Maori suspicions had not been created in the past, they would have been very easy to deal with.

(Ibid, p.354)

It is difficult to say exactly what was in Wahanui's mind, and what understandings he had come to with Ballance but the lack of full disclosure of government intentions to the Rohe Potae chiefs generally (in order to 'establish a feeling of confidence in the minds of the Natives') amounts to deliberate deception, especially in view of the government's earlier emphasis on leasing on the Thermal Springs model.

Full research of Native Affairs Committee minutes and Native Land Purchase Department records will be necessary to disclose exactly what blocks were being negotiated for among the Whanganui people, but it is obvious that government land purchase officers were operating ahead of blocks going through the Native Land Court. For example, a return of Crown purchases presented to parliament in 1888 contains a column of 'Payments to 31 March 1884'. About £3000 was spent towards Crown purchases of blocks in the 'Taupo' district, and over £12,000 for various blocks in the 'Wanganui' district. Of these, many had still not passed the Court when the return was compiled in 1888. But the payments for Whanganui land before 1884 included £1,192 for the Waimarino (cited as 384,260 acres). (See AJHR 1888, Vol. 2, G-2, p3, Doc.7). These payments then form part of the background to the cluster of applications to the court in 1885-6. They stand in contrast to the central North Island chiefs' desire expressed in 1883-4 not to deal with land until the main external Rohe Potae boundary had been established and for government not to make advance payments to individuals.

18. *Ballance's new legislation debated*

(a) *Meanwhile, during 1885, Ballance was developing his proposals to reform the Native Land Acts and Native Land Court. Broadly his proposals emanated from principles which John Bryce had been developing since 1880. Bryce, representing small settlers rather than rich speculators, had become thoroughly disenchanted with direct private purchasing which (given the complexities created by the 1873 Native Land Act), favoured the speculator. He proposed 'to permit the disposal of Native Land only through the Land Boards of the colony, or by direct sale to the Crown' (See Governor's Speech, 1884, PD, Vol.47, pp.2-3).*

The government changed in September 1884 but Ballance continued to develop a bill along the same lines. He discussed also the role of Native Committees in the process of determining title, as well as administering land. As we have seen in debate on the Native land Alienation Bill, 1884, and his meetings with Maori communities in

1885, he saw a much greater role for them, but not one which would displace the Native Land Court altogether. In view of the incessant, serious complaints about the Native Land Court, Ballance began to develop two bills, a Native Land Court Bill and a Native Land Disposition Bill.

Ballance introduced the latter in the 1885 parliament and received copious submissions on it in the Native Affairs Committee, with amendments being proposed by Wahanui and by the MHR for Eastern Maori, Wi Pere. All these were printed and circulated through the country, and then discussed at a large meeting of iwi leaders convened at Waipatu near Hastings on 2 January 1886.

At a well attended meeting at Waipatu, near Hastings, on 2 January 1886, James Carroll, then aspiring to the Eastern Maori seat, expressed the meeting's objections to the large role envisaged for the district Land Boards (even with Maori representation) the Public Trustee, a Commissioner who would handle the alienations, and the Governor-in-Council. 'The one point the Natives insist upon' he said 'is to have absolute disposal of their lands'. (AJHR, 1886, G-2, pp.4-5 and 14-15). As a result of these representations Ballance removed the reference to the Land Boards and changed the name of the Bill to Native Land Administration Bill. (PD, 1886, vol.54, p.328). In 1886 he reintroduced this Bill and the Native Land Court Bill to parliament. The principles of the Native Land Administration Bill were:

1. *Block committees could be elected by the owners of any block.*
2. *A majority of owners could direct the Commissioner appointed for each district, to lease or sell on their behalf some of their 'disposable' land (the non-sellers' portion would be partitioned out).*
3. *Owners or the committee could deal directly with the Crown rather than through the Commissioner, if they wished.*
4. *After deduction of a 5% administration charge, an agreed sum for surveys and roading, the revenue received by the Commissioner would be paid to the owners.*
5. *Direct private purchase of Maori land was prohibited.*
6. *Sec.47 repealed the Native Lands Alienation Restriction Act 1884. Henceforth all Maori land was to be sold through the Crown, so the 1884 boundary became redundant, from the government's point of view.*

The bill was in fact a carefully considered effort to stop the chicanery in Maori land purchase. It was of course opposed by the politicians who wanted direct purchase, but Ballance was able to show that it was wealthy speculators, not small settlers, who were able to purchase direct. (PD, 1886, vol.54, pp.327-331, 460-64) Wi Pere

said 'The native people approved of the general principle of this Bill'. He condemned the bribery of Maori vendors inherent in the previous system (PD, 1886, vol.54, pp.450-1) He also endorsed the election of block committees. Wi Parata also generally endorsed the bill as did Ihaka Hakuene of Northern Maoris. Te Puke Te Ao took the opportunity to support the Kingitanga demand for a separate province under Clause 71 of the Constitution Act. There was a note of resignation about Hakuene's speech - an expectation that the land would be sold, either to the government or to a company, but that there was at least a chance of getting a reserve back from the government. (ibid., p.457-8). Ballance was of no doubt that the Maori would continue to sell their land under the new system. He said cynically: 'My own experience is that they will part with their last acre if they get the opportunity' (ibid, p.330). The bill passed with many North Island member voting against it, but with the Maori members supporting the government.

Ballance's Native Land Court Bill, 1886 consolidated previous legislation. It simplified division of the land, by several orders rather than one order, and by partition. It could determine relative individual interests, in a multi-owner title. But it did also provide (Section 41) that land could be 'granted to a tribe or hapu by name', every member of the tribe or hapu being deemed an owner for the purpose of partitions. Applications for rehearing (to be made within three months) still lay with the Chief Judge.

Debate on the bill was limited and it passed without a division.

(b) The other major 1886 legislation affecting the Rohe Potae was another North Island Main Trunk Railway Loan Application Bill. The North Island Main Trunk Railway Loan Act, 1882 had authorised the raising of £4 million for the construction of the railway. The 1886 Bill introduced on 23 July 1886, was to define the application of that loan. Firstly it again defined the route, via Murimotu and Taumaranui. It defined what was included in the 'cost of construction', which included the land for the railway itself. It further included, in section 4(5), the cost, not exceeding £100,000, for acquiring 'Native or other' land within the boundaries of the Native Land Alienation Restriction Act, 1884. By section 5, 2½ per cent of this land could be set apart for education, hospital and other endowments and:

> *the remainder of such lands shall constitute a railway reserve, the proceeds of which shall be applied, as Parliament shall from time to time direct, in the construction of the said Main Trunk Railway, and of branch railways, tramways, or roads in connection therewith.*

This specific deviation of loan money for land purchase, and the dedication of the purchased land itself as a reserve for further development, drew strong opposition from the conservative sections of parliament. Members objected to its novelty - the fact that it amended the 1882 Act obliquely , and because the government was using part of the loan for purposes beyond those stated in 1882. It was a jealous opposition, in effect. One member (Mr Montgomery) remarked that of the profits of resale of land in all the North Island provinces, leaving aside the profit from sale of confiscated land in Taranaki, the total sum raised was a mere £300,000! (PD, 1886, Vol. 56, p.419; also Vol. 57, pp. 224-336). The whole system rested on borrowing for public works: hence the jealousy.

Vogel defended firmly, saying that rapid development of the area was expected after the Main Trunk line went through. The Maori members did not speak and Messrs Pere, Hakuene (Western Maori) and Parata voted for the bill; Te Ao (a Kingitanga supporter) voted against it. In the Legislative Council Mr Reynolds (Otago) said that the railway should not be made unless the Maori gave a large area of land, as the railway would greatly increase the value of the remainder, but the Bill passed easily enough.

19. *Tuwharetoa make separate application*

Meanwhile, as a result of the 'groundbait' being laid by the land purchase officers, land in the Rohe Potae began to come before the Native Land Court. On 31 October 1885, Te Heuheu Horonuku formally made an application to the Native Land court on the basis of a sketch-map, not a surveyed boundary, for a hearing of the N'Tuwharetoa lands. Te Heuheu had not been content with the way the Rohe Potae boundary had split the N'Tuwharetoa claim, even though N'Tuwharetoa lenders had been involved in all meetings surrounding the 1883 petition and had signed the petition. There are indications in the evidence that the initiative for this may have come from the government rather than Te Heuheu. Te Heuheu had visited Wellington with L.M. Grace, who had married a daughter of Te Heuheu's. L.M. Grace's brother, W.H. Grace, land purchase agent, later testified:

> *I received instructions to go to Taupo in November [sic] 1885 to get application signed for Tauponuiatea. I believe at that time Government were dissatisfied with the conduct of 'Maniapoto over their Rohepotae which took in part of Tauponuiatea.*
>
> *(See 'Boundary Case', Doc. 4, p.66)*

Certainly the acceptance of this application, with Native Minister Ballance's knowledge and approval, struck a heavy blow at the whole Rohe Potae concept. N'Maniapoto, who had inspired the 1883 agreement of the five tribes and the single survey of the land, were furious. Quite rightly they considered that the government had broken the 1883 agreement. Even if (from his stand point) Te Heuheu was dissatisfied with the way the Rohe Potae agreement had been put together, it had been publicly affirmed by government, and Ballance, if he were to keep faith with Wahanui and others, should at least have discussed the 'Tuwharetoa' decision first. So should Te Heuheu. The N'Maniapoto spokesman stated in 1889:

> *At the time that the Gazette announcing the sitting of the Court at Taupo was published N'Maniapoto relied on the word of Mr Bryce that there should be only one Court for the Rohe potae, together with the fact that the land had not been surveyed*
>
> *Therefore at the meeting held by N'Maniapoto to discuss the Court gazetted to be held at Taupo they settled that Taonui should proceed to Taupo to represent them and to apply that the Court should be adjourned in order that the Rohe potae should not be adjudicated upon piecemeal but as one block.*
>
> *On the very day that Taonui intended to start for Taupo he was served with a subpoena ordering him to attend at the Residents Magistrates Court at Cambridge.*
>
> *The Court at Taupo was fixed to open on the 14th of January 1866 the Court at Cambridge was fixed for the 11th of the same month*

As a result of the subpoena Taonui did not get to Taupo until 18 January. Mr Paul Harman, in an earlier report for the Tribunal, has recounted what followed. On 19 January Taonui asked Te Heuheu Tukino (Horonuku's son, who was conducting the case) to adjourn the proceedings, saying:

> *"Let us be all one people". That Maniapoto were trying to get laws passed to save the people & the land. Te HeuHeu refused saying Taonui had not consulted him when he made his Rohepotae & as to laws to save the land & the people [He then referred to the way that the 1883 Rohe Potae boundary ran through Lake Taupo] "Your boundary splits me in two". Te Heuheu spoke with feeling. "What about the half of me that is left outside? Who is to save that part? No, I prefer my people to die together, as a whole." (See P. Harman,*

'Preliminary Report on the Pouakani claim (Wai-33', May 1989, p.58 and doc A 5(i), pp.70-71 Harman report).

On 12 March 1886 the NLC (under Judges Brookfield and Scannell) delivered their judgment on a western boundary, between N'Tuwharetoa and N'Maniapoto, commencing as follows: (p.59)

> *the boundary line commencing at Ketemaringi thence to Tauwharepurakau thence to Weraroa thence to Tahoro-Karewarewa thence in a straight line to Tapararoa ... Names to be furnished as soon as possible ....*
> *Certificates will issue accordingly on properly surveyed plans being deposited in Native Land Court Office Auckland (Taupo Minute Book No.4, cited Harman report p.59 and his Doc.A10).*

Mr Harman makes the comment that it is not yet clear whether the sketch plan upon which the Tauponuiatea judgment was based had been verified by the Chief Surveyor.

The western boundary finding was immediately contested by N'Maniapoto who claimed further eastward to the crest of the Hurakia range - a boundary they claimed to have been laid down 14 generations before, and recognisable by the absence of eels in the steams flowing east from the crest, and by the pronunciation of the pronouns as 'matou ratou etc' west of the range and as 'matau, ratau etc', east of it. (notes 're Maraeroa etc'). Mr Harman has outlined the subsequent history of this dispute, which involved Supreme Court proceedings, a commission of inquiry in 1889 and a rehearing over Pouakani. The NLC hearings on the Tauponuiatea block itself went on for over six years, until Final Orders were made in 1891 and 1892 about 138 blocks and nearly 3 million acres of land (Harman report p.48). By that stage many of the blocks had been purchased, or partly purchased, by the government. For the purposes of this study the important decision was the definition of the western boundary in April 1886, which separated N'Tuwharetoa from the Rohe Potae

IV THE WAIMARINO PURCHASE

1. The NLC hearings

The Rohe Potae concept received a further blow through the purchase of the huge Waimarino block in 1886-7. Only the northern position of what was to become the Waimarino block lay within the boundary of the Rohe Potae as defined by the 1883 petition. Nevertheless the sudden Crown acquisition of such a huge area, in which upper Whanganui people were claimants, struck at the process of carefully

controlled and limited opening of the Rohe Potae envisaged in the 1883 agreement.

The Whanganui chiefs in 1885 clearly intended the same controlled and careful opening of the up-river country as did the N'Maniapoto in their district. At the big hui at Ranana on 7 January 1885, Paori Kuramate referred to the exterior boundaries of the Whanganui people, and to handling surveys, sales, leases, the railway and river transport through the Whanganui Committee. Ballance, in general agreed, though maintaining a role for the Native Land Court in relation to the tribal committees (AJHR, 1886, G-1, p.2). At the same time, as we have seen, government land purchase officers had already acquired interests in the region and were presumably still operating even as Ballance spoke.

For on 5 September 1885 Rangihuatau and 15 others applied for a hearing on the Waimarino block. He appears in the record in 1879-80 as a land-seller in the Raoramouku No.1 block of 7000 acres (Booth to Gill, 27 April 1880, MA-MLP 1/21/86/134, cited M. Laurenson, draft preliminary report, p.63). Otherwise little has emerged about him from preliminary research. Indeed little is known at all about the activity between Maori and government agents in the Tuhua-Waimarino area at this time and the matter should be a priority for further research. Newspaper reports (which normally report NLC hearings) are silent on the Waimarino hearing, as are the government officers' annual published reports. It is almost as if there is a conspiracy of silence about the Waimarino.

The hearing began at Whanganui on 1 March 1886 before Judge O'Brien. Rangihuatau of N'Maringi claimed from his tupuna Tamakana and submitted a list of names. A series of counterclaims was made, but only one from Ngati Pare admitted in part. The Court adjourned on 14 and 15 March. On 16 March, after a further half day of hearing, the court ordered that, of the 490,000 acres claimed, 14,977 acres should be set aside for Tareti Te Waimarama, 18,525 acres for Te Kiritahanga and 2,309 acres for Ngati Pare. The balance, 454,189 acres, was awarded to Rangihuatau's list of 1,006 claimants, their names to be entered upon a Certificate of Title, 'as soon as a proper survey of the land has been made'. On subsequent days a few more names were added. (NLC minutes 9 Whanganui pp.281-310 Doc.8A)

Just over a year later, on 30 March 1887, the land purchase officer J. Butler applied for a sub-division before Chief Judge MacDonald, Judge Puckey and Pairuki Te Waru (Assessor). Of the original 1006 names, 85 were duplicates. Of these 78 had sold their interests to the Crown and 7 had not. Butler went on

> *I now produce the deeds of sale and ask the Court to award to the Crown the shares of all those who have sold leaving the non-sellers to prove the extent of their claims.*
>
> *(See typescript of NLC, 13 Whanganui, Doc.8B, p.2)*

Topia Turoa stated: 'I do not know where the interests of those whose shares Mr. Butler's claims rest upon the land' and asked for time to discuss the matter with Butler. The land purchase officer replied that he had opened a 'prima facie case' for the Crown and it was for the non-sellers to prove their claims. The Court accepted the deeds and considered the case opened.

The next day, Hori Pukehika asked for an adjournment.

> *I, with others, asked Judge O'Brien to re-open the case, so that we who had been left out of the land might be put in. He declined, saying that we must speak to the Chief Judge.*

MacDonald replied formally:

> *So far as the persons who have been left out, they made an application for rehearing on the ground of their being absent, but as the claim had been duly gazetted, and notices no doubt sent to all, and after all the requirements of the law had been fulfilled, the case was proceed with and this Court has no other action now in respect to that matter, but to accept the work of the Court upon the original investigation.*
>
> *(ibid, p.3)*

Thus by the legal technicalities, claimants likely to have land interests in the block, were effectively denied recognition of those interests.

Topia Turoa also reported that he could get no agreement with Butler as to the position of the block to be given up to the Crown. Subsequent minutes - an examination of the non-sellers - show confusion about who should have been listed but weren't, and of those who could point out hapu boundaries and those who could not, and a near total absence of witnesses because the old people had gone home or were ill. Only 3 were in fact in Court. Somehow, out of this confusion, the Court was to determine the interests of the non-sellers.

On 1 April Butler re-opened the case for the Crown. Rangihuatau stated:

I am a member of Ngati Maringi tribe, that hapu has a large claim on this block. The principal members of that hapu are these, Te Oro, Matuahu, Te Kuri. I am related to Te Kuri, he is a younger relative of mine. He is a greater man than I because I have given him my mana. Matuahu and Te Piki are in the same position. I can give the boundaries of the land of Ngati Maringi beginning at Waipapa thence to Whakapakirangi at No 2 in red pencil. Waipapa is at No 1 in red pencil fro Whakapakirangi thence to Mathiwi following the Hikumutu Stream, to Hunoa on the Hikumutu Stream, on to Kopanga and thence to Porere and thence to point of commencement; Ngati Maringi may have other lands in this block but I am not able to describe them. I know the names of other lands of that hapu on this block outside the boundaries I have given, but I cannot give the boundaries of such portions; the names I know of, as I have heard, Waitea at Ohonga in the Waimarino block. This is the only name I have heard of. I have an ancestral right at Waimarino proper under Tamakana. I did tell you and Mr Stevens that I was the principal man there. Topia Turoa has a claim there.

Exd by Chief Judge
I made that statement to Messrs Stevens and Butler because Mr Butler was paying money to men as Chiefs on that portion, so I felt disgusted and said I was the principal man there. That statement was and is correct. I am the principal man there. This was before the money was paid to me. Mr Butler had told me what sum I was to receive for my interest.

(ibid. p.7)

He went on to discuss the interests of other hapu in the block, about some of which he knew something and some of which he acknowledged he knew little. A handful of other witnesses spoke briefly. On Saturday 2 April the Court formally opened then adjourned. On Monday 4 April Rangihuatau formally presented a statement he had prepared on the Saturday, regarding various claimants' interests. Butler handed in 'a correct list' of non-sellers. (Ibid).

That was the sum total of the evidence. On the basis of this one-sided, incomplete and hasty process, the Court, on 5 April 1887, gave its judgement on the sub-division application, first summarising the evidence:

Mr H.J. Butler appeared on behalf of the applicant. He stated that in the order of Court there were 1006 names of whom

101 had not sold to the Crown, one sold afterwards leaving 100. By direction of the Court he then read out the names of the non sellers. The Deeds of Sale were produced and Mr Butler asked the court to award to the Crown the interests of the persons who had sold.

Major Topia applied for an adjournment to enable the parties to come to an arrangement.

On the Court resuming it was informed that the adjournment had been fruitless.

The Court then called the non sellers of whom only three, ie Tarihira Kereti, Taituha Te Uhi and Tarewa Heremaia were present in Court.

Taituha Te Uhi brought evidence to show where his right lay, but it as not of a satisfactory nature. Evidence was also called on behalf of Tarewa Heremaia.

Tarihira called no evidence.

The Crown Agent in reply called witnesses to prove where the interests of the various hapus to which the non sellers and sellers belonged were situated.

The witnesses, excepting Wiremu Kiriwehi, were very reluctant in giving reliable evidence. Indeed it soon became apparent to the Court that there was a wide conspiracy to defeat the application of the Crown in which the sellers both Chiefs and people were implicated.

As it appeared impossible to get reliable evidence in the face of the strong opposition manifested by Major Topia, himself a seller, a statutory declaration was made by Rangihuatau as to the various hapu boundaries which was produced to the Court and received as evidence and admitted to witness.

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

The Court has considered the question submitted to it and has come to the following conclusion, that the interests of the non sellers amounts to 41.000 acres and that the residue 417.500 acres belongs to the Crown.

The interests of the non sellers as awarded by the Court are as under:

Ngati Pare	*2.250*
Ngati Maringi	*2.250*
Ngati Hinewai	*30*
Ngati Kahukurapango	*1.350*
	5.880
Ngati Tamahuatahi	*300*
Ngati Hinekino	*3.640*
Ngati Kuratangiwharau	*1.350*
Ngati Kahukurapane	*900*
Ngati Matakaha	*4.050*
Ngati Poumua	*2.400*
Ngati Tauengaarero	*6.750*
Ngati Te Wairehu	*2.250*
Ngati Atamira	*1.800*
" Tamakana	*2.250*
" Ngaronoa	*900*
" Tukaiora	*3.150*
" Hinekowhara	*30*
" Hinewai No 2	*1.350*
" Tumanuka	*1.350*
" Ruakopiri	*1.500*
Tarewa Heremaia & Te Moana	*950*
	40.800

The Court will proceed tomorrow to allocate the several awards now made and it will be the non sellers own fault if they are located on the precipices and pinnacles.

(ibid, pp.11-13)

The following day Mepia Topia asked the Court about the 50,000 acres of reserves for the sellers:

McDonald replied:

The portion to be returned to the sellers under the deeds of sale is a matter of arrangement between the Government and the sellers, and a matter with which this Court has nothing to

do at present, but it is quite distinct from the portion the Court awarded to the non sellers, ie 41.000 acres or thereabouts.

(ibid.)

By this travesty of a judicial proceedings, the Crown acquired over 400,000 acres of the central North Island, including the northern portion of the block which had been within the Rohe Potae boundaries. The signatures on deeds of sale collected by Butler, and Rangihuatau's statutory declaration were sufficient for the Court to set aside the protests of hundreds, manifested by their statements or by their absence, deliberate or otherwise - protests considered a 'conspiracy' by the Court. The Western Maori MP, Hoani Taipua was later to say that he had witnessed the sale of Waimarino and 'I saw the Trustees of the minors selling interests of the minors and squandering the money for their own use'. (PD, 1883, Vol.61, p. 690)

The total price paid for this land, according to the 1888 return, was £1,192 before 31 March 1884 and £40,182 after - a total of £41,394 or very nearly 10 acres to the £, or two shillings an acre. (AJHR, 1888, G-2, p.3.) Ms Laurenson cites a statement from an unpublished research essay by Ms Tui Houpapa, University of Auckland, 1988, that Butler and Stevens had paid £14,030 for 200,000 acres before the hearing in 1886 and estimated that the remainder would cost £36,000. (See Marama Laurenson, draft report 'The Crown's Acquisition of the Waimarino block', p.84.) The whole question of transmuting the complex of Maori customary rights into blocks with tidy boundaries has rightly been called into question by Ms Marama Laurenson in her draft preliminary report for the claimants on the Crown's acquisition of the Waimarino block. She shows also from primary source records of the Native Land Purchase Department that a series of payments was made to local leaders for assisting in the opening of the upper Whanganui and the purchase of the Waimarino, and that others - notably Topia Turoa - lodged claims for such services. (Native Land Purchase Department Record Book, 1873-88, cit. Laurenson, p.87)

Ms Laurenson has also shown in respect of Waimarino, what is now clearly being established by recent scholars more generally - that the whole complex nature of traditional Maori possession and usage of land differed fundamentally from the 'ownership' required by the Native Land Acts and Native Land Court. She describes the customary tenure as involving 'fluctuation from mobile and static activity [planting, hunting and gathering, shifting of residence] in a pattern of cooperative and overlapping occupation' (ibid, p.58). Boundaries between hapu and sections of hapu were not fixed and

immutable because the hapu themselves were not fixed and immutable. She rightly cites witness after witness as knowing where they lived, and planted (or had lived and planted) but not knowing 'boundaries', or features of landscape which were not important in their experience. (ibid, pp.58-59) But, as Ms Laurenson says, this did not matter to the Court. The surveyors and land purchase agents and land-selling chiefs knew enough to satisfy the judges that they could determine a 'block' of 490,000 acres. This included 88,000 acres in the N.W. within the boundaries of the 1883 Rohe Potae petition - a portion which Ms Laurenson says, somewhat misleadingly, was 88,000 acres of the 'Aotea Block', citing an NLC minute of 1 March 1886 (Laurenson, pp.98-9). The 'Aotea Block' as such, was not defined by the Court till June-July 1886, although the survey plan for it was probably prepared soon after the Waimarino judgment. Some 40,000 acres were to be excised for the non-sellers. Just where depended upon their making preferences known and coming to some agreement with the land purchase officers and the court. This put considerable power in the land purchase officers, and left the Maori (like the NgaiTahu after the Kemp purchase) deprived of bargaining power, since the reserves were being made <u>after</u> a sale had been confirmed by the court.

2. *<u>Willing and witting consent?</u>*

This was a rough process indeed, carried out with amazing speed, against the manifest objections and non-cooperation of many of the 900 who had accepted the land purchase agents' money and signed their deeds. There is certainly <u>no</u> way in which the complex and changing patterns of Maori customary tenure could be transmuted into 'ownership' of tidily bounded blocks without some distortion to the former. This is true throughout the Pacific. It may be argued that the approximations and listing of names of all Maori with interests (under the 1873 Native Land Act and its successors) was the best approximation one could make to ensure that all right-holders, including minors, were recognised. But to then give each individual the right to <u>alienate permanently</u> his or her interest, without a collective decision by the hapu and the chiefs (including non-resident chiefs whose mana was accepted) was a manifest distortion of traditional Maori right-holding. The government purchase at Waitara in 1859-60 had been resisted on just that principle.

The Waimarino purchase in fact demonstrates just how Maori group control of <u>permanent</u> land alienation were circumvented by the settler-controlled state. Piecemeal purchase of individual interests before the land had gone through the court and customary title been extinquished, then the ramming through of the purchase, controlled by some willing sellers, to the accompaniment of bullying by the

judge, total reliance on deeds of permanent sale signed by individuals (before the hearing), plus the rule obliging witnesses to appear and give evidence in court or have their interests ignored, are all demonstrated in the very minutes of the Waimarino hearing. If the essential nature of Maori land tenure as at 1840 was recognized in the rangatiratanga guarantee of the Treaty then Waimarino and purchases like it are in breach of the Treaty. The case demonstrates as graphically as any that the primary purpose of granting land court title was to facilitate the transfer of Maori land to the Crown. Although the sellers were having second thoughts (as they clearly were in respect of Waimarino) the fact that they had accepted payment and signed a deed was the essence of what the settlement process required. Non-sellers were reduced to being supplicants to the land purchase officers and the Court to avoid being left with the peaks and pinnacles.

3. *Subsequent protests*

Non-sellers not only had to appear but also had to be prompt about it. Appeals for rehearing on ground of absence were not very sympathetically treated by the Court. Appeal by petition to the Native Affairs Committee of parliament was hazardous, the outcome capricious.

(a) *In 1887 Te Kere Ngataierua, Te Huiatahi and others appealed against the inclusion of the Opatu block in the sale of Waimarino. (Petition No.153 of 1887) As a strong supporter of Tawhiao and considered a prophet by many in the district, Te Kere opposed the Native Land Court and would not appear in it. His chances of success in the Native Affairs Committee were therefore slight, but the vote was close. After hearing statements from Te Huiatahi and Tangaiti, committee member Dobson moved:*

> *That there cannot be a rehearing as the block was dealt with in January 1886 and no appeal was made. Those who dissented from the sale of the Opatu have had their land cut out and their interests were preserved - The Committee has no recommendation to make.*

In the vote Messrs Pratt and Dobson voted for the motion, Messrs Taipua and Pere against. The Chairman, Col Trimble, gave his casting vote with the affirmative. (Le 1/1887/8).

(b) *In the same session Te Moanapapaku and another appealed regarding the award of Mt Ruapehu (Petition No.155) which had gone through the court as part of the Tauponuiatea hearings. Major Kemp gave evidence that during the hearing he and his people were at*

Whanganui, for another Native Land Court. He said that the Whanganui people had inserted the names of Te Moanapapaku and other Taupo Maori in the Waimarino block (he appears in Waimarino No.5) and expected that the Taupo people would protect Whanganui in the Ruapehu case. He said that the leading claimants for Ruapehu were Te Moanapapaku, Puranihi Te Tau, Topia Turoa, Teoti Pohe, Matuahu and their people. He wanted another hearing which both Whanganui and Taupo could attend. (Ibid, evidence on petition 155 from Te Moanapapaku Te Huatahi, 10 November 1887). No decision is recorded (or has survived) in the minutes. Kemp's own petition on the subject (no.141 of 1887) was given a recommendation for favourable consideration, but no rehearing took place. Meanwhile Ruapehu and Tongariro, to a circumference of one mile from the summit, had been given by Te Heuheu as a National Park.

(c) *Meanwhile Te Kere in 1887 had appealed to the Native Affairs Committee against the sale of Waimarino without his consent. (Petition No.127) Statements were taken from Captain Mair (W.G. Mair?), Lewis (Under-Secretary of the Native Department) and Te Kere. Consideration was then postponed to 1888. (Le 1/1887/8 in relation to petition no.153). The Minute Book of the Committee for 20 August 1888 notes (regarding petition No.127 of Session I, 1887 from Te Kere Ngataierua and another). 'That after reading the memo of the Lands Purchase Officer, this Committee has no recommendation to make'. Present were Monk, Kelly, Taipua and Taiwhanga. (Le 1/1888/8, Minute Book, Vol.1) Several other petitions, almost all unsuccessful, are listed in Laurenson, pp.43-100.*

(d) *In 1890 Hoani Taipua (MHR for Western Maori) asked in parliament:*

> *What steps the Government intend taking with regard to the Natives living at Aotea, on the Waimarino Block? The Natives now living on this land did not get their names inserted in the certificates when the land was passed through the Court. They had made frequent representations to him and to the honourable member for Rangitikei asking for relief. Seeing that these people were without land, he hoped the Government would seriously consider their case. It was a very large block, but it was well known that there were certain Natives who had other than ordinary motives which actuated them in their conduct. These Natives, for the reasons he had hinted at, did not attend the Court. The only way to settle the matter was to do something as soon as possible. Matters would not be improved by delay. Seeing that the Government had not had to pay a very large sum for the block. he hoped that some provision would be made for these Natives. These Natives had lived on the land from the times of their ancestors, and it was*

only through the action of the Native Land Court that they had lost their right to the land.

Mr. MITCHELSON said he had endeavoured to ascertain from the Native Department what this question meant; but there was no officer in the department that could understand it. The honourable member now stated that the question referred to a number of Natives living at Aotea, in the Waimarino Block, who had neglected to appear before the Court to substantiate the claims which they now said they had within that block, or to make any application for a rehearing. This was the first time the department had heard that there were Natives living in that part of the country who ought to have been included among the claimants to the land. It was too late now to reopen the question of the Waimarino Block,--that having been settled long since, and the land acquired by the Crown, with the exception of a number of reserves that had been set apart for the use and occupation of the Natives,--but he would promise the honourable gentleman to have inquiry made, and if it were found that these Natives had no land in any part of the country, and were not entitled to any land, in that case, the Government would take the matter into consideration.

(PD, 1890, Vol.69, p.685)

(e) *Not that Native Affairs Committee members were always unsympathetic. In respect of a petition regarding Maungatautari a memorandum for the committee reads:*

> *... if the discontent of the natives left out is to be weighed (without a legal rehearing) there is no title in the country worth the paper it is written on. <u>That there has been a great deal of injustice and miscarriage of justice with regard to Court titles seems to be beyond dispute</u> [my emphasis] but the evil would be multiplied many fold if the Government set itself to override the law and to indirectly or directly review titles (Le 1/1887/8, unsigned, undated memo re Maungatautari*

4. *<u>Treaty principles</u>?*

So the unjust proceedings of the Native Land Court were propped up. The whole process of settlement needed the land court titles and, however crude a tribunal it was, the Court's authority and its titles had to be sustained. The only way to get a review, if the Court refused a hearing, was by special legislation, or in the annual Maori land Claims Adjustment Acts which were used in respect of a number of blocks from this time on. Te Kere and his people were eventually

to be given 1500 acres of Crown land in the Tawata Valley, after a visit by the Under-Secretary, Sheridan, in 1901. (See Maori Land Claims Adjustment Act, 1904, Sec.8, cited Laurenson, op.cit., p.92)

Generally though, Maori had to adapt to the Court and use it to their particular advantage as best they could. Some secured titles, which they sometimes retained for a generation or more. But the titles to most land were sold even before the land reached the Court, and the money spent. The inexperienced and competitive Maori were often undoubtedly, as individuals, consenting parties in this process. The question is whether a process which gave them such powers of alienation of part of the hapu land, and which took advantage of their inexperience, competitiveness, jealousies and need for money in a commercial economy should have been launched or, once launched, allowed to continue - whether it is indeed in breach of the Crown's Treaty responsibility to actively protect Maori in the new state. Certainly Wahanui ask the N'Maniapoto leaders to institute a different kind of process, in establishing the Rohe Potae. But, whittled away by the decisions on Tauponuiatea, Waimarino, Mokau-Mohakatino and elsewhere, the Rohe Potae itself was now under threat.

V THE ROHE POTAE AND LAND LAW TO 1890

1. The Rohe Potae hearing

In May 1886 the Native Committee meeting at Kopua worked hard and long to determine their claims, not apparently without disputation which at one point caused Wahanui to withdraw from the proceedings (Waikato Times, 1 May 1886). The NLC hearing affecting 1,636,000 acres of land, in what came to be called the Aotea block, came before Judge W.G. Mair at Otorohanga in June 1886. Wahanui for N'Maniapoto and Tuao Ihimaira for Whanganui presented the claim. W.G. Mair (whose private papers survive) commented that: 'The five iwi claiming this Block will not even give evidence as to the boundaries between each Tribal Estate. The sole object at present seems to be to oust Waikato, or get their interest (if the Court thinks they have any) defined. (W.G. Mair to 'Tawa - Gilbert Mair - 26 Sept 1886, Mair papers, University of Auckland Library.) Counter-claims were brought by sections of Waikato for the northern section between the Waipa and Maungatautari, but Mair concluded that Waikato had not exercised mana there - it was still N'Raukawa and N'Whakatere land. Complex claims and counter-claims also focused on Kawhia harbour, arising from the 1820s battles with N'Toa, resulting in Te Rauparaha moving south to Cook's Strait. On 20 October 1886 Mair found for N'Maniapoto and N'Hikairo while recognising that a section of Waikato ('Kiwi's people')

had acquired ownership rights there. ('Kiwi' had purported to sell 20,000 acres to John Cowell in 1840. See Turton's Old Land Claims p. 376). Mair made orders for various named portions in the NE of the Aotea block in favour of the claimants 'and such members of Waikato as can prove they or their elders were in occupation about the year 1840'. The balance of the Rohe Potae was 'to issue in favour of the claimants of the five tribes'. Claimants were told to hand in lists of names as soon possible. On 23 October the boundary of N'Maniapoto claims in Mokau-Mohakatino was decided. On 25 October lists of names for the portions in which Waikato had interests were handed in and read. (See summary of judgment in MLC microfilm reel 69, prepared by Ms Cathy Mair, Doc.1) Eventually (but not at this hearing) some 4,500 names were listed for the Aotea block.

Lack of time has precluded a full examination of the Mair papers but a quick examination has shown one or two points of interest. Mair claimed that, under the encouragement of L.M. Grace, Tureiti Te Heuheu came to the court in 1886 with claims on behalf of N'Tuwharetoa. Against the furious objections of N'Maniapoto and N'Raukawa, Tureiti 'not being able to show any claim except some old tupuna affair' withdrew his list, then 'some were inserted by Hitiri in his list, and they appeared in the list as printed, but when it was under review lately attention was called to the fact and they were struck out'. (W.G. Mair to Gilbert Mair, 16 December 1887). The politics of making of lists of names was clearly very complex and is not able to be closely examined now as the lists were made up during adjournments of the Court, without minutes.

The making up of lists of names was a requirement imposed on the Court by the 1873 Native Land Act, still in force. In the case of the Rohe Potae the principal claimant tribes did not want to make up lists at all. Mair added:

> *... today Wahanui told me privately his reasons, ie the LPOs [Land Purchase Officers], it is reported that Grace and Butler have each been making advances from his side and that Wilkinson is making inquiries here if any are willing to sell. Wahanui is very wrath, he says that Ballance has broken faith and that the word of a Minister is worth no more than that of any body else ... These people will not be hurried. They wish to get their land questions all settled and then they will set apart some for sale some for lease and make permanent reserves for their own use. The Nat[ive] Dept. know all this and commended the idea but I suppose Govt. want to acquire something on this side of the Country before Parliament meets*

again for I expect that there will be a lot of talk about the great Trunk Railway.

(W.G. Mair & Gilbert Mair, 22 October 1886)

Mair's surmise was undoubtedly correct. As we have seen, Ballance was under great political pressure to acquire land for settlement in the Rohe Potae; the issue of purchase of Maori land - seen as the remedy for economic depression - was in fact to dominate the election of 1887. In trying to satisfy that pressure Ballance was involved in tortuous, if not deceitful, negotiations with the Rohe Potae leaders.

On 15 April 1886 at Kopua (one of many visits to the King Country) Ballance was confronted by John Ormsby. They had given the one chain width for the railway, said Ormsby; when was the government going to do something for them in return. Ballance replied that the railway itself was the payment. He agreed that payment would be made for the land for stations, but they did not know who the owners were. He would be glad if the Native Committee could assist in this. With reference to the adjudication of Tauponiuatea he said that when Te Heuheu applied for a court he thought it best to grant it; it would help maintain the authority of the Queen in the area! (Waikato Times, 15 April 1886). Obviously he had not thought it necessary to discuss the application with the other signatories to the petition of 1883 and the agreement with Percy Smith.

At a further meeting at Otorohanga in January 1887 Ballance maintained that the government would not purchase any land in the Rohe Potae until subdivisions had been made. There would be payment for the station sites; the contractors were bound to pay for timber under the schedules of the Public Works Act. (New Zealand Herald, 27 January 1887).

2. *Maori and settler views of the 1886 legislation*

In fact Ballance was resting all his hopes on the Native Land Administration Act, 1886 and Native Land Court Act, 1886 - measures which he hoped would meet Maori aspirations and yet make land available for settlement. (See above Part III, Section 18). Throughout his meetings with the Rohe Potae leaders Ballance kept urging them to use their committees to assist the Court in settling the ownership of the land. He declined, however, to allow the committees absolute control of land alienation. Wouldn't they rather have a government commissioner distribute the revenue than a Maori committee, he asked a large meeting at Aramoho? (Wanganui Chronicle, 29 March 1886)

During 1886-7 the principles and operations of the new law were furiously debated, among Pakeha and Maori alike. Deprived of the right of direct private purchase most Pakeha comment was scornful and critical, expecting that acquisition of land would be slower. It was scornful and critical of the Maori committees also, as unrepresentative and likely to favour their own groups (Wanganui Chronicle), 19 January 1886). In June 1886, for example, the Kihikihi correspondent of the Wanganui Chronicle stated the Maori people's objection to the proceedings of the Native Land Court, to real owners being deprived of land altogether, to bogus claims being admitted, to names being arbitrarily written into Certificates of Title. Yet, argued the correspondent, 'on Mr Ballance's Native Committees they look with even greater distrust'. The writer had heard a European speculator in Maori titles declare that he could, by his own influence and that of his Maori wife's kin, command two-fifths of the existing committee (Wanganui Chronicle, 14 June 1886).

The 'Kawhia Committee' as it was known, under John Ormsby's chairmanship, continued to maintain control of the Aotea Block throughout 1887. Agreement was reached on payment for the outside boundary survey. Of the £1,600 agreed in 1883 the Tauponuiatea block of 1,002,000 acres, since adjudicated separately, was charged with £607 15s 4d; the Aotea block (still generally called Rohe Potae), of 1,636,000 acres, with £992 4s 8d. This was duly paid by the Rohe Potae leaders to Percy Smith and the matter closed. (Wilkinson to Under-Secretary, 2 June 1888, AJHR, 1888, G-5, p.4)

Suspicions of the intentions of both government and opposition was intense. H.A. Atkinson, furiously campaigning against Ballance's Maori policies, was alleged by Paul Tuhaere to have said in Auckland that he would 'take' the surplus lands from the Maori, leaving them only enough for their own occupation. (Waikato Times, 3 April 1886, reporting a visit by Tuhaere to the Rohe Potae). Ballance was inclined to make statements supporting this version of what Atkinson said. What he actually said was:

> *I say that no more land should be left to the natives than is sufficient to provide them with an ample living. That the rest should be bought by the Crown at a fair price [with regard to prevailing purchase prices] ... I will never be a consenting party to see a large class of Maori landlords set up in the country.*
>
> *(Waikato Times, 1 April 1886). Other papers report Atkinson in almost identical terms, and he made similar statements in parliament.)*

Ballance defended furiously, also claiming that he would not support the setting up of a 'Maori aristocracy' in New Zealand, but that, in the last resort, he would prefer a Maori aristocracy in New Zealand to absentee white landlords living overseas. (Whanganui Chronicle, 14 January 1886). In fact Ballance's interest, and that of the Rohe Potae leaders, in a leasing policy, flew in the face of Pakeha prejudice and economic exigencies. There was a deep resentment among 'energetic' whites to living as tenants of 'idle' Maori landlords. More directly it was believed that capitalist investors were simply not interested in Maori leaseholds. They wanted cheap land in freehold. This was widely considered to be the 'crying need', to attract capital and relieve the nation's depression (Wanganui Chronicle, 28 January 1886).

Among Maori, though there was widespread suspicion of Atkinson's policies, there was even more suspicion of Ballance's Native Land Administration Act. Despite the negotiations and amendments to the Act in 1885, for most Maori it was still too paternalistic, suggesting high costs and too much government control. Lawyers had also been readmitted to NLC hearings - inadvertently, as a result of bad drafting, if Ballance is to be believed. Despite controls in the Act it was easy to fear that the committees would behave like the 10 nominated owners of the 1865 Native Land Act, sell the interests of their people and spend or pocket the proceeds. Maori members like Wi Pere, who supported the Act, were already heavily involved in land dealings on the East Coast. In consequence Maori put virtually no land under the 1886 Act. Ballance's expectation that he would be able to guarantee a flow of Maori land for settlement was thus frustrated, and he was left fully exposed to the bitter criticism of the Opposition and to demands that the Act be repealed.

In the Maori seats it was easy for candidates like James Carroll and Hirini Taiwhanga, in the 1887 elections, to emphasise the most worrying features of the new law, so they won seats in the 1887 election and helped Atkinson form a majority in parliament later that year.

The essence of what Maori were saying, both in regard to the Rohe Potae concept, and in regard to the land law, was to secure control over their own land, both in respect of settling title and in administering the land subsequently. Thus John Ormsby reproached Ballance in January 1887 because in the law 'the Government took to itself the mana over the sale of land' (New Zealand Herald, 27 January 1887).

How the Maori aspiration exactly was to be expressed in the land laws was the subject of many meetings of Maori leaders around New

Zealand. Henare Matua's 'Repudiation' movement in Hawkes Bay, Paora Tuhaere's parliaments at Orakei, the Treaty of Waitangi movement among Ngapuhi, were coalescing in the Kotahitanga which was to dominate Maori politics in the 1890s. The loss of land was the movement's main concern. In 1887 a meeting at Putiki framed a draft bill - apparently at the government's suggestion - to express Maori wishes. Four principles stand out in the document:

(a) The meeting was not totally opposed to land selling but emphasised that ample reserves must first be made

(b) There was a marked preference for leasing, with elaborate provisions for having lease terms, in Maori, witnessed by a commissioner and a judge.

(c) A total distrust of the Native Land Court and a demand that the Native Committees appointed under the 1883 Act be 'released from the control of the government' and 'have the same jurisdiction as the said Court'.

(d) Where land had been given by Maori for schools or government buildings and was not used for those purposes it should be returned (AJHR, 1888, Vol.2, G-7)

3. *<u>The 1888 Native Land Act</u> ('free trade')]*

In August 1888 a deputation of Maori leaders, led by Paora Tuhaere, again appeared at the bar of the Legislative Council. Tuhaere asked for the government's land bills to be deferred until they could be discussed at Waitangi. Tuhaere complained that the land bills framed by them, at government's request, had not been accepted. He said that when asked to draft bills they replied 'Yes: we will do so upon the lines of the Treaty of Waitangi, which treaty provides that we should have the management of our own lands and of our fishing-grounds, our own pipi-beds and forests, and all other properties belonging to us'. He referred also to the 1852 Constitution Act: 'It was there provided that the Natives should manage their own lands'. The deputation in Wellington was 'very much distressed' at the government's present land bills. (PD, 1888, Vol.63, pp.209-10, Doc.11).

The Atkinson government had in fact drafted a very short bill, repealing Ballance's 1886 Act and providing, in its main clause (S.4):

> *Subject to the provisions of 'the Lands Frauds Prevention Act, 1881' [and its amendment act of 1888] Natives may alienate*

> *and dispose of land or any share or interest therein as they think fit.*

Section 5 provided that the Governor-in-Council could remove the restrictions on alienation of any land simply on application of a majority in number of the Native owners - proof of adequacy of consideration and that the vendors had other land for their requirements were no longer required.

The new Native Minister, Edwin Mitchelson, represented this bill as expressing the wishes of the Maori people - simply giving them the right to deal with their land as they wished. He too had attended meetings round the country, and heard the objections to Ballance's act, and how they wanted to sell or lease without the intervention of government as agent. They objected also to the pre-emptive right - to being allowed to sell only to the Crown. That, said Mitchelson, left only the option of 'free trade in Native lands'. (PD, 1888, Vol.61, pp.668-9).

Ballance attempted to rebut Mitchelson. So-called 'free trade' he said, had been tried and it had failed. It favoured the speculators. Maori opinion in 1885-6, and the opinion of the four Maori members of parliament, had been unanimous in rejecting it. Now their opinions had apparently changed. But had they really? or totally? Because he had in hand a letter from Wahanui asking that the Native Land Administration Act not be repealed, but only amended in minor ways. (ibid., pp.671-2)

Hirini Taiwhanga (northern Maori), later in the debate, read out Wahanui's letter:

> *Sydney Taiwanga.*
> *SIR,--I have heard that the Government have introduced into the House a Native Land Bill, and I advise you to protest against it all you can. My reason for asking you to do this is because this Bill is taking away our right in the Treaty of Waitangi. We approve of some clauses of Mr. Ballance's Act of 1886; but some of the clauses of that measure are bad. They could, however, be removed. Clauses 19, 20, and 27, and some other clauses, are not clear to our mind. We wish the Government not to have power to buy or lease our lands. We desire to have the management of our own lands. We think that no lawyer should be allowed to attend the Native Land Court. Therefore you and the other members will have to watch very closely the flock of sheep, so that they may not be*

destroyed by the wolf. I will send you another word in a few days. From your friend,

"WAHANUI."

(Clauses 19, 20 and 27 refer to sale or lease through the Commissioner, or directly to the Crown, and to the right of lessees to renew leases).

Taiwhanga said that 'all the chiefs of New Zealand had protested in similar terms'. (Ibid, pp.693-4)

Mr Taipua (western Maori) expressed his objection to the paternalistic restraints of Ballance's bill - especially the restraint on Maori who had individual Crown grants: 'They were treated as if they were a foolish people, not capable of looking after their own property'. This would appear to support Mitchelson's 'free trade' position. But Taipua went on:

> *All that the Maoris ask is to have the land taken away entirely from the control of the Government. If the Government really have the benefit of the Native race at heart, they should cease from purchasing Native land, and not allow Europeans to buy it either. I entirely approve of the Natives leasing their land to the Europeans, because if they lease their land they will derive substantial benefit from doing so...*
>
> *(Ibid, p.689)*

Mr Parata (Southern Maori) said that, after the protests about Ballance's Act:

> *I thought the Government would bring in some measure to give the Natives entire management of their lands. After that experiment was made and proved to be satisfactory then it would be quite time enough for the Government to bring in other proposals.*

He referred to two provisions in the Bill - allowing free trade in Maori land (which he clearly did <u>not</u> equate with Maori self-management of their land), and the rating of Maori land. (Ibid, pp.690-1).

Taiwhanga later returned to the debate with a bitter indictment, arising from a recent armed clash in Ngapuhi territory, which had left several dead. (See Ward, <u>A Show of Justice</u>, p.300).

> *Sir, I will not make a long speech on this Bill, because I think it is a Bill which is going to rob us of our lands and kill the Native people. This statement is not an untrue one, and I have only to point to the fact that certain Natives lost their lives only a few days ago. The cause of the fighting through which these Natives lost their lives was the survey of the land. Some of the chiefs went to the Native Minister at the time that the Natives were disputing about this land - that is to say, about two weeks before the fatal disturbance took place. One week before the fighting took place I myself waited on the Native Minister and asked him not to allow the surveyor to go on the land, no matter by which side he should be employed; but that honourable gentleman did not listen to our request. On the contrary, a newspaper which I have before me states that the Minister gave permission to the surveyor to go and survey the land.*
>
> *(PD, 1888 Vol.62, p.268)*

But the conservative government in power was not likely to be deterred by the Maori speakers from its course. The encouragement of capital meant making cheap land available for investors. Therefore 'free trade' in land was restored under the 1888 Native Land Act.

However, as far as the Rohe Potae was concerned, special provision had to be considered. Ballance's 1886 Act had repealed the Native Land Alienation Restriction Act, 1884, which had reserved the Rohe Potae to Crown pre-emption. Mitchelson proposed to withhold application of the 1888 Act from the Rohe Potae and the Thermal Springs district:

> *The Land Court now sitting at Otorohanga is busily engaged subdividing the whole of that country; and as soon as that is done - we consider it will take at least two years to complete the work - this particular block of land can come under the provisions of the Bill. [i.e. 'free trade'].*
>
> *(PD, 1888, Vol.61, p.670)*

In the end the relevant clause was put into the Native Land Court Act 1886 Amendment Act, 1888, which has to be read in conjunction with the Native Land Act, 1888. (They were debated together for the most part). Clause 15 stated:

> *In the investigation of the title to "Rohe-Potae" now before the Court, any interlocutory orders or decisions already made or arrived at declaring the ownership of parts of "Rohe-Potae,"*

shall be deemed to be, and as to such respective parts shall have the effect of orders made under clause twenty of the said Act, declaring the ownership of the land the subject of each such order, and which orders shall be deemed to have been made on the day of the passing of this Act.

And as to interlocutory orders or decisions declaring the ownership of other parts of "Rohe-Potae" aforesaid, which may be hereafter made by the Court during the investigation aforesaid, such orders or decisions shall be deemed to be like orders as aforesaid and to have been made under the said clause twenty, and shall have effect on and from the day of the making thereof respectively.

Notwithstanding any interlocutory order or decision already made or given, or which may hereafter be made or given, in respect of "Rohe-Potae," or any part thereof, no part of the said land shall in any way be dealt or interfered with before the expiration of three years from the passing of this Act, and, until the expiration of that time, the said land shall be deemed to be Native land within the meaning of the clauses numbered five and seven of "The Native Lands Frauds Prevention Act 1881 Amendment Act, 1888," and the said several causes shall apply and be in force in respect of the said land and every part thereof. But this provision shall not apply to or affect the Crown, or to any person acting for or on behalf of the Crown, under the authority of a Minister of the Crown.

What this meant was that although private purchasers were excluded for 3 years, the old practice of the government land purchase officers buying, piecemeal, the interests of individuals named in the lists provided in interlocutory orders of the NLC, could continue. Thus the brave effort of Wahanui and his associates in 1883 to manage and control the land on a tribal and hapu basis was totally undermined.

4. *The Maori Real Estate Management Act, 1888*

The Atkinson government further weighted its legislation regarding Maori land in favour of the purchaser through its Maori Real Estate Management Act, 1888. A previous Act of that name had allowed the interests of minors named in NLC titles to be freely alienated by the elders named as trustees, and they were so alienated. In 1886 Ballance had repealed the act, as part of his effort to allow Maori a more genuine and responsible management of their land. The Atkinson government now re-enacted the repealed Maori Real Estate Management Act. An attempt in the Legislative Council in the committee stage to deny the trustees power to sell or lease was

defeated, 15 to 10, Taiaroa and Wahawaha voting with the minority. (PD, 1888, Vol.63, p.415. See also Parata, Vol.62, p.17)

5. *The North Island Main Trunk Railway Loan Application Act 1889*

This Act essentially renewed the provisions of the 1886 Act of the same name, appropriating £120,000 for the purchase of Maori land along the Main Trunk route. Section 5 also secured the continuance of Crown pre-emption in the Rohe-Potae till 1892. The economic basis of the measure was clear. Speaker after speaker explicitly regretted that land along the railway should remain in Maori lands, or that government should acquire land by lease. The added value of the land was wanted by the government and the settlers; it was not to remain with the Maori. Explicit mention was made of the Awarua block, between the railway and the Wanganui river, to the Kahikatea forest of the Hautapu valley, to the totara of Taumaranui, to the maire opposite Ruapehu. Almost all the politicians were eager that the freehold of the land should be obtained as quickly as possible. The Maori members made some protest, but even their objections tended to focus on the questions of adequate consent and fairness of price. Only a Mr Turnbull raised doubts as to the economic sense of the policy: by the time the Crown had paid for surveys and roading there was a net loss in acquiring land, beyond what was sufficient to construct the line. A number of critical comments were made about the confused proceedings in the NLC and the devious activities of land purchase officers. But there was no doubt that the drive to acquire the land in freehold was going to prevail. As Dr Newman put it: 'Both Auckland and Wellington are deeply interested in the purchase of these large blocks [Awarua, Mokau and Tuhua], which are more suitable for settlement than perhaps any other part of the country. (See PD, 1889, Vol.66, pp.118-126, 232-6, 404-7, 515-8).

6. *Secretive purchasing in the Rohe Potae*

The legislative machinery was now in place for renewed purchasing from individuals named in NLC orders. The process was greatly assisted by subdivisions within the Rohe Potae. In 1889 Wilkinson reported:

During the past year the Native Land Court presided over by Judge Mair, with Paratene Ngata as Native Assessor, has been sitting almost continuously at Otorohanga, with a result that over 750,000, or more than three-quarters of a million, acres of land within the Rohepotae, or King-country, Block have now been adjudicated upon. Judgment has been given in eighty-two blocks, with areas varying from 1 acre to 100,000 acres; and in the cases of most of these

blocks the lists of names of owners have been sent in and finally passed by the Court. They vary in number from one (the lowest) to 991 (the highest).

Wilkinson said that sub-division surveys were going on apace and were notably complete in respect of blocks in the Waipa valley, from the Puniu river to Te Kuiti. He said:

> *Although the Native owners of the Rohepotae blocks are not likely to take kindly at first to any system of wholesale land-purchase by the Government, there are, however, a considerable number who are ready at once to sell their interests in one or more blocks. I think therefore, that the time is now opportune for commencing the purchase of such blocks as are suitable for settlement, and the occupation of which by Europeans would act as a feeder to the railway. (Wilkinson to Under-Secretary, 20 June 1889, AJHR, 1889, Vol.2, G-3, pp.3-4)*

In other words the Maori could successfully resist sale on a hapu basis but the old system of piecemeal purchase of individual interests would undermine their opposition.

It is not yet clear exactly why the rush to sub-division hearings and surveys should have occurred after the years of brave effort to stop them. But it had happened earlier in many other districts (most recently in the Rotorua area) and the usual reasons can be surmised: traditional rivalries exacerbated by the commercial value of land; encouragement by land purchase officers to establish claims, both true and false, and then to sell the interests; efforts by genuine rightholders and non-sellers to secure their titles and hold the land. In his 1890 report Wilkinson testifies emphatically to the reluctance with which the Rohe Potae leaders took the various steps, which led ultimately to the progressive loss of control over the land:

> *Their first step in the new order of things was to separate themselves from the Waikatos and the King party, which they did by laying down the external boundaries of the land claimed by them, which they called "Rohepotae," surveying the same and proclaiming it to be owned by the five tribes--Ngatimaniapoto, Ngatiraukawa, Ngatiwhakatere, Ngatihikairo, and Whanganui. Having done this, they thought, at that time, that that was all that was necessary, and that they would thereafter be acknowledged as the owners by European law and the government. This, however, they found could not be done until they had proved their title to the land in the Native Land Court, which they had to do, though much against their*

wish at first; [my emphasis] as, although they wanted to be recognised as owners by us, they did not want to give themselves so much, as they thought, into our hands as to allow their land to be dealt with by a tribunal of our instituting, called the Native Land Court. This was the second stage. The third stage--and it was almost contemporary with the second--was allowing the railway-line to run through their country. This was agreed to by them after due consideration and deliberation as a body; and most likely what helped them considerably to come to such a decision was the fact that they could see that Government were determined to put it through. Having put their land through the Court in one large block, in accordance with the survey of the external boundaries, it became necessary for them to send in the name of each individual who had ownership to it. This they objected to for a long time, and wanted it awarded to tribes and hapus only, and not to individuals. This was for the purpose of preventing sales, &c., and to 'keep the power in the hands of the chiefs. But as the Court had no power to do this they had to send in the names of individuals, and here commenced the jealousy, ill-feeling, bickerings, and quarrelling that finally resulted in their subdividing the original large block, with over four thousand five hundred owners, into numerous small blocks, with separate lists of owners for each. This subdividing of the large block, and deciding the ownership of the minor blocks, may be called the fifth stage, and there they hoped and tried hard to stop, as the next or sixth stage meant surveying the boundaries of each block as defined by the Court, and this they objected in many cases to do, as they saw plainly that, as soon as that was done and the area known, there was nothing to prevent those of the owners from selling who wanted to do so, a proceeding that was almost unanimously considered should not be allowed if it could possibly be avoided. A strong effort was also made at the time to keep the Government from getting a hold upon the land by survey lien or otherwise, and when they found that it was absolutely necessary that the surveys should be made--if not, all the previous work of the Native Land Court would be of no avail--they at first endeavoured to make arrangements with private surveyors to do the work and wait until the Natives could subscribe amongst themselves, or by other means get together the money to pay them. Eventually, however, they allowed the work to be done by the Government, as it was pointed out to them that it would be done with greater accuracy and quite as cheap that way. This is now being done, and the seventh or last stage is now being entered upon--namely, parting with their land by sale. As I have shown, they have, from the

> *commencement, entered upon each successive stage with reluctance and with as much delay as possible, and it is only in keeping with all their previous action that they should show as much reluctance and cause as much delay in bringing about this seventh and last stage as they have done in all the others. But this delay is only temporary, and this reluctance will gradually wear off and pass away. Numerous elements, the greatest of which is jealousy, are now at work amongst them, and which ere long will bring about a complete disintegration of their policy of anti-land-selling. What is wanted is to be prepared to act promptly, and take advantage of the disintegration as soon as it takes place.*
>
> *[AJHR, 1890, G-2, p.3; cited in my work-in-progress paper No.3]*

Wilkinson's comment that the Court had no power to award the land to tribes and hapu not individuals is a little puzzling. It was true in 1886 when the application was first lodged, but the 1886 Native Land Court Act itself, effective in 1887, provided in S.41 for award to hapu and tribes. The provision was not used and more research is necessary to determine why; possibly it was because the original orders of 1886 had already begun to list individuals; possibly because the 1883 petition had envisaged a determination of individual interests, administratively, by the maori committees themselves, but this had run into some difficulty.

In any case, although many subdivision orders were made by the Court at Otorohanga sales did not immediately take place. I have commented elsewhere on it as follows:

> *In the King Country, despite the original decision to define hapu interests only, disputes among claimants had led to individuals being listed on the titles. However, the chiefs and community opinion at first restrained individuals from selling their interests and the sheep farming projects that Wahanui and others had envisaged were begun. Government officers gave no encouragement whatsoever to them, but waited cynically for them to fail. A typical comment from one Land Purchase officer to another reads: 'they have sheep on the brain and this makes them quite unmanageable and until the mania passes away, or until they overdo it, or quarrel amongst themselves over the sheep and where they should run they will not think of selling'. [W.H. Grace to Wilkinson, 22 March 1890, MA13/70, NLP 90/60] In 1890, however, Wilkinson reported gleefully that he had succeeded in breaking through the opposition and made the first freehold purchase in the King*

Country; the secretiveness of the deal amply displayed the cynicism and fundamental immorality of the government agents' activities;

the two who just disposed of their interests ... were fully a fortnight after discussing the matter with me, before they could screw up their courage to sell, and, instead of coming to me in the day time they waited upon me at 9 p.m. ... having ridden 12 miles since sundown (they would not leave their own settlement until dark) and returned that night least any of the local natives should see them and surmise that they had been selling land.

[Wilkinson to Native Minister, n.d., c. March 1890, MA 13/78, NLP 90/76]

Before long, news of the sale leaked out, the familiar process of jealousy and distrust convulsed the NgatiManiapoto and more land was sold.

(Ward, A Show of Justice, p.299)

Thirty years later I see no reason to change my view of what happened. A responsible, serious and cooperative effort by the central North Island tribes to establish the Rohe Potae and permit settlement, mainly on a leasehold basis, was deliberately and systematically undermined by a government and its agents determined to get the freehold. There always were members of Maori communities willing to sell land, but they did not necessarily represent majority opinion in the hapu. Acquisition of Maori land depended, after the war over Waitara, on the mesh of intersecting hapu rights being converted into individual names on Crown grants, individually negotiable. The Rohe Potae leaders had tried to avoid this, but the land law, taking advantage of their traditional divisions and jealousies, pushed them steadily towards a listing of individual interests on Court orders. Although actions by Maori themselves were part of each step of the process, they could not be said to be fully willing parties. Agents like Wilkinson cynically manipulated the divisions among them.

Alienation of the land was intimately connected with individualisation; it might nevertheless still have been limited and controlled, as it was under Ballance's 1886 Act. That Act had serious weaknesses, and it aroused Maori people's fears of excessive control by government and excessive power in their own committees. But it had very real safeguards too and was not beyond repair. The long negotiations between Wahanui and Bryce, then Ballance, from 1883 to 1886 were

not without useful fruits. In 1888 Wahanui wrote to Taiwhanga to try to save the Act. In vain. Henceforth the Maori campaign to <u>really</u> regain control of their land lay with Taiwhanga and the many district leaders grouped in the Kotahitanga. In 1891 most land in the Rohe Potae remained still in Maori hands. The struggle continued over the land laws and their application in the Rohe Potae throughout the period of Liberal government.

VI *<u>THE LIBERAL GOVERNMENT'S POLICIES REGARDING MAORI LAND</u>*

1. *<u>In General</u>*

Liberal government legislation from 1890-1911 affecting Maori land is complex and requires a full study on its own, as would its specific application to WAI-48 claims. In the main, the Liberals were willing to introduce reforms in the land law to remove some of the worst abuses and inequities of the 'free trade' period. But they were not prepared to allow the central North Island to remain closed to settlement. This was an era of new immigration and close settlement. Consequently, the rhetoric of Prime Minister Seddon (in particular) is replete with statements about vast areas lying idle and the absolute necessity to develop it by white enterprise. He and his colleagues referred often to compulsory taking of Maori land, if necessary, for close settlement, just as the Liberals were compulsorily acquiring large settlers' estates for sub-division. James Carroll, in Cabinet from 1894 and Minister for Native Affairs from 1899-1912, was mainly a loyal servant of this policy, while fighting as best he could for Maori to be assisted to be farmers as well. This 'taihoa' policy was intended to try to control and slow the face of alienation until Maori could themselves participate more fully in land development, not simply as landlords. The general Pakeha hatred of 'Maori landlordism' ran through all this, with the Opposition baying at the heels of the Government to secure the freehold wherever possible. But the Maori too were making their presence felt, through the reorganised Kingitanga, the growth of the Kotahitanga and the development of the 'Maori parliament' movement, involving veteran leaders like Major Kemp and many Maori MPs or former MPs. The Kotahitanga and Maori parliament sought from the national parliament an acceptance of semi-autonomy for a Maori legislature, and authority for Maori committees to determine land title (instead of the NLC) and administer the land. They were supported in their desire for reforms of the law by influential Pakeha like W.L Rees, Chairman of the commission of enquiry into the land law in 1890-91. In 1895, as a result of agreement in the Maori parliament, a boycott of the NLC was achieved, especially in the King Country and Wanganui. An even stronger pressure came from the Urewera where surveys were

physically resisted from 1892-95. (See John A. Williams, Politics of the New Zealand Maori; protest and cooperation, 1891-1909).

The Liberals' efforts to steer through these conflicting pressures explain the various shifts of policy, but the pressure to secure the freehold (or at least very favourable lease terms) and a willingness to use compulsory powers if the Maori would not sell voluntarily, continually re-emerged.

2. *Some significant innovations*

(a) *Under the Native Land Purchase and Acquisition Act, 1893 the government could 'proclaim' areas of Maori land not actually the site of villages or cultivations, which the owners must sell or lease, through a board (with Maori representation) which would deduct its charges and pay the beneficial owners. The Act, for the time being, remained inoperative.*

(b) *The Native Land Court Act, 1894 by which Crown preemption was again resumed. (By an 1892 Act preemption could be applied to particular districts by proclamation); by an 1895 amendment the converse applied - areas could be exempted from preemption and opened to private purchase.)*

(c) *The Native Land (Validation of Titles) Acts, 1892 and 1893 by which a special court investigated many dealings which were technically in breach of one of the many requirements of the law but which, if considered equitable by the Validation Court, could nevertheless be recognised as lawful. (The Validation Court operated mainly on the East Coast.)*

(d) *The Urewera District Native Reserve Act, 1895. This was a response to the government's difficulties in the Urewera. For the first time a real effort was made to replace the NLC and other government agencies. Under the Act, as Williams puts it:*

> *A special commission, composed of five Tuhoe Maoris and two Europeans, was to do the work of the Native Land Court, cutting the land into family blocks and defining the relative shares of individuals. Elected committees would manage these blocks, and a general committee, with members from each elected committee, would exercise local government powers for the whole district. The Crown retained its power to make roads...*
>
> *(Williams, p.94)*

3. *Crown land purchase in central North Island*

During the 1890s the purchase of Maori land, usually by Crown agents buying individual interests, went on apace. The best summaries of it were given by the Stout-Ngata commission in 1907.

(a) *For the Whanganui district they reported:*

> *The Crown has been purchasing largely in this district since the early eighties. We find that from 1881 to the present time, during a period of twenty-six years, the total area purchased is nearly 1,273,000 acres, at a cost of £273,340. Nearly one-half of this area lies within the boundaries of what may be called the North Island Main Trunk Railway loan system of blocks and was acquired in conjunction with that undertaking. Deducting from the cost incidental expenses, the amount paid to the owners did not average more than 4s. an acre. We believe that but for the practical cessation of Crown purchases between 1901 and 1905 another quarter of a million acres would have been acquired. The Maoris knew in later years that they were parting with their lands at absurdly low prices, but the restriction against private dealings left them no alternative. They had to sell to the Crown at the latter's price, for, among other things, Court fees, agents' costs, and survey charges had to be met, and in litigation, in order to substantiate claims to one block, a whole tribe will recklessly throw away the land it has already won. And the taste for good Government cash or cheques once cultivated easily became a passion. The purchase-money has generally gone in litigation and riotous living. This weakness has been known for a generation, and ministered to whenever there is an outcry for the settlement of the waste areas of the colony.*
>
> *There yet remain to the Maoris of the Whanganui District about 500,000 acres, at a liberal estimate. For outside the lands covered by this report are small blocks in the vicinity of the Whanganui Township, all in profitable occupation, and into which there is no urgent necessity at the present time to inquire. The average interest per head of adults and minors is 250 acres. As a matter of fact the relative interests vary greatly from 30 or 40 acres to 3,000 or 4,000 acres per head. Our general inquiry into the titles and ownership of the lands yet remaining to the Whanganuis, though necessarily incomplete, has led us to believe that though a minority of owners can afford to sell a proportion of their interests, it will not be wise to treat the mass as having surplus lands for sale. We do not think it advisable that the present system of*

purchasing should be continued in this district. We find moreover, that the larger Maori landowners have in most cases succeeded in individualising their interests. The information in the schedule of lands under Group 4 is ample testimony of this. They are in a favourable position to deal with such lands, and are availing themselves of the opportunities afforded by recent legislation.

(AJHR, 1907, Vol III, G-1A, pp.15-16)

(b) For the Rohe Potae they reported:

From 1892 to 1900 the Crown acquired by purchase or in payment of survey liens, including interests afterwards defined by the Native Land Court, 687,769 acres. In that period there was an expenditure of £145,384 of State money among the Maori owners. It was money come by easily, and as in the Whanganui district, so here the taste for Government money grew upon the Ngati-Maniapoto, and in the absence of any provision for its investment and proper expenditure the money was wasted and the vendors immoralised. Under the circumstances any ambitions that the Maori owners might have had in the direction of farming their own lands were stayed. They could not but choose the easier way of raising money by the sale of their tribal lands....

(AJHR, 1907, Vol III, G-1B, p.4)

In parliament in 1907 Mr A.L.D. Fraser referred to the ridiculously low prices paid for Maori land under Crown pre-emption.. Not until 1905 was there any legislation to establish a minimum price (in relation to the Government Valuation of Land Act, 1896) and even then it was difficult to set values because of the absence of a market. The value of timber on the land was not reflected in the price. (PD, 1907, Vol. pp.388-9). Mr Apirana Ngata also referred to the relationship between land sales and liquor sales:

Complaint was then made in the King Country that hundreds of Natives came down from Taumarunui and TeKuiti and Otorohanga to Kihikihi, and sold their land there, and spent the whole of the money in the Kihikihi public house. That must not be continued, because it is not much the under-value of the land that we take umbrage to, it is the degredation of the race that we have to guard against. (Ibid., p.391).

4. *The Maori Land Administration Act 1900*

(a) *In 1898, concerned by both Maori and settler outcry about the Crown purchase under near-monopoly conditions, Seddon proposed a bill something along the lines of Ballance's 1886 Act, to set up boards which would manage all Maori lands in their respective districts. Though relating to Maori committees it was to be a Pakeha board. (Williams p.98). The Maori organisations pressed for Maori boards, with wider powers, including the socio-economic matters which Apirana Ngata and the Te Aute Association were then addressing. The government compromised with the Maori Lands Administration Act and a Maori Councils Act. Under the first Act the land councils (later Land Boards) retained a Pakeha majority and the NLC was not abolished. But the councils had some role in settling title and Maori owners could withhold their land from the land councils' jurisdiction. Seddon and Carroll steered the Act through parliament on the understanding that the land councils would make land available to settlers on leasehold.*

(b) *The compromise was in fact considered by many to be unworkable. Williams comments:*

> *Only in Wanganui and the East Coast did the Maoris willingly vest their land in the Maori land councils. Elsewhere because of the renewal of Maori opposition, the work of the councils was limited to determining land titles, and very little land was opened for settlement.*
>
> *(Williams, p.118)*

Nevertheless the Whanganui Maori indeed welcomed the alternative to selling. The Stout-Ngata Commission in 1907 reported:

> *Be it remembered that prior to "The Maori Land Administration Act, 1900," most of the large Maori blocks in the Whanganui District, certainly all those in the first group of lands covered by this report, could not be leased or dealt with in any way by private persons. The owners could only sell to the Crown; they had already taken that course, and sold over a million acres. The opportunity afforded by the Act of 1900 of leasing through the Council instead of selling to the Crown was eagerly seized upon, and resulted in the vesting of about 100,000 acres in the Council by deeds of trust, executed by a majority of the owners. This operation and the completion of the titles in the Council occupied up to 1903. Since then the Council, and now the Board as its successor, has leased*

more than half the area vested in it. Other large blocks are expected to be put on the market immediately.

(AJHR, 1907, Vol.III, G-1A, p.77)

In the Rohe Potae 41,077 acres were leased through the Land Council. (Report of Stout and Ngata, AJHR, 1907; Vol.III, G-10, p.8).

Nevertheless there was an widespread perception among Maori that the Councils involved undue bureaucratic tutelage and interference, and the rate of land alienation slowed. (Williams, pp.118-9).

(c) *Meanwhile the Opposition hue and cry about 'idle Maori land' forced the Liberals into making further impositions. The Native Land Rating Act 1905 imposed rates on Maori communal land, with compulsory vesting of land in the land councils for non-payment. Maori got a token representation on local bodies in return. More importantly the Maori Land Settlement Act, 1905 introduced the beginnings of state financial support for Maori farmers as for Pakeha farmers.*

(d) *But the same Maori Land Settlement Act, 1905 replaced the partially elected Maori Land Councils with wholly appointed Maori Land Boards, with one Maori and two Pakeha members (including the chairman). In certain districts land 'not required or not suitable for occupation by the Maori owners 'could be vested compulsorily in those Boards'. (Williams, p.127) The Stout-Ngata Commission also reported that Section 20 enabled the Government 'if it can get a majority in value of the owners in a block, to bind the minority and to complete its title in the whole block regardless of their wishes. This seems to us contrary to natural justice'. (AJHR, 1907, Vol.III, G-1B, p.5) It is a matter for detailed study of particular blocks to know precisely how for this effect operated in the Rohe Potae but Stout and Ngata obviously thought it did. The 1905 Act also authorised direct dealing for leases, subject to the approval of the Board.*

NB. For a further incisive and succinct summary of Liberal policy and legislation regarding Maori land from 1891 to 1905 see the 4-page summary written by Stout and Ngata, AJHR, 1907, G-10, pp.4-7, Doc.10 attached.

5. *The Stout-Ngata Commission 1907-8*

(a) *To supplement its 1905 legislation the government, on 21 January 1907, commissioned the Chief Justice, Sir Robert Stout, with Apirana Ngata, to 'make inquiry as to the areas of Native land which are unoccupied or not profitably occupied, and as to the modes in which*

such lands can best be utilised and settled in the interests of the Native owners and the public good'. This was the outcome of the complex politics of land referred to above, and of the efforts of Carroll and Ngata, in particular, to steer a way through them, saving as much as they could for the Maori while trying to blunt the Opposition's thrust for compulsory acquisition. As far as possible these two tried to promote alienation through leasehold, rather than freehold, and, moreover leasehold which would see the land returned to Maori control in good condition after a generation or so. (This is part of the reason 'old Taihoa' - Carroll - got his name.) The bulk of the undeveloped land was in the central North Island and the East Coast. It returned the owner's little and was the focus of the settler pressure. Carroll apparently vested his hopes in the new strategy, and on the Commissioners, to try to accommodate both Maori and settler interests. If he was expecting support for leasehold there was some justification for his hopes: by November 1907 the Commissioners had recommended, mainly with respect to the Whanganui and the Rohe Potae, the sale of 60,000 acres, the lease of 280,000 acres and the reservation for Maori occupation of 208,000 acres (PD, 1907, Vol.142, p.1032)

(b) *A reading of the reports of the Commissioners suggests that the wishes of the hapu did indeed shape the Commission's views. The hapu indicated which areas they wanted for papakainga, which areas they hoped to develop, and which they could sell or lease to raise revenue for development. A sample of the Commissioners' consultation and reflection of local wishes comes from their report on the upper Whanganui lands:*

> *Some of the owners of these lands were examined at Whanganui, some at Pipiriki and Maraekowhai (near the house-boat), and others at Taumarunui. The following is a précis of their views: All urged that the Court should as early as possible partition Maraekowhai, Whitianga, Waimarino A, and Waimarino 3, so that the interest of each individual or family be defined and allocated. Beyond this point they were not prepared to say what would be done with the land--whether they would farm or lease. That would be for each individual or family to decide after partition. Anyhow, they preferred, if the lands were to be leased, that they themselves should do this independently of the Board. The owners of Maraekowhai occupying the land and residing at Taumarunui were most emphatic in expressing their views on the matter. The Ngatiuenuku living at Manganui-o-te-ao, who own the greater part of Waimarino 3, desired partition to enable them to farm, but suggested that the interests of absentees (of those who did not live on the block) might be dealt with as the*

Commission thought fit. A large portion of the block would thus be available for general settlement. As to Waimarino A, the majority of the owners were in favour of leasing. They desired certain papakaingas to be made, and a portion set apart for Maori farming.

We were informed that Europeans were negotiating for leases of portions of Maraekowhai and for Waimarino B, C, and D. The land was much sought after by Europeans, particularly in the neighbourhood of Koiro. The Maoris allege that the favourite argument of every pakeha wanting a lease was that if the Maoris did not lease the Government would muru or take the land compulsorily. Negotiations for some of the larger areas are at a standstill, awaiting a Court to subdivide so as to enable the Board to approve of leases in suitable areas.

(AJHR, 1907, Vol.III, G-1A, p.6)

(c) *Stout and Ngata also had some forthright things to say about the way the land legislation had limited the owners' options and obliged them to sell more than they otherwise would have, or to lease on unsatisfactory terms:*

(i) *From Whanganui they reported:*

> *After so many years the Whanganui Maoris might be expected to hold strong opinions as to this system of administering their lands. The case they made out against the present Board as successor to the defunct Council was a strong one. Incidentally they instituted comparisons with leases they themselves have negotiated or are negotiating since section 16 of "The Maori Land Settlement Act, 1905," came into operation. Their views may be summarised as follows: They did not favour any system of leasing which divested them of the fee-simple of their lands; the system inaugurated by the Act of 1900 was expensive, and though good rentals might be obtained, the deductions for costs of surveying, roading, and administration would more than counterbalance any advantage that leasing by tender through the Board might have over leasing by direct negotiation with the lessees; they cited the Ohatu Blocks, which the Board, after an expenditure variously estimated at from £8,000 to £10,000 for roading and surveying, had leased with some difficulty; they had not yet received any*

rents from the Board for any of the lands leased by it, whereas the moment their private leases were approved by the Board, if not before, the rents were available without any deductions except for land-tax. Generally speaking, they alleged against the system, delay, expense, and loss of freedom of dealing. They could not be expected to be influenced by general considerations of policy as to limitation of holdings and the prevention of aggregation. Some were not altogether opposed to the Board acting as agent only to lease their lands, the fee-simple remaining in themselves, but preferred if possible to do the leasing themselves.

(Ibid, pp.11-12)

(ii) *From the Rohe Potae they reported a division of attitude. A letter signed by Taonui and others and handed in by John Ormsby, accepted in some measure the control of land alienation by the Boards:*

1. *All lands to be administered by a Board with extended powers, and under conditions similar to the provisions of section 17 of "The Maori Lands Settlement Act, 1905." The members of such Board shall be men having special knowledge of land-settlement. The President to reside in the district.*

2. *Practical farmers to be appointed as instructors, and paid by the State. They shall travel through the district, giving advice in practical farming, and where necessary supervise the expenditure of loans.*

3. *Loans under the Advances to Settlers Act be granted to Natives with the approval of the Board, and when necessary expended under its direction. Where Native proves incapable, the Board may take and lease the land.*

4. *Papakainga to be inalienable.*

5. *Land in suitable areas to be set apart for farming by the owners, also reserves for minors.*

6. *Surplus lands to be leased or sold by auction.*

7. *The Board to have discretionary powers either to withhold or to direct the expenditure of rents and the proceeds of land-sales, so as to prevent squandering.*

8. *Exchanges of land to be simplified.*

9. *Sales of land to the Crown in this district to be discontinued.*

10. *All restrictions to be removed from lands of capable Natives.*

However, another group of Ngati Maniapoto proposed to deal direct by sale or lease, 'without the interference of any Native Land Board or Council, always reserving for each Native sufficient land for a papakainga'. (AJHR, 1907, G-1B, pp.6-7)

6. *The Native Land Settlement Act, 1907*

(a) *The 1907 Native Land Settlement Act was allegedly to give effect to the commissioners' first sets of recommendations. Where they had reported that land was not required for Maori occupation but was available for sale or lease the Governor-in-Council could order such land vested in the Native Land Board of the district in fee simple, in trust for the Maori beneficial owners. The Maori beneficial owners were then debarred from dealing with the land -direct private dealing with all its attendant sharp practice, was to cease. By Section 11 'the Board, shall, with the approval of the Native Minister, divide such land into two portions approximately equal, and set apart one of those portions for sale and the other portion for leasing'. This provision was a concession to the Opposition, who considered that 'the leasehold party' had the dominant influence in the Native Affairs Committee and on the Maori Land Boards (PD, 1910, Vol.150, p.335). Subdivision into allotments was authorised in the case of land suitable for close settlement. Sale or lease was by public auction or tender (the principle of the Thermal Springs Act) so that market prices were available. Leases were for up to fifty years without right of renewal but with entitlement to payment for improvements. A sinking fund was to be established by the Board from lease revenue to pay for such improvements. Funds for surveys, roads and bridges would be advanced from the Public Works Fund, and charged to the relevant Board (i.e. a charge against the land). After payment of administration costs, development costs, rates and taxes, the sinking funds and any mortgage or lien on the land, the balance, if any, would be payable to the Maori owners. It was also lawful (S.53) for the Board to sell the land to the Crown. By section 7 the previous*

Maori owners had no power of disposition of the land once vested in a Board. (This was to keep out the private agents.)

(b) *Part II of the Act included clauses introduced by Ngata, not by Carroll. They provided that the land which the Commissioners recommended for Maori occupation could be leased through the Board to recommended Maori lessees without competition. First offer was to go to the owners themselves. Moreover, Maori lessees could borrow money on the security of their leasehold interest.*

(c) *In this paternalistic way, involving compulsory acquisition and alienation of some of the undeveloped Maori land, the settlers' demand that the land must be used, if not by Maori then by themselves, was to be achieved. The principle of the 1893 Native Land Purchase and Acquisition Act was now in force. But along with it were measures to assist Maori to farm their own land.*

(d) *The authoritarian nature of the Bill was pointed out by many speakers in parliament. It is strange indeed to read of J.D. Ormond, one of the most rapacious of all the 'free trading' settlers in the 1870s, complaining about the injustice of the Bill and the way it proposed to take control of the land out of the owners' hands. And, paradoxically that Wi Pere, who had been among the radical fighters of the 1890s for Maori control of their own land, saw the Bill as nearly ideal, a vast improvement on the constant teasing for individual interests that had gone on before. The reason for this paradox is that Wi Pere put great faith in the Commissioners and their discussions with each hapu before making their recommendations. As he saw it the hapu, openly and publicly, would get the full market value for the land, whereas now the continuous reckless sales to the Crown (he instanced the Wanganui district in particular) brought as little as one shilling and sixpence an acre. Moreover, under Part II the Maori too would now get the benefits of development funding and be assisted to farm their own land. (PD, 1907, Vol.142, pp.1147-50)*

(e) *But Wi Pere was closing his eyes to the coercive aspect of Section 11. Carroll explained the clause, which required that when the land was put under the Board it would be divided, half for sale, half for lease. An interjector called out, 'Why not lease the lot?' Carroll's reply reflected Pakeha preferences and political pressures, not Maori wishes:*

> *I know there are those who claim there should be nothing but leasehold; there are those, again, who claim that all tenure should be freehold; and there are also those who believe in a percentage of both. In the circumstances, the latter course is the one that meets with the more general acceptance, and that*

is what the Bill proposes. As it immediately affects the area clearly reported on by the Commission, and as the Commission had not the declared line of policy before it, it may be necessary for the Commission to review its reports, and make, extend or modify the same, as it sees fit.

(PD, 1907, Vol.142, p.1034)
In other words the preferences of the Maori hapu, accurately and sensitively reported by Stout and Ngata, were to be pushed and shoved about to meet the settler demand for 50 per cent of the freehold. Ngata himself, in the debate, acknowledged that the honourable members would not be content with the proportion of freehold recommended by the Commission. The Maori ideal, on the other hand, 'is opposed to the whole of the legislation from 1900 down to the present time and to the proposals of the Bill'. They said they wanted to be left alone, free of tutelage and with unrestricted freedom of dealing. But that aspiration was bedevilled by the purported individualisation of title which the Pakeha had thrust on the Maori since 1865, leading to enormous loss of land by the Maori and confusion to Pakeha settlers. Ngata defended the leasehold system and the lease term of 50 years, insisted on by the Maori members, in the expectation of recovering the land in due course. (Ibid., pp.1041-4). At the very least a variety of approaches was necessary to meet different needs and circumstances. (Ibid., pp.1041-4). Against the furious attacks of Massey, and with Sir Joseph Ward (the Liberal Prime Minister) half-capitulating to Massey's demands, this was the best Carroll, Ngata and Pere thought they could hope to achieve - mainly because of the Part II provisions. But the Bill undoubtedly involved loss of control by the hapu of land vested in the Boards, while the sale provisions of Section 11 and Section 53 (by which the Board could sell to the Crown 'at an agreed price') opened the way to further loss of the land itself. Heke, Kaihau, Parata and of course Mahuta in the Legislative Council remained substantially opposed, but a move in committee by Heke to strike out the power of sale was resoundingly lost by 11 votes to 37. (Ibid. p.1114).

7. *Effects of the 1907 Act on the Stout Ngata Commission*

(a) *By early 1908 the flaws of the 1907 Act had made themselves plain. On 11 March Stout and Ngata had to report that among the Whanganui and N'Maniapoto tribes the distrust of Section 11 was so great that Maori would no longer consent to open up the land to settlement. Section 11 forced them, if they wished to lease land, to sell half of what they wished to lease. The Commissioners*

considered that section 11, in relation to the previous purchase of the bulk of the Maori blocks, infringed the Native Rights Act 1865. (AJHR, 1908, G-1F, pp.1-2) Moreover the Commissioners had found that their recommendations of the previous year relating to the Rohe Potae had been ignored: 'Some areas that we recommended to be set aside for Maori occupation only have been purchased by the Crown. Some areas that we recommended for leasing have been purchased by the Crown, and some areas that we recommended for sale [by the public tender system] have been purchased by the Crown' (Ibid., p.3) The Commissioners concluded with an eloquent plea to help the Maori to become farmers, not to watch them cynically then take their land from them because they were not succeeding as well as Pakeha (ibid., p.4). The Commission struggled on for a further year, but the spirit had gone out of it. The hapu could no longer trust the process to reflect their wishes and the Commissioners knew they could not either. Mr W.H. Grace, Native Land Purchase Officer, continued to buy in the Rohe Potae, under the 1905 Act, for another year (AJHR, 1909, Vol.III, G-3A). Maori attitudes to the Land Boards remained ambivalent. (See PP, 1910, Vol.151, pp.287 and 290 for evidence of Maori being unaware that a meeting had vested their land in the Board, and of placemen being appointed by Carroll to the Land Boards).

8. *The 1909 Native Land Act*

As Minister Carroll was also responsible for the massive Native Land Act of 1909, consolidating 72 previous enactments. Ngata, now in the Executive Council, assisted him and there were long consultations with the Native Land Court judges. Introducing the Bill, Carroll was proud to announce that less than half a milion acres remained under customary Maori tenure. The Bill removed existing restrictions on alienation of Maori land and enabled Maori to deal with their land freely, subject to a check by the Native Land Court on adequacy of payment and the provision that no Maori could part with all his Maori freehold land. The majority of owners in multiple-owned blocks could deal with their land by way of resolution - a system which continued to bind the majority them to partition the block. The important provision was introduced that Maori customary tenure could not prevail against the Crown - a response to a recent opinion of the Privy Council in a case based on the Treaty of Waitangi and the Native Rights Act, 1865. This would prevent a rush of litigation, said Carroll, and quieten titles throughout the country. Maori could deal with their lands through the Maori Land Boards if they wished. Compulsory vesting still applied for breaches of the Rating Act and the Noxious Weeds Act. The powers of land incorporations and the land development provisions of 1907 were strengthened. In short, the regime of Maori land administration which lasted till the 1960's

was introduced. It certainly did not stop the continued alienation of Maori land, though it did end most sharp practice and facilitate the development of Maori farming where owners were determined and fortunate enough to retain land.

9. *Outcome of Liberal policy*

Time precludes a further study of the general legislation. The main lines of Maori land administration continued to emphasise the vesting of land in the Boards, for a variety of reasons, and hence a loss of control by Maori over land. Although Carroll had been able to retain some constraints on sale, many of thse were removed by William Herries, Native Minister in the Massey government, and more Maori land was alienated between 1912 and 1921 even though there was by then clear evidence of a rising Maori population. The alliance of Coates and Ngata in the 1920s saw a shift of emphasis to helping Maori develop their own land, but by this time only some 3½ million acres remained, much of it under lease.

VII *LIBERAL LEGISLATION EXPLICITLY RELATING TO CENTRAL NORTH ISLAND*

1. *The North Island Main Trunk Railway Loan Application Act, 1892*

This law was essentially similar to the 1884 Native Land Alienation Restriction Act. At a time when private purchase of Maori land still operated it continued to reserve the Rohe Potae to Crown pre-emption for a further 2 years (the 3 year period in the Atkinson's government's 1888 Act being about to expire.) The boundaries within which private purchase were debarred were extended from those in the 1884 Act. (PD, 1882, Vol.77, p.353) Complaints came from would-be private investors of course, and from legislators who expected that the country would be opened further if Maori were paid a better price. They also came increasingly from King Country Maori, stating that they had been offered prices from private enquirers of one pound to two pounds per acre, when the government agents were paying a maximum of six shillings an acre under the Crown monopoly (e.g. AJHR, 1889, G-1, p.xxviii; PD, 1894, Vol.86, pp.234-5). This was an age-old complaint following immediately after the signing of the Treaty. (It contributed to Hone Heke's challenge to British sovereignty in 1844 for example). The complaints reflect very strong feelings and have a certain evident justification. They omit, however, the tendency of the Crown to outlay for roads and bridges and other development works, and omit also a whole range of sharp practices which followed the private land trade. Crown pre-emption was a major principle of the Treaty, which is to

some extent in conflict with the rangatiratanga principle, though the latter is not now generally interpreted (as it often was in 1840-1900) as the right to sell land on the open market.

2. *Rohe Potae Investigation of Titles Act, 1892 (and Amendment Act 1893)*

This Act consists of a preamble one page long and 3 clauses totalling 14 lines. The Bill is not only virtually incomprehensible now but was virtually incomprehensible to the Minister introducing it to the Legislative Council in 1892! The Hon. Sir P.A. Buckley said 'he was bound to admit that the matter was in such a complicated state that he defied anyone living to follow the whole course of procedure, and make himself fully acquainted with the position'. He had asked the Chief Judge of the NLC about it and 'under the circumstances he could not do better' than read the letter he had from the Chief Judge:

> *The purpose of this Bill is to clear away difficulties that have arisen in the course of the investigation of the title to the Rohe Potae Block, otherwise known as the King-country. The block was in the first instance brought before the Court for investigation as a whole, and it was found that a large number of Natives were interest in different parts under different rights, so that it was necessary to divide it into many portions. At the outset a number of owners were found to be entitled, and as the division proceeded it was discovered that persons had been omitted from the first list who were clearly entitled to share in some portion or other of the block. As the investigation has lasted for several years, many of the persons first found entitled have died, and it has been necessary to determine their successors, which in numerous cases has been done summarily. The law, as it stood at the time when the investigation was begun, did not enable the Court to make orders for the different portions of the land one by one, but obliged it to withhold every order that was made until the whole of the land had been accounted for. This was found inconvenient, and, accordingly, in 1888 a clause was inserted in the Native Land Court Act 1886 Amendment Act of that year, directing that orders already made should be deemed to be orders made upon investigation of title under 'The Native Land Court Act, 1886,' and that any orders that might thereafter be made should in the same way be deemed final orders as they were made. It is now found that there is great difficulty in carrying out the provisions of the law, and there is also doubt whether the law has been technically complied with in all its strictness. It is proposed, therefore, by this Bill to give effect to the results that have already been arrived at; and, to*

prevent similar complications in the future, it is proposed that the whole of the land that has not yet been in any way clothed with a title shall be deemed to be Native land, so that the hands of the Court shall be free to deal with it in the most complete and satisfactory manner that the circumstances of the case will allow. With regard to succession orders that have been made, the difficulty is that the provision which was made in 'The Native Land Court Act, 1886,' for summarily determining successors upon partition appears to have been regarded as an authority to follow the same course upon a division of this block; but, as the proceedings were on investigation of title, and not on partition, the course adopted seems to be open to question, although its convenience - one might almost say, its necessity - is obvious. The Bill proposes to validate the succession orders so made. Shortly, it is proposed in this Bill to do two things: first, to validate what has already been done, notwithstanding the fact that there may have been some technical flaw in the procedure adopted; second, to enable the Court henceforward to deal with the residue of the block, free from complications that have arisen in consequence of the way in which it was originally brought forward.

[PD, 1892, Vol.75, p.544]

This is the kind of confusion which reigned when the Maori customary title was purportedly individualised. That the parliament was legislating uncomprehendingly indicates how far the authority over Rohe Potae land had passed - not only from the Maori owners, but from the elected legislature. It was in the hands of the NLC and the bureaucracy.

The following year the Act had to be amended. James Carroll, introducing the amendment, explained:

the Land Court, after deciding the ownership, made several partitions, for which orders were made, awarding to several hapus respectively such several partitions, numbering over one hundred. In the process by which those partitions were made some doubt arose as to the validity thereof, and consequently last year Parliament passed the Rohe Potae Investigation of Titles Act, to remove such doubts. That Act came into force, and confirmed all the orders made by the Native Land Court with the exception of a certain number which, by some mishap or another, were not signed until two days after the passing of the Act. Those orders were shown in the schedule of the present Bill, and this Bill was to give effect to them.

(PD, 1893, Vol.80, p.342)

The many admissions by ministers and commissioners of the confusion of Maori land law and administration raise serious questions as to whether the trusts implied in the Treaty were adequately discharged.

3. *The Tongariro National Park Bill (1893)*

(a) *The core of the formation of the National Park was the decision of Te Heuheu Tukino and the N'Tuwharetoa, while the Tauponuiatea block was going through the NLC in 1886, to grant the mountain peaks to the Crown for a national park. The gift related to a radius of one mile around the peaks of Tongariro and Ngaruahoe and a radius of two miles around Ruapehu. In 1888 a question was asked in parliament as to what steps government had taken to complete the park. The Native Minister gave the reply:*

> *Mr MITCHELSON said no such steps were being taken at the present time. The block of land in which these mountains were situated was at present the subject of an action in the Supreme Court; therefore the Government could not attempt to purchase any portion of it. The portion already acquired by the Government was nothing but the bare tops of the mountains, and the Natives had already refused to part with any more as a free gift. Any other land that was required must be acquired by arrangement with the Natives and by purchase, and that could not be done till after the action now pending in the Supreme Court was decided.*
>
> *(PD, 1888, Vol.62, p.283)*
>
> *The Supreme Court case referred to was probably that arising out of the Pouakani boundary dispute.*

(i) *By 1893, after various attempts to establish the Park, the Liberal government brought down legislation. Minister of Lands, John McKenzie, introducing the bill, said that 'the chiefs who owned land there were asked to give their consent, and that consent had been obtained'. The acreages involved were:*

Land given by Natives	*23,510 acres (the original Te Heuheu gift)*
Crown lands	*15,380 "*
Land under negotiation	*14,510 "*
Native land	*8,900 "*
Total	*62,300*

(PD, 1893, Vol.78, 309. See also plan of proposed park. AJHR, 1887, C-18, Doc.16.)

The 'Native land' appears to be land which not yet passed the NLC. It is not clear who was being negotiated with for the 'land under negotiation', but probably sections of N'Tuwharetoa. James Carroll remarked that the Maori of the district had 'in a noble, unostentatious and worthy spirit made a concession to the Government, for this very purpose, of 33,000 acres without any parade whatever'. His '33,000 acres' is presumably the 23,510 plus the additional 8,900 acres of 'Native Land'. (Ibid, p.311).

(b) *After the Bill had been to the Waste Lands Committee, Mr Taipua expressed concern that the Maori land had not all passed through the Court. He had a letter from Tureiti Te Heuheu (son of the Te Heuheu who had gifted the peaks), who wanted to appear before the Native Affairs Committee to discuss the Bill. Mr Kapa said that the extension from a one-mile to a 3-mile radius was taking in more Maori land including some villages. William Rolleston (Leader of the Opposition) supported them, referring to 'a large amendment in the Bill which probably amounted to confiscation', which ought to be translated and circulated. (PD 1893, Vol 80, p.321). McKenzie reacted angrily. It was open for anyone to move an amendment to exclude Maori land but:*

> *The Native land that was affected by the measure was of very little value to the Natives; it was never used for cultivation, and, in fact, it was only of value for the scenery in connection with it. It was of no value for depasturing sheep or cattle, but, as he said, it had a certain value in connection with its scenery and mountains. Another difficulty in the way was that if these Natives could only sell half the property it would simply mean that the Government would be blackmailed by a few individuals in getting possession of this country. Were they going on with this Tongariro Park or not? If they were, this Bill was absolutely necessary. Without a Bill of that sort, by which to declare this land a national park, the value of the land to the Natives would be gone, and the country would never get a Tongariro Park at all. His experience of dealing with the Natives taught him that it was always with them a matter of delay--always put off, always postpone till some other time; and when that time came there would be another request for postponement. If the Tongariro Park was to be set apart at all, now was the time to do it, and, seeing that the Government had 39,000 acres there already, and seeing that they were prepared to give the full value to the Natives for any interests*

> *they had in the matter, he did not think any injustice could be done to them. It was very much in the interests of the colony that the land should be set apart at once. They had had in the case of the land at Rotorua an instance of what delay in these matters meant. Let them remember the difficulty which they had to contend with in getting in the last remnant of the shares of the Natives in that district. What was their value? The Government had constructed baths there and made the place a sanitorium, the effect being to bring people there from all parts of the world. The land was of no value to the Natives, but the action of the Government gave it a value, and they were blackmailed in getting into their possession the last of the rights of the Natives in that locality. The same thing would happen in this case if they did not at the present time take the power asked for in the Bill. The leader of the Opposition was quite right in saying that they had altered the Bill from what it had been before. That was done by the Solicitor-General as the only way of getting the thing done properly. There was no use in half-and-half legislation. If they were going to do the thing, let them do it in proper form. They were assured the Natives were getting full value for all the interest they had in the land, and, that being the case, he could not see that any injury or wrong could be done to them.*
>
> *(Ibid., p.322)*

This was a characteristic government response - an element of compulsion, payment of fair <u>un</u>improved value for the land <u>ahead</u> of development work, and care to avoid having to pay improved value. Since the Maori were not paying the considerable costs of development this seemed to McKenzie only equitable. It omitted consideration of the contribution by Maori of the land of great importance and increasing value; omitted also a more 'joint venture' approach to development, and left the Maori on the margins.

4. *<u>The Native Townships Act</u> (1895)*

(a) *This is a further example of the Liberal government's tendency to resort to compulsory measures to assist private development. The Act is sub-titled 'An Act to promote the Settlement and Opening-Up of the Interior of the North Island'. The preamble states:*

> *it is essential that townships be established at various centres: and whereas in many cases the Native title cannot at present be extinguished in the ordinary way of purchase by the Crown etc. [because of the long lists of owners and the complexity of purchase].*

The bill provided that sites of up to 500 acres could be declared by the governor's proclamation, surveyed and laid off into allotments and reserves. Up to 20 per cent of the allotments would be 'Native allotments' for the farmer owners, and include urupa, and dwellings actually occupied. All streets and public reserves were to vest in the Crown in fee simple. All allotments were to vest in the Crown 'in trust for the Native owners' but any owner could sell his/her interest to the Crown. The allotments other than 'Native allotments' were to be leased at public auction for terms of 21 years, with a right of renewal and with entitlement to compensation for improvements. The rent, less surveying and administration costs, and less the compensation payable for improvements, would be 'divided amongst the Native owners in proportion to their relative shares and interests therein'.

(b) *In introducing the Bill in the House the Minister of Lands, John McKenzie, expressed concern that 'Europeans were building stores and dwelling-houses on Native land in places where he had no doubt at some future day it would cause a considerable amount of trouble'. The opening-up of the country was being delayed 'through the fact that no site could be got for a proper township'. He mentioned Pipiriki and Moawhanga as examples. (PD, 1895, vol.87, p.180). A Mr Duthie acknowledged the 'very arbitrary character' of the Bill, but considered it necessary. He had been to Pipiriki, where 'the tourist traffic ought to be a very large source of income to our settlers' (ibid. p.101) It was apparently not in the minds of settler politicians to pay serious regard to Maori making much income from the tourist traffic.*

(c) *Hone Heke (Northern Maori) pointed out that the system had been tried at Rotorua 'but the Natives had derived no benefit from that township' (ibid, pp.593 and 596). He argued that the township sites should be made inalienable (by sale) to the Crown or private individuals. That was the essential difference between Rotorua, where they freehold had largely been sold to the Crown and the West Coast leases where it had not. His remarks exposed the direct competition between Maori and Pakeha for the development opportunities of towns and the added value of town land. Heke's request was a forlorn hope.*

(d) *No explicit mention was made of compensation for the land taken for streets and public reserves. Probably this was deemed to be a reasonable contribution by Maori towards a development which was considered likely to earn them revenue - development largely created by government capital. This is perhaps a reasonable point of view except for the compulsory nature of the acquisition in the first place. The question of Crown liability to pay compensation under the Public Works Act for streets etc would also need to be considered.*

5. *Later Native Townships provisions*

(a) *The principle of vesting lands in the Land Councils for township purposes was also introduced by section 8 of the Maori Lands Laws Amendments Act, 1902 and it was under this act that the towns of Taumaranui (384 acres), Te Kuiti (263 acres) and Otorohanga (246 acres) were proclaimed (respectively from the Ohura South G block, Pukenui block and portions of Orahiri, Otorohanga and Waikawhitiwhiti blocks). The bidding for the leases of the town allotments was strong, apparently because some lessees construed the 1902 Act as implying that the leases were perpetual. Stout and Ngata felt that the lease prices realised at Te Kuiti had influenced the 'progressive' party among the N'Maniapoto to look favourably on leasing through the Land Boards as agent:*

> *We were informed that deeds were executed vesting many blocks of considerable area in the Council (now the Board) for administration. The title was never completed in the Board and lately the Crown has commenced to purchase interests in these blocks ...*
>
> *[AJHR, 1907, Vol.III, G-1B, p.7)*
>
> *It cannot, on that evidence, be said that Native Townships were always unsatisfactory to the Maori concerned. It depended essentially on the nature of lease terms - and here the usual conflict of interest between Maori and settler operated.*

(b) *Stout and Ngata found the lessees and town council of Taumaranui pressing for better lease terms. The Commissioners agreed that the term under the 1902 Act provided for only one renewal term. In their opinion, where permanent buildings were to be erected, a 'Glasgow lease' should be provided - that is either perpetual renewal or payment for improvements. They did not agree that the freehold was needed. (Ibid., p.9)*

(c) (i) *These sorts of consideration underlay the Native Townships Act, 1910. Carroll, introducing the Bill, said that it was to consolidate the administration of all the Native Townships in the Land Boards and to grant the Glasgow lease in respect of any allotment. It was noticeable, he said, that the towns created under the 1902 Act had gone ahead much more than those created under the 1895 Act (Kaimakau, Rotoiti, Parawai, Te Puru, Karewa, Te Puia, Te Araroa, Tuatini, Waipiro, Pipiriki,*

Tokaanu, Potaka, Parata and Hokio). He referred to his going to Taumaranui in 1904 'to treat with Natives for the surrender of the land for the purposes of the Act';' apparently the land was not just taken, though what proportion of the owners consented is not yet clear. As in the 1907 Act the 1910 Native Townships Act vested the Maori allotments (already vested in the Crown in trust) in the Land Boards in fee simple in trust for the beneficial owners. Public roads were vested in the Crown or in the borough, and all other reserves were made public reserves. Land Boards could subdivide the land and lay off roads. There was some limitation on the power of leasing the Native allotments: by Section 15 they could only be leased in pursuance of a resolution of the assembled owners'. The Board could also sell to the Crown any land or any undivided interest in land, with the consent in writing of the beneficial owner(s) concerned. (PD, 1910, Vol.150, pp.271-3) Here again was an attempt by Carroll and Ngata (who supported the Bill) to walk the tightrope.

(ii) *But they could not. In committee Carroll and his government colleagues defeated by 37 to 29 a move instigated by the Liberal member for Taumaranui to allow sale of the freehold to private parties (Ibid, p.301). But a month later the bill was re-committed to allow the addition of new clauses and Carroll himself moved an extra clause 21B (which became S.23 in the Act) to permit sale by the Board of any land vested in it, with the prior consent of the beneficial owners in writing or resolution of the assembled owners. Carroll, Ngata and Parata voted for the amendment, Rangihiroa against it. The 'assembled owner' provision made it easy to acquire a specious form of Maori consent, and sale could be by private contract as well as public tender. The lessees and the Opposition 0914had got their way. Ngata (now on the Executive Council) defended the change of front on the basis that the new clause met the situation better than the defeated one, that the Maori owners' consent was still required and that the Land Board always leased in the beneficial owners' favour. Moreover, many of the leading men (Ormsbys, Hettits) had been to Wellington to consult with the Native Minister 'and were perfectly satisfied that the Native interest is well concerned in this Bill'. (Ibid., pp.343-4). However, the truth behind the change of front lies in electoral politics, with the Liberal government desperate to hold the seat of Taumaranui against Massey*

and the Reform party in the 1911 election. A Mr Taylor (Christchurch North) saw through Ngata's rather lame explanations:

> *The interesting speech of the member of the Executive representing the Native race is a frank confession that the Government intend to hold the Taumaranui seat against all-comers in the next election, even if it involves the establishment of free trade in Native Lands. ... The Government have drifted into the position that the combined forces, on both sides of the House on the freehold question have been too much for the Executive.*
>
> *(Ibid. pp.344-5).*

VIII SOME CONCLUSIONS

1. *There are great ambiguities about what was meant by permitting Maori the full control over their land. After 1840, for most settlers it meant being allowed to sell it on the open private market. For many Maori it meant that too. Paternalistic restrictions were often resented as involving loss of mana and loss of opportunity to get the prices being offered by the private market. Many statements can be cited by Maori MPs and their constituents, objecting to Crown pre-emption. Yet 'free trade' was mainly claimed only in opposition to Crown monopoly. Most of the time, thoughtful Maori leaders did not want free trade in the tribal patrimony. In the period studied here, both on the Whanganui river and in the Rohe Potae, scheme after scheme was proposed by Maori to limit alienation; and to lease rather than sell. The pre-1840 situation, where Maori admitted Pakeha to their territory but retained ultimate control of the land on which they resided, was remembered.*

   But 'Maori landlordism' was systematically opposed and overturned by settlers and their governments during the period under review. As in Greymouth, where local hapu were obliged to concede lease-in-perpetuity to avert having to grant lessees the freehold; as in Rotorua, where the leases were mostly converted to freeholds; so too in the Rohe Potae settlers insisted on the freehold, both in Native Townships and on rural land. Their purpose was mainly economic - they wanted to gain the added capital value of the land along with their improvements. There was also a strongly ethnocentric or even racist overtone that Maori should not receive unearned increment

from settler enterprise. Only the Liberal Government, in part, tried to apply the same view consistently to the unearned increment of European landlords. Generally white capitalists were encouraged to invest in New Zealand in freehold titles acquired from Maori customary land. Settlers often justified the process on the basis that it would be good for Maori to become landless in order to oblige them to work (see e.g. James Williamson, p.35 above).

2. *The principal instrument of the process was the Native Land Court, created by the Native Land Acts of 1862 and 1865, passed by parliament without Maori representation and with virtually no consultation with Maori. It could be argued, on good historical evidence, that many Maori at the time wanted to engage in direct dealing with settlers about land, having become increasingly disenchanted with Crown land purchasing from 1840 to the war over Waitara in 1860. Equally though, it could be shown that Maori did not want any dealing over land at all, or at any rate any sales. This was obviously the position of the kingitanga, but Maori in districts such as Hawkes Bay and Poverty Bay were also making it very clear to settlers in the 1850s that their so-called purchases were not going to be recognised as acquisitions of the freehold but merely the rights of tenants on good behaviour. The settlers' legislation of 1862 and 1865 who designed to create a negotiable title to overcome this resistance.*

3. *The rush of applications to the court and the land selling by the chiefs named on Crown Grants as owners, under the 1865 Act, might again seem to indicate a widespread desire among Maori for individual titles and direct dealing. Undoubtedly there were many Maori who did not seek to take advantage of the opportunities provided by the new process and were profligate with their tribal patrimony. Others genuinely sought to develop some land and lease or sell other parts. The alienation must be seen in the context of considerable commercial pressures to sell, and a raft of practices designed to involve Maori in debt and then press them to discharge their debts in land.*

4. *Serious consideration must be given by the Waitangi Tribunal to the question of whether the setting aside of Crown pre-emption in 1862, albeit with some Maori approval at least, was itself a fall by the Crown in terms of the explicit provision of the English version of the Treaty. The events reviewed in the paper show that, although many Maori wanted modification of the pre-1862 system, they sought something very different from what was provided. The history of land legislation from 1862 to 1910, is a history of struggle, of largely losing struggle, to modify the jurisdiction and powers of the Native Land Court.*

5. *The efforts of the Rohe Potae leaders and others to stop the sale of land necessarily involved getting the powers of the NLC cut back or abolished, and the authority of commitees representing hapu and iwi leadership put in its place. When this was done, or partially done, the effects were immediately evident - the flow of land sales slowed or stopped. Settler politicians were often amazed and cynical at the way Maori sold their interests in land; but this happened only because of the so-called individualisation of title, which enabled all kinds of jealous competition and secretive dealing to flourish. Land selling did not flourish under the 1900 legislation or even that of 1905. Perhaps the clearest indication of a genuine expression of Maori wishes came from the discussions of Stout and Ngata with the various hapu in 1907. A complex of attitudes was revealed, mostly in favour of leasing and of the development by Maori of their own land, sometimes in individual farms where the land was suitable, sometimes on large pastoral runs with the many owners incorporated. A relatively small portion of the land was proposed for sale. But this, of course, was unacceptable to the settlers. The determination of the settlers to secure the freehold in the central North Island was one of the most striking features of the whole period under review; the Liberals tried to satisfy it with a mixture of vigorous buying under Crown monopoly and compulsory acquisition. But even they were overwhelmed. In the climate of the times Carroll and Ngata could fight only rearguard actions.*

6. *Two other major features of the uncontrollability of the process, for Maori, should be noted:-*

(a) *One is the fact that, until the Native Committees or Land Boards were given a role, Maori had no way of securing recognition of their landrights in the received law <u>except</u> by making application to the Native Land Court and appearing in it. The system encouraged Maori to make false or exaggerated claims and the use of rule 'oe non apparentibus et non existent ibus eadem est ratio' ('Not to appear is not to exist') obliged genuine right-holders to come into court. Coming into the process was not usually a matter of free choice, as far as the Central North Island is concerned. (Se e.g. the explicit statements by J.C. Richmond 35 above and John Ormsby, pp. 41-2 above);*

(b) *And coming into court was very expensive. A great deal has been written of court costs, survey fees and the costs of travelling and lodging an order to pursue or defend claims. Many large blocks or portions of blocks in the Whanganui ki Maniapoto region were taken in payment of survey charges. Much of Rangipo North was involved and the total extent merits further research. (See the Stout-Ngata report on Whanganui lands, AJHR, 1907, G-1A, p.10 for detailed*

examples of subdivision costs and survey costs typically taking one-third of a block).

7. *Another them requiring close consideration by the Tribunal is the question of the relationship between group and individual rights. Traditionally there were various levels of rights in Maori society - day to day disposition of a household's garden lands, for example, being a matter for individual or family control, not normally involving the hapu leadership. But individual rights largely derived from active membership of a hapu, and an individual o family did not possess the right permanently to alienate part of the tribal patrimony., Thus, the statements by Richmond and Ormsby cited above, affirm the hapu basis of land ownership, and most of the efforts of most organised Maori movements from the kingitanga onwards were designed to defend and strengthen the control of land by hapu or iwi. Yet with increasing modernisation Maori developed more individualist attitudes towards property and the desire to demancate and secure one's individual interest in the hapu patrimony vied with more group-oriented approaches. Both tendencies existed, as they do today. Where the land was suitable for an individual or family farm the new aspiration was and is understandable, and is perhaps a concomitant part of Article III Treaty rights. James Carroll, for one, affirmed this in his policy approaches. But Carroll, and many other Maori leaders, made clear their views that to pursue individual title on high country land was utterly inappropriate. For that kind of land they worked consistently for control and development through elected block committees. Thus, although the 1883 Rohe Potae petition itself and the 1895 Urewera District Nativ Reserve Act (to give another example) themselves spoke of eventually <u>defining</u> proportionate individual intrests (<u>after</u> hapu level interests had been defined) they did <u>not</u> speak of those individual intgerests being individually alienable. But that is the just the distortion pursued in the Native Land Acts and by successive governments' land-purchasing policies, with the exception of the 1886 Native Land Administration Act and its successor 1900. Very very few Maori were enabled to develop individual family farms before Ngata's 1920 schemes. The so-called individualisation of title pursued by the Native Land was a phoney individualisation, a false individualisation. It mostly amounted to no more than a listing of names on a Certificate of Title. There were few individual farms marked out on the ground. The only thing really individual was the right to alienate the land, or one's interest in land, without the restraints of the traditional hapu authority over land. It is a matter for serious consideration as to whether such an arrangement, so convenient to the land-buying Crown and settlers, was a breach of the Treaty guarantee of rangatiratanga and of the*

Native Rights Act 1865, which enjoined upon the courts the recognition of custom, notwithstanding that the Native Land Act expressly provided for the extinguishment of custom in respect of any land brought before it.

8. *Reviewing the history of land alienation in the Central North Island from 1870 to 1910 it is difficult not to conclude that the over-riding purpose of government throughout the period was to obtain the freehold of Maori land for settlers rather than to see Maori land developed by Maori. Almost every effort by Maori to slow the alienation, and either develop or lease their land, was systematically overcome, by legislation, whenever it showed signs of succeeding. By the end of the period Maori held minority interests and most were economically marginalised, as elsewhere in the country, although some families and individuals had been able to retain land in their own names.*

Alan Ward
March 1992

MAPS

1. *Line of the Main Trunk railway.*

2 *The Waimarino block, as defined by the Native Land Court 1886-7.*

3. *The boundaries of Rohe Potae (by petition of 1883 and Cussen's line, 1884).*

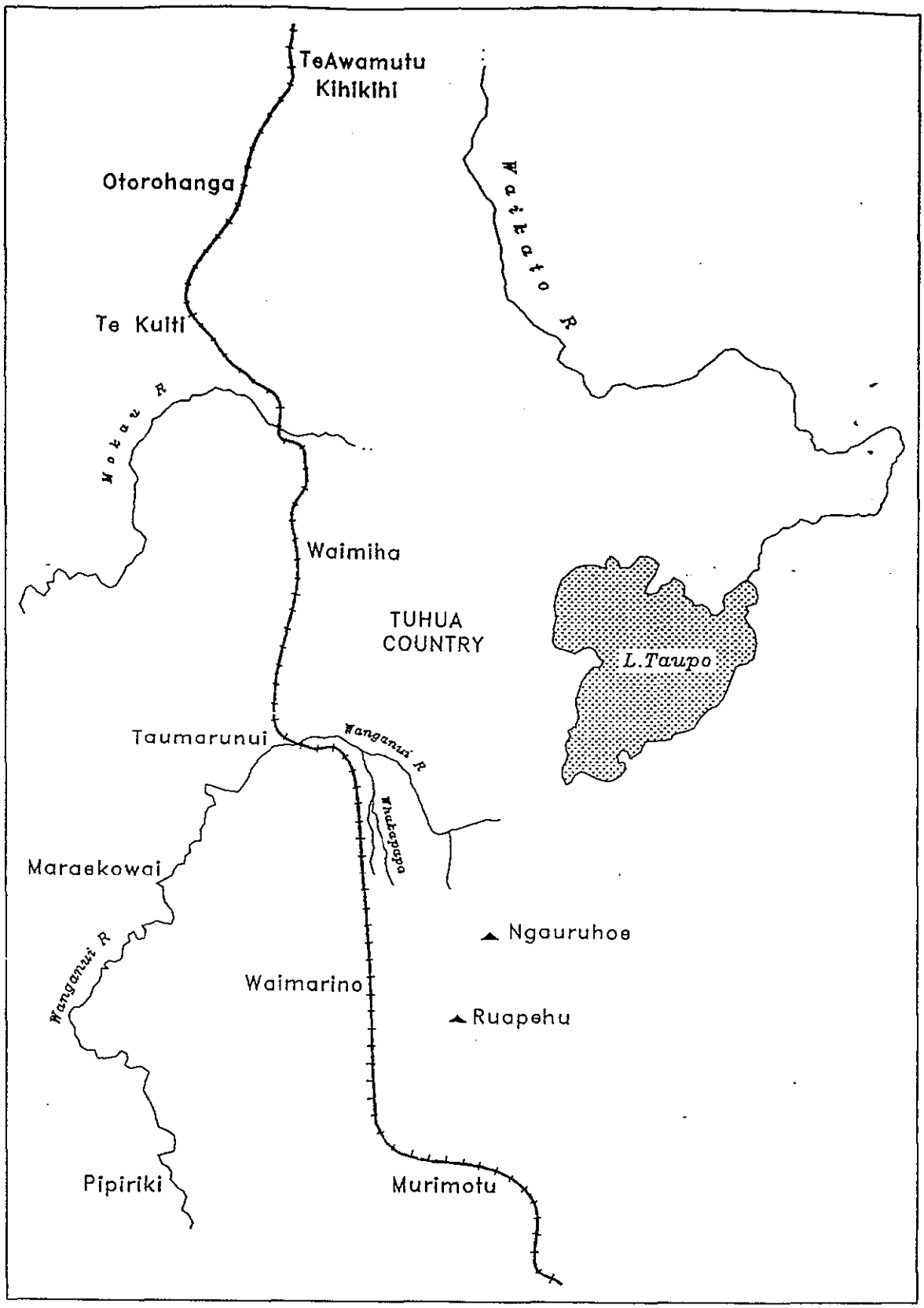
4. *Tauponuiatea block, showing inroads on 1884 Rohe Potae boundary.*

5. *The Aotea (Rohe Potae) block, as defined by the Native Land Court, 1886.*

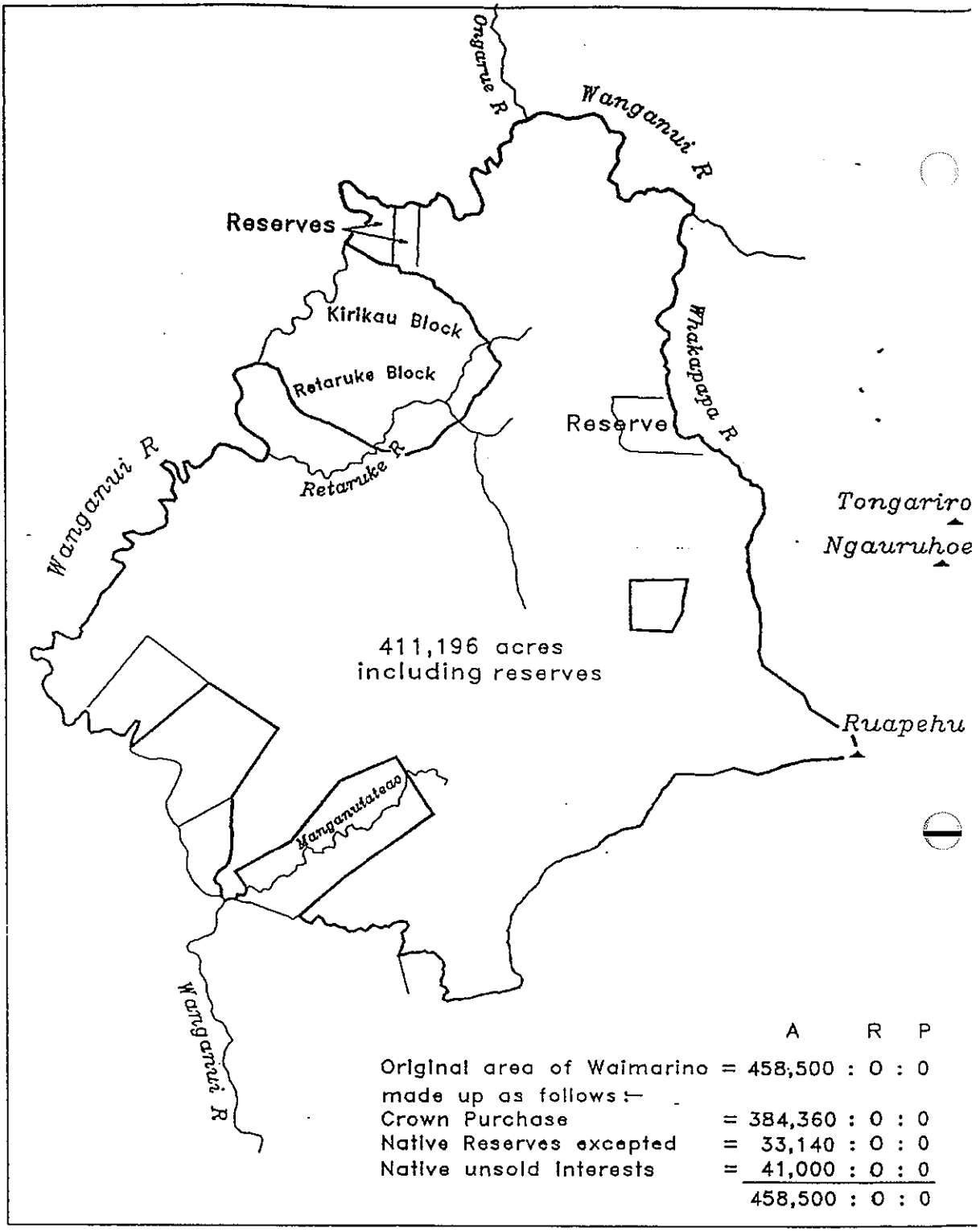
6. *Maori land tenure 1891.*

7A *Plan of the Tongariro National Park (AJHR, 1887).*

7B *Plan of the Tongariro National Park (supplied in response to the motion of Apirana Ngata, file Le 1/1908/219, National Archives).*

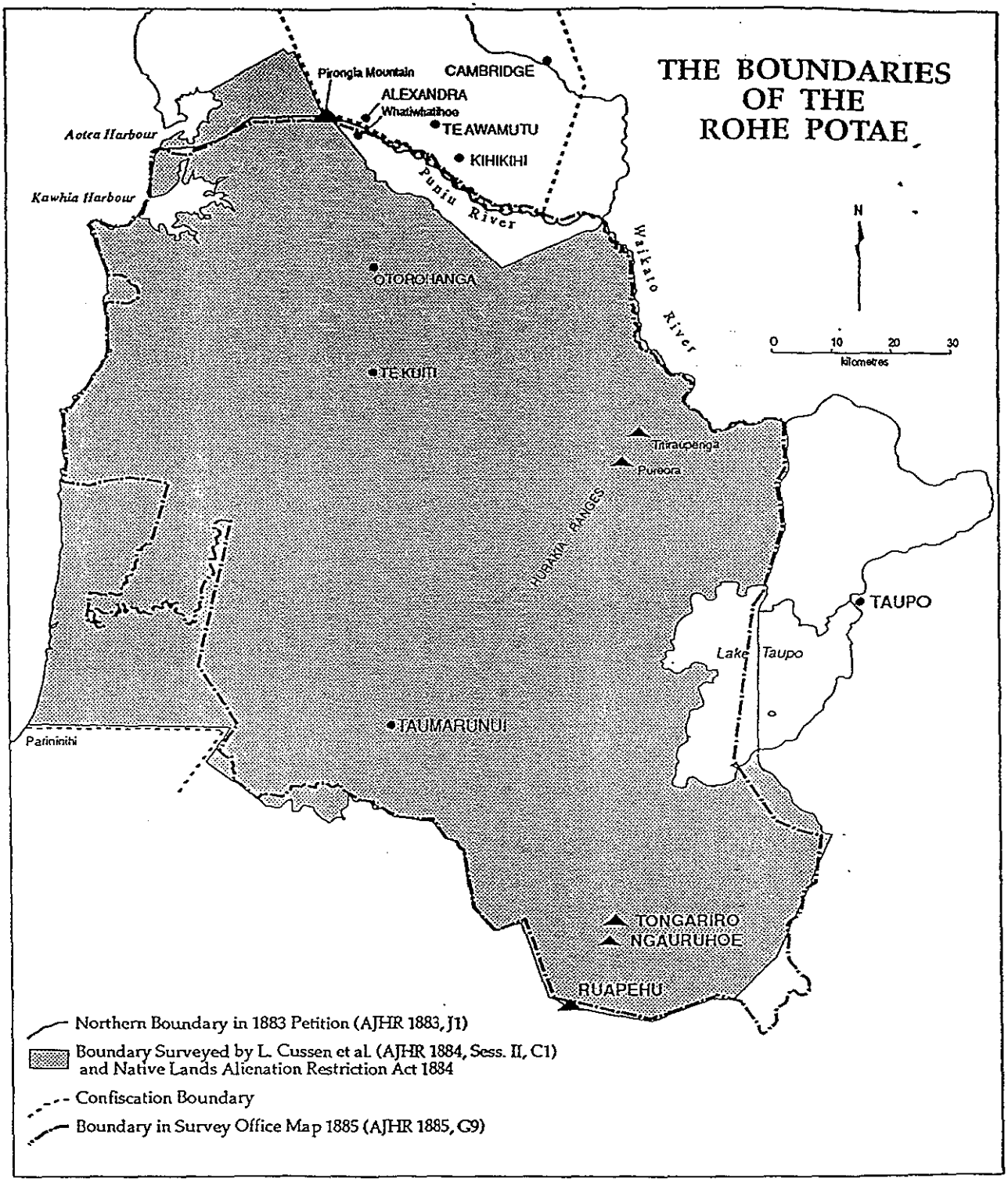


Map 1: LINE OF THE MAIN TRUNK RAILWAY



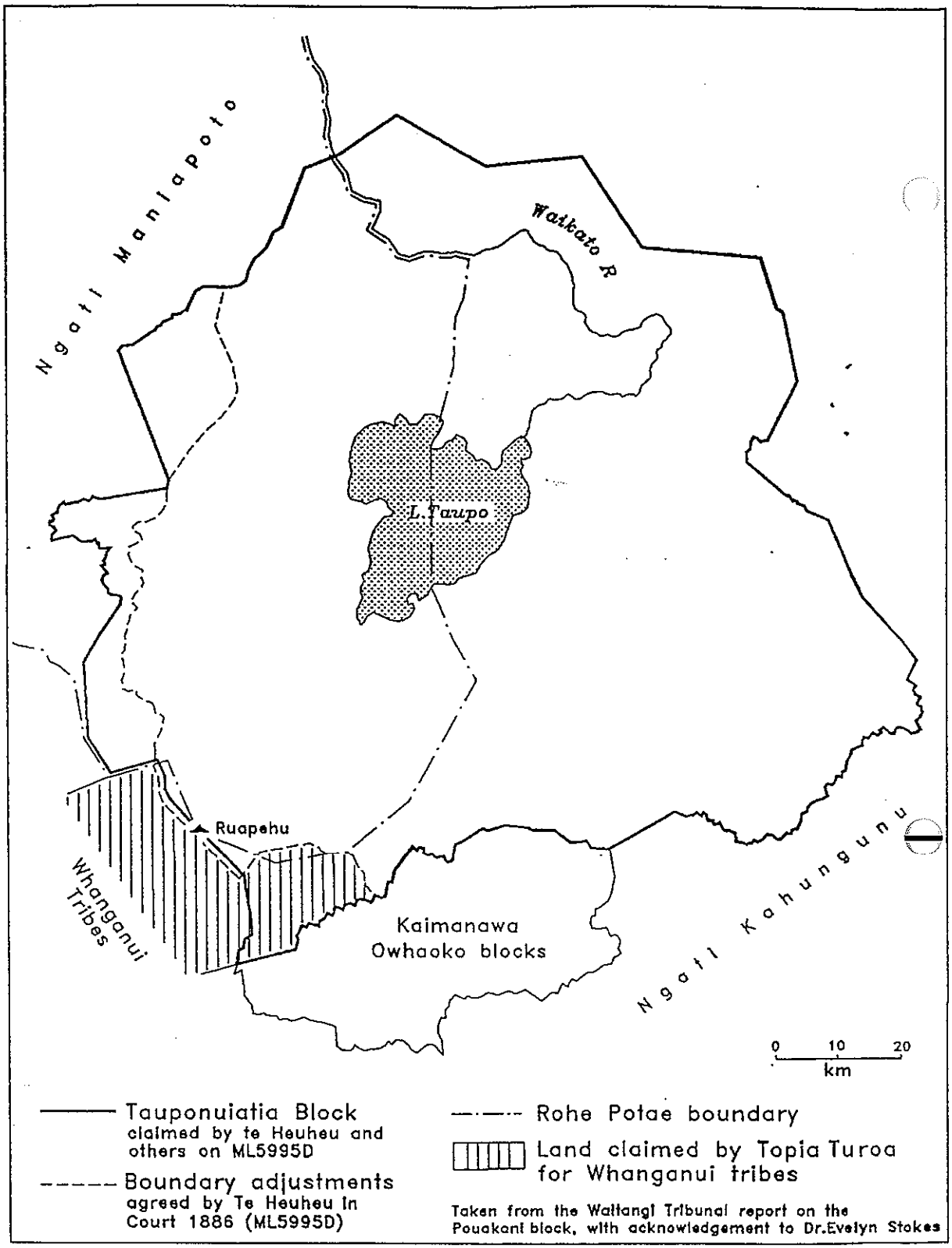
	A	R	P
Original area of Waimarino	= 458,500	: 0	: 0
made up as follows :–			
Crown Purchase	= 384,360	: 0	: 0
Native Reserves excepted	= 33,140	: 0	: 0
Native unsold interests	= 41,000	: 0	: 0
	458,500	: 0	: 0

Map 2: WAIMARINO BLOCK AS DEFINED BY THE NATIVE LAND COURT 1886–7

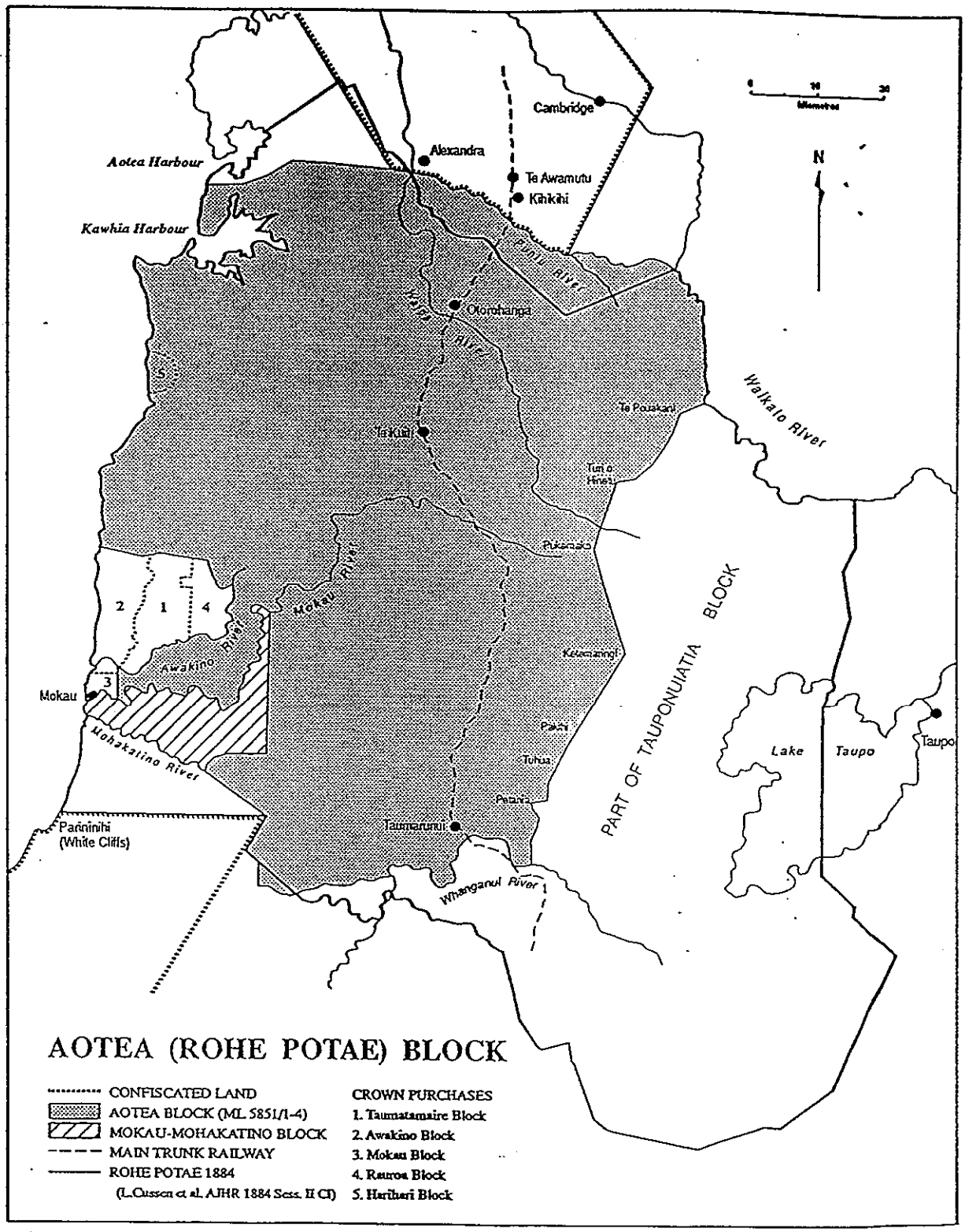


Map 3

Taken from Waitangi Tribunal Report on the Pouakani BLock, Wai 33, with acknowledgement to Dr Evelyn Stokes.

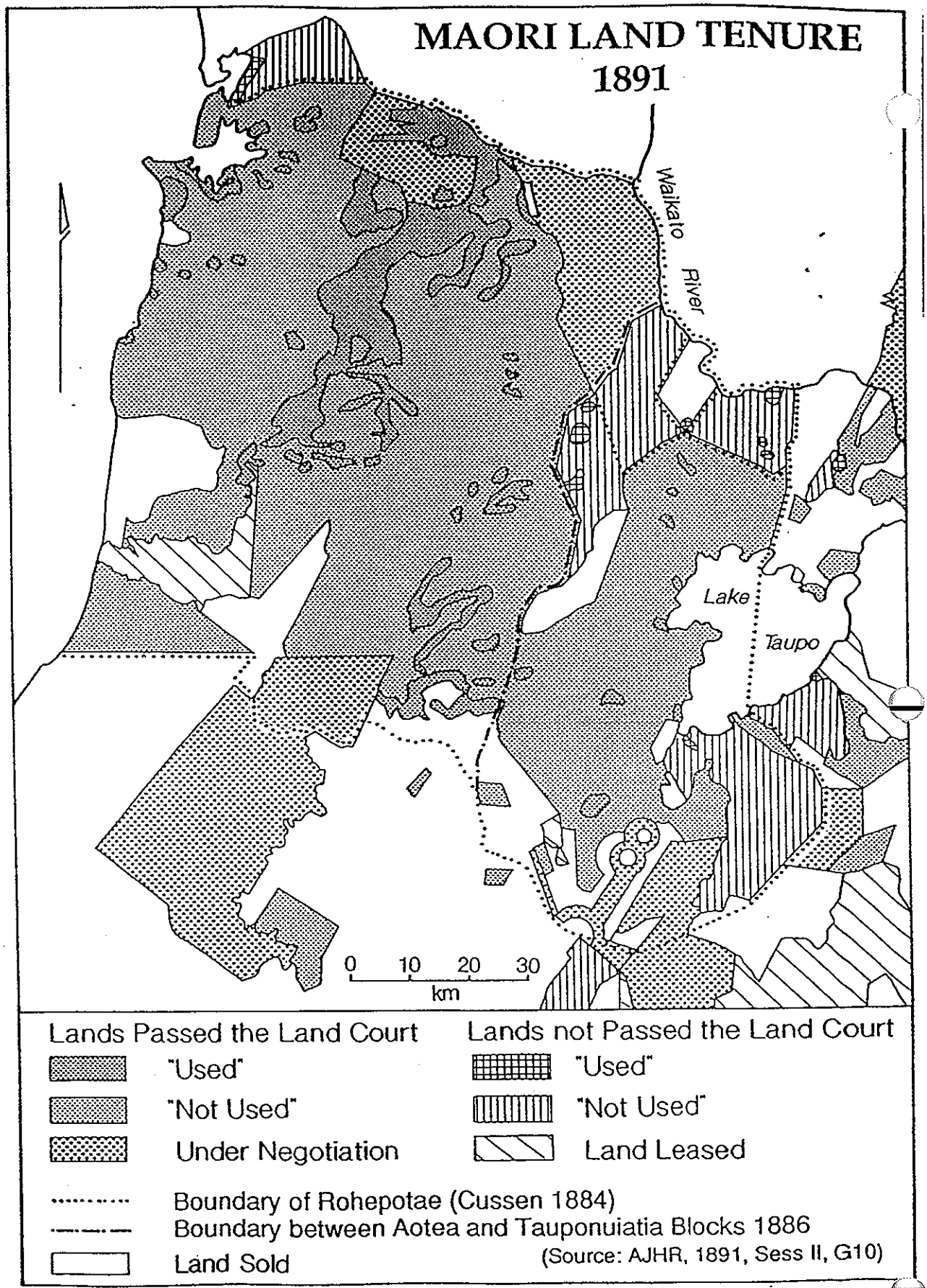


Map 4: TAUPONUIATIA BLOCK (SHOWING INROADS ON 1884 ROHE POTAE BOUNDARY



Map 5.

Taken from Waitangi Tribunal Report on the Pouakani BLock, Wai 33, with acknowledgement to Dr Evelyn Stokes.



Map 6.

Taken from Waitangi Tribunal Report on the Pouakani BLock, Wai 33, with acknowledgement to Dr Evelyn Stokes

THOS. HUMPHRIES,
Surveyor-General.

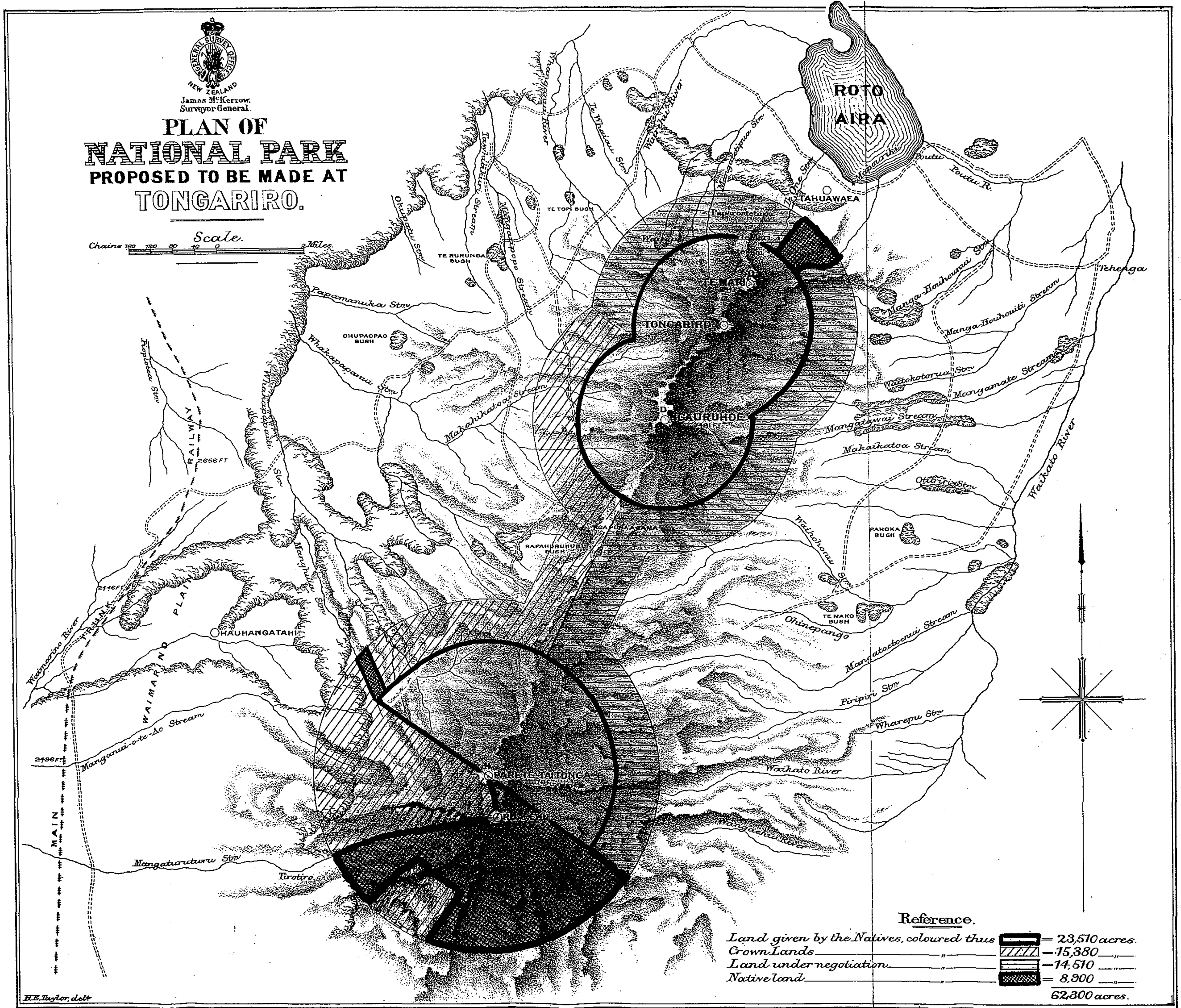
PLAN OF TONGARIRO NATIONAL PARK

'Original Boundaries.....thus ▬ ▬ ▬ (as described in the "Tongariro National Park Act" 1894.)
Amended " " " ▬▬▬

SCALE
½ 0 1 2 3 4 MILES.
E.C.C. del.

Native Land coloured ▨
Freehold " " ▭
Uncoloured Lands are Crown

By Authority: John Mackay, Government Printer.



Lithographed at the General Survey Office. Wellington, N.Z. April, 1887.